



October 3, 2006

Oregon Public Utility Commission
550 Capitol Street NE, Suite 215
Salem, OR 97310-2551

Attn: Vickie Bailey-Goggins, Administrator
Regulatory and Technical Support

Re: **PacifiCorp DRAFT 2012 Request for Proposals - Docket No. UM 1208**
Revised Draft 2012 RFP

Pursuant to the amended schedule adopted on September 27, 2006 in Docket No. UM 1208, PacifiCorp submits its revised draft request for proposal 2012 ("2012 RFP"). Both clean and redlined versions of the 2012 RFP are being filed. The redlined version will reflect the changes made since the July 11, 2006 version was filed; however, only the documents that have been revised since July 11, 2006 are being resubmitted. This filing is also provided in both Word and pdf formats on the enclosed CD.

If you have any questions about the filing please contact Laura Beane at 503.813.5542 or Stacey Kusters at 503.813.5351.

Very truly yours,

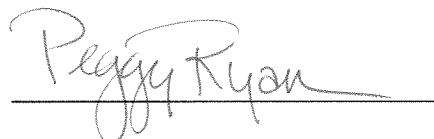
A handwritten signature in cursive script that reads "Andrea Kelly pr".

Andrea Kelly
Vice President, Regulation

Enclosures
cc: Service List UM 1208 (w/ enclosures)

I hereby certify that on this 4th day of October, 2006, I caused to be served, via overnight delivery, a true and correct copy of PacifiCorp's Revised Draft 2012 Request for Proposal 2012 in Docket No. UM-1208 to those parties who have not waived paper service.

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Peggy Ryan
Supervisor, Regulatory Administration

ASSET PURCHASE AND SALE AGREEMENT

dated as of [DATE]

by and between

PACIFICORP, as Buyer

and

as Seller

TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS AND INTERPRETATION.....	<u>21</u>
Section 1.1 Defined Terms	<u>21</u>
Section 1.2 Interpretation.....	2
ARTICLE 2 SALE OF ASSETS.....	2
Section 2.1 Sale and Transfer of Project by Seller	2
Section 2.2 Purchase Price.....	4
Section 2.3 Closing.....	5
Section 2.4 Assumption of Liabilities	6
Section 2.5 Further Assurances	6
Section 2.6 Conditions to Buyer’s Obligation to Close.....	6
Section 2.7 Conditions to Seller’s Obligations to Close.....	7
ARTICLE 3 TERMS FOR PROGRESS PAYMENTS.....	7
Section 3.1 Terms	7
Section 3.2 Conditions Precedent.....	8
Section 3.3 Notice of Request for Progress Payment.....	9
ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF SELLER.....	12
Section 4.1 Organization, Standing and Power	12
Section 4.2 Capital Structure	12
Section 4.3 Authority; Execution and Delivery: Enforceability.....	12
Section 4.4 Validity of Agreement; No Conflict.....	13
Section 4.5 Governmental Approvals and Consents	13
Section 4.6 No Proceedings.....	14
Section 4.7 Compliance	14
Section 4.8 Taxes.....	14
Section 4.9 Environmental Matters	15
Section 4.10 Title to Properties	16
Section 4.11 Real Estate	16
Section 4.12 Transaction Documents; Representations and Warranties in Transaction Documents	16 <u>17</u>
Section 4.13 Sufficiency of Assets.....	17
Section 4.14 Water Rights	17
Section 4.15 Emission Reduction Credits	18
Section 4.16 Discharge Permit	18
Section 4.17 Security Interests and Liens.....	18
Section 4.18 No Defaults.....	18
Section 4.19 Expertise	<u>18</u> <u>19</u>
ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BUYER.....	19
Section 5.1 Corporate Organization; Etc.....	19

Section 5.2	Validity of Contract; No Conflict	19
Section 5.3	Consents, Approvals and Authorizations	20
Section 5.4	Resources	20
Section 5.5	No Proceedings	20
ARTICLE 6 CREDIT REQUIREMENTS		20
Section 6.1	Credit Requirements	20
Section 6.2	Security	20 21
article ARTICLE 7 GENERAL OBLIGATIONS OF SELLER		21
Section 7.1	Seller's General Obligations	21
Section 7.2	Physical Obstructions And Conditions (PacifiCorp Sites Only)	22
Section 7.3	The Contractor and Subcontractors	22
Section 7.4	Compliance With Applicable Law	23
Section 7.5	Governmental Approvals	23
Section 7.6	Opportunities for Other Contractors; Labor Relations	23 24
Section 7.7	Labor and Employment	24
Section 7.8	Authority for Access for Inspection	25
Section 7.9	Seller's Use of Buyer's Drawings	25 26
Section 7.10	Contractor Drawings and Manuals	26
Section 7.11	Training	26 27
Section 7.12	Safety	27
Section 7.13	Intellectual Property Rights and Computer Program Licenses	27 28
Section 7.14	Seller's Representatives	28
Section 7.15	Seller's Personnel/Drugs, Alcohol and Firearms	29
Section 7.16	Use of Premises and Trespassing	29 30
Section 7.17	Electricity, Water and Pipeline Natural Gas	29 30
Section 7.18	Temporary Facilities	30
Section 7.19	Decisions and Instruction of Buyer's Representative	30 31
Section 7.20	Cooperation Between the Parties	31
Section 7.21	Spare Parts Inventory	31
Section 7.22	Maintenance of Buyer Lien	32
Section 7.23	Further Assurances	32
Section 7.24	Indebtedness	32
Section 7.25	Other Liens	32 33
Section 7.26	Restriction on Fundamental Changes	33
Section 7.27	Contingent Obligations	33
Section 7.28	Amendment of Project Documents; Additional Project Documents	33 34
Section 7.29	Environmental Matters	34
Section 7.30	Records and Accounts	34
Section 7.31	Condemnation, Eminent Domain, Casualty Events	34
Section 7.32	Seller's Organizational Documents	35
Section 7.33	Construction Coordination Agreement [PacifiCorp Sites Only]	35
Section 7.34	Import Permits, Licenses and Duties	35
Section 7.35	Compliance with Planning Permissions, Consents	35
Section 7.36	Permits	35 36
Section 7.37	Lay Out	35 36

ARTICLE 8 GENERAL OBLIGATIONS OF BUYER	36
Section 8.1 Buyer’s General Obligations	36
Section 8.2 Planning Permissions, Consents (PacifiCorp Sites Only)	36
Section 8.3 Operations and Maintenance Staff.....	<u>3637</u>
Section 8.4 Certificate of Convenience and Necessity	37
Section 8.5 Buyer’s Representative	37
Section 8.6 Standard of Conduct	<u>3738</u>
ARTICLE 9 WORKING ARRANGEMENTS	38
Section 9.1 Site Regulations	38
Section 9.2 Site Security.....	38
Section 9.3 Preservation of Public and Private Access	39
Section 9.4 Night, Weekend or Holiday Work.....	39
Section 9.5 Avoidance of Noise and Disturbance	<u>3940</u>
Section 9.6 Opening Up of Work	<u>3940</u>
Section 9.7 Fencing, Protection, Lighting	40
Section 9.8 Site Services.....	40
Section 9.9 Cleanup	<u>4041</u>
Section 9.10 Contamination.....	<u>4041</u>
Section 9.11 Material Safety Data	<u>4041</u>
Section 9.12 Historical Artifacts (PacifiCorp Sites Only).....	<u>4142</u>
ARTICLE 10 PROJECT SCHEDULE.....	<u>4142</u>
Section 10.1 Project Schedule	<u>4142</u>
Section 10.2 Form of Project Schedule	<u>4142</u>
Section 10.3 Rejection of the Project Schedule.....	42
Section 10.4 Alterations to Project Schedule	42
Section 10.5 Revision of Project Schedule.....	<u>4243</u>
Section 10.6 Seller’s Responsibility to Comply with Milestone Completion Dates	<u>4243</u>
Section 10.7 Rate of Progress.....	<u>4243</u>
Section 10.8 Progress Reports	43
Section 10.9 Progress Meetings.....	<u>4344</u>
ARTICLE 11 DELIVERY, SHIPPING, AND HANDLING OF PLANT AND EQUIPMENT	44
Section 11.1 Delivery Responsibility.	44
Section 11.2 Packing	44
Section 11.3 Transportation.....	<u>4445</u>
Section 11.4 Extraordinary Traffic	<u>4445</u>
Section 11.5 Allocation	45
ARTICLE 12 SELLER’S EQUIPMENT	45
Section 12.1 Seller’s Equipment.....	45
Section 12.2 Seller’s Equipment on Site	45
Section 12.3 Loss or Damage to Seller’s Equipment	<u>4546</u>
Section 12.4 Maintenance of Seller’s Equipment.....	<u>4546</u>

ARTICLE 13 CHANGE ORDERS	4546
Section 13.1 Changes.....	4546
Section 13.2 Procedure for Changes.....	47
Section 13.3 Continued Performance Pending Resolution of Disputes	4849
Section 13.4 Preservation of Schedule and Purchase Price.....	4849
ARTICLE 14 WORKMANSHIP AND MATERIALS.....	4849
Section 14.1 Manner of Execution	4849
Section 14.2 Condition of Materials.....	49
Section 14.3 Inspection.....	49
ARTICLE 15 DRAWINGS.....	50
Section 15.1 Drawings.....	50
Section 15.2 Consequences of Documents not in accordance with Agreement.....	5051
Section 15.3 Drawings Submitted	5051
Section 15.4 Inspection of Drawings.....	5051
Section 15.5 Operating and Maintenance Instructions	5051
Section 15.6 Buyer’s Use of Drawings.....	5152
Section 15.7 Manufacturing Drawings	5152
Section 15.8 Errors in Drawings Supplied by Seller	52
ARTICLE 16 SUSPENSION OF WORKS, DELIVERY OR ERECTION	5253
Section 16.1 Order to Suspend	5253
Section 16.2 Protection of Work	53
Section 16.3 Resumption of Work.....	5354
Section 16.4 Change Order in Event of Suspension.....	5354
ARTICLE 17 PROJECT COMMENCEMENT AND COMPLETION.....	55
Section 17.1 Notice To Proceed	55
Section 17.2 Time for Completion	5657
Section 17.3 Buyer’s Request for Earlier Completion	57
Section 17.4 Delay in Completion.....	57
ARTICLE 18 PERFORMANCE TESTING	5758
Section 18.1 Performance Tests	5758
Section 18.2 Emissions Guarantee	5758
Section 18.3 Cost and Direction	5758
Section 18.4 Buyer’s Right to Validate	5859
Section 18.5 Additional Tests; Test Energy	5859
Section 18.6 Timing.....	5859
Section 18.7 Test Reports.....	59
Section 18.8 Failure on Tests or Inspection.....	5960
Section 18.9 Duty to Advise of Defects, Errors and Omissions in Plant and Equipment	5960
ARTICLE 19 DEFECTS BEFORE TRANSFER OF POSSESSION AND CONTROL OF WORK	60
Section 19.1 Identification of Defects	60

Section 19.2	Replacement of Defects	<u>6061</u>
ARTICLE 20 NOTICE OF SUBSTANTIAL COMPLETION, NOTICE OF FINAL ACCEPTANCE AND TRANSFER OF CARE, CUSTODY AND CONTROL		
		<u>6061</u>
Section 20.1	Notice of Substantial Completion of Work	<u>6061</u>
Section 20.2	Care, Custody and Control; Punch List Items	<u>6162</u>
Section 20.3	Dispatch Coordination	<u>6162</u>
Section 20.4	Use Before Acceptance Date	<u>62</u>
Section 20.5	Title and Risk of Loss	<u>6263</u>
Section 20.6	Marking of Equipment and Plant	<u>6263</u>
Section 20.7	Removal of Equipment	<u>6364</u>
Section 20.8	Notice of Final Acceptance of Work	<u>64</u>
ARTICLE 21 CODES AND STANDARDS		
		<u>6465</u>
Section 21.1	Comparable Quality	<u>6465</u>
ARTICLE 22 ENVIRONMENTAL MATTERS		
		<u>6465</u>
Section 22.1	General	<u>6465</u>
Section 22.2	Release On-Site	<u>65</u>
Section 22.3	Release Off-Site	<u>65</u>
Section 22.4	Liability	<u>6566</u>
Section 22.5	Pre-existing Regulated Materials	<u>6566</u>
Section 22.6	Notice	<u>66</u>
ARTICLE 23 WARRANTIES OF WORK		
		<u>66</u>
Section 23.1	Warranties	<u>66</u>
Section 23.2	Warranty Period	<u>6667</u>
Section 23.3	Repair of Defects	<u>6667</u>
Section 23.4	Warranty Period Extension	<u>67</u>
Section 23.5	Contractor and Subcontractor Warranties	<u>67</u>
Section 23.6	Delay in Remediating Defects	<u>6768</u>
Section 23.7	Removal of Defective Work	<u>6768</u>
Section 23.8	Further Tests	<u>6768</u>
Section 23.9	Seller to Diagnose	<u>6768</u>
Section 23.10	Latent Defects	<u>68</u>
Section 23.11	Significant Defects	<u>6869</u>
ARTICLE 24 LIQUIDATED DAMAGES		
		<u>6869</u>
Section 24.1	General	<u>6869</u>
Section 24.2	Critical Milestone Guarantee Liquidated Damages	<u>69</u>
Section 24.3	Liquidated Damages for Delay in Substantial Completion	<u>6970</u>
Section 24.4	Liquidated Damages for Net Capacity and Net Heat Rate	<u>6970</u>
Section 24.5	Liquidated Damages for Startup and Commissioning	<u>70</u>
Section 24.6	Calculations and Payments of Liquidated Damages	<u>70</u>
ARTICLE 25 LIMITATIONS OF LIABILITY		
		<u>7071</u>
Section 25.1	Duty to Mitigate	<u>7071</u>

Section 25.2	Limitation of Buyer’s Liability.....	<u>7071</u>
Section 25.3	Enforceability of Liquidated Damages.....	<u>71</u>
Section 25.4	Limitations on Liquidated Damages.....	<u>7172</u>
ARTICLE 26 INDEMNIFICATION		<u>7273</u>
Section 26.1	Indemnification for Third Party Claims	<u>7273</u>
Section 26.2	Title Indemnity and Liens.....	<u>7374</u>
Section 26.3	Indemnity Period	<u>7475</u>
ARTICLE 27 INSURANCE.....		<u>75</u>
Section 27.1	Contractor’s and Subcontractors’ Insurance Coverage	<u>75</u>
Section 27.2	Buyer’s Insurance	<u>7778</u>
Section 27.3	Waiver of Rights.....	<u>7879</u>
Section 27.4	Seller’s Cooperation with Buyer	<u>7879</u>
ARTICLE 28 FORCE MAJEURE		<u>79</u>
Section 28.1	Effect of Force Majeure.....	<u>79</u>
Section 28.2	Notice of Occurrence.....	<u>7980</u>
Section 28.3	Performance to Continue	<u>7980</u>
Section 28.4	Termination in Consequence of Force Majeure	<u>7980</u>
Section 28.5	Risk of Loss	<u>7980</u>
ARTICLE 29 DEFAULT		<u>80</u>
Section 29.1	Seller’s Default	<u>80</u>
Section 29.2	Buyer’s Default.....	<u>81</u>
Section 29.3	Removal of Seller’s Equipment.....	<u>8182</u>
Section 29.4	Remedies on Default.....	<u>82</u>
ARTICLE 30 TERMINATION.....		<u>83</u>
Section 30.1	Termination by Buyer.....	<u>83</u>
Section 30.2	Termination by Seller	<u>8384</u>
Section 30.3	Procedures Following Termination by Seller or due to Force Majeure	<u>84</u>
Section 30.4	Exclusivity	<u>8485</u>
ARTICLE 31 TAXES.....		<u>8485</u>
Section 31.1	Buyer’s Obligation.....	<u>8485</u>
Section 31.2	Seller’s Obligation	<u>85</u>
ARTICLE 32 CLAIMS, CLAIM NOTICE AND DISPUTE RESOLUTION.....		<u>85</u>
Section 32.1	Claims	<u>85</u>
Section 32.2	Dispute Resolution.....	<u>86</u>
ARTICLE 33 ASSIGNMENT.....		<u>8687</u>
Section 33.1	Assignment of Seller’s Interests	<u>8687</u>
ARTICLE 34 CONFIDENTIALITY		<u>8687</u>
Section 34.1	Confidentiality	<u>8687</u>

ARTICLE 35 MISCELLANEOUS PROVISIONS.....	<u>8788</u>
Section 35.1 Notices, Consents and Approvals.....	<u>8788</u>
Section 35.2 Entire Agreement.....	<u>8889</u>
Section 35.3 Amendment; Waiver.....	<u>89</u>
Section 35.4 Successors and Assigns	<u>89</u>
Section 35.5 Third Party Beneficiaries.....	<u>8990</u>
Section 35.6 Severability	<u>8990</u>
Section 35.7 Further Assurances	<u>8990</u>
Section 35.8 Publicity.....	<u>8990</u>
Section 35.9 Independent Contractor	<u>8990</u>
Section 35.10 Survival.....	<u>90</u>
Section 35.11 Governing Law; Waiver of Jury Trial	<u>9091</u>
Section 35.12 Counterparts.....	<u>9091</u>
Section 35.13 Captions	<u>9091</u>
Section 35.14 Consent Agreements.....	<u>91</u>

List of Appendices

Appendix A:	Site References; Legal Description
Appendix B:	Scope of Supply and Technical Specifications
Appendix C:	Project Schedule
Appendix D:	Seller's Submittals
Appendix E:	Governmental Approvals
Appendix F:	Glossary of Terms
Appendix G:	[RESERVED]
Appendix H:	Substantial Completion, Final Acceptance, Performance Guarantees and Performance Tests,
Appendix I:	Progress Payment and Cancellation Schedule
Appendix J:	Change Order Costing
Appendix K:	[RESERVED]
Appendix L:	Seller and Contractor Final Waiver and Release of Lien
Appendix M:	Emissions Reductions Credits
Appendix N:	Pre-Existing Regulated Materials
Appendix O:	[RESERVED]
Appendix P:	[RESERVED]
Appendix Q:	Approved/Preferred Supplier List
Appendix R:	Price Options
Appendix S:	Construction Coordination Agreement
Appendix T:	Witness Point Schedule

List of Exhibits

Exhibit A	Form Of Notice Of Request For Progress Payment
Exhibit B	Form of Notice to Proceed
Exhibit C	Credit Matrix
Exhibit D	Change Order Forms:
D-1	Form of Change Order
D-2	Form of Change Order Request
D-3	Form of Change Order Notice
Exhibit E	Form of Officers' Certificates for Notice to Proceed
Exhibit F	Form of Letter of Credit
Exhibit G	Planning Consents
Exhibit H	Insurance Certificates
Exhibit I	Form of Seller Lien Release
Exhibit J	Form of Contractor Lien Release
Exhibit K	Form of Subcontractor Lien Release
Exhibit L	Form of Supplier Lien Release

List of Schedules

Schedule 2.6	Authorization Parties
Schedule 4.2	Seller Membership Interests

Schedule 4.2 (a)	Seller Membership Interested Controlled
Schedule 4.2 (b)	Seller Membership Interests or other voting securities
Schedule 4.5 (b)	Approval Persons for Transfer of Project
Schedule 4.6	Seller or Project Proceedings
Schedule 4.11	Pending Appropriation or Condemnation Claims
Schedule 4.12 (a)	Seller Documents that may affect the Transaction
Schedule 4.12 (d)	Material Defaults under Transaction (Project) Documents
Schedule 7.3	Seller Assignable Contracts and Sub-Contracts
Schedule 7.277.25 (c)	Liens
Schedule 11.1 (b) (xiii)	Record Searches

THIS WORKING DRAFT DOES NOT CONSTITUTE A BINDING OFFER, SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE, AND IS CONDITIONED UPON SELECTION OF THE BIDDER, EXECUTION, AND EACH PARTY'S RECEIPT OF ALL REQUIRED MANAGEMENT AND BOARD APPROVALS IN THEIR SOLE DISCRETION (INCLUDING FINAL CREDIT AND LEGAL APPROVALS). ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS WORKING DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS RELATING TO THIS WORKING DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL THE TOLLING AGREEMENT IS NEGOTIATED, APPROVED BY ALL APPROPRIATE PARTIES AND EXECUTED BY EACH PARTY'S AUTHORIZED SIGNATORY, NO PARTY SHALL HAVE ANY LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS WORKING DRAFT OR IN THE COURSE OF NEGOTIATIONS. ~~any~~ANY ASSERTION TO THE CONTRARY IN ANY PROCEEDING OR ACTION REGARDING THIS WORKING DRAFT SHALL RENDER THIS WORKING DRAFT NULL AND VOID IN ITS ENTIRETY. ~~during~~DURING DISCUSSIONS AND NEGOTIATIONS ANY PARTY MAY CHANGE ITS POSITION ON ANY MATTER, WHETHER OR NOT SET FORTH IN OR BASED UPON THIS WORKING DRAFT, ANY OTHER DOCUMENT OR ANY COURSE OF DEALING, AT ANY TIME OR FOR ANY REASON.

ASSET PURCHASE AND SALE AGREEMENT

THIS ASSET PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered into as of _____ (the "Effective Date"), by and between PacifiCorp, an Oregon corporation ("Buyer"), and [SELLER FULL NAME], a Delaware limited liability company ("Seller"), each referred to individually as "Party" and collectively, as "Parties."

WITNESSETH:

WHEREAS, Seller responded to a Request for Proposals – PacifiCorp RFP-2012 (the "RFP") which was issued by Buyer on [RFP DATE]. Buyer's objective in issuing the RFP was to fulfill a portion of its resource requirements as contemplated in Buyer's integrated resource plan published in January, 2005;

WHEREAS, Buyer's selection of Seller's bid was based upon a competitive bid and was, in part, based upon Seller's representations and warranties and Seller's guaranteed performance of the Plant. Such matters were a material inducement for the selection of Seller, and Seller's failure to perform in accordance with the terms and conditions hereof shall cause material damage to Buyer;

WHEREAS, following negotiations with Seller Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, the Project (defined below), upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual representations and warranties and covenants made herein, Buyer and Seller, each intending to be legally bound, hereby agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

Section 1.1 Defined Terms

Unless the context requires otherwise, capitalized terms used in this Agreement shall have the meanings assigned to them in the Glossary of Defined Terms attached hereto as Appendix F.

Section 1.2 Interpretation

Unless the context requires otherwise, in this Agreement: (a) words singular or plural in number shall be deemed to include the other and pronouns having a masculine or feminine gender shall be deemed to include the other; (b) any reference in this Agreement to any person shall include its permitted successors and assigns and, in the case of any governmental instrumentality, any person succeeding to its functions and capacities; (c) any reference in this Agreement to any Article, sub-Article, Section, sub-Section, Appendix, Exhibit, Schedule or Attachment to any of these shall mean and refer to the Article, sub-Article, Section, sub-Section, Appendix, Exhibit, Schedule or Attachment contained in or the Article, sub-Article, Section, sub-Section, Appendix, Exhibit, Schedule or Attachment attached to this Agreement, as the same may be amended or modified from time to time; and (d) the words “include” and “including” shall mean to include, without limitation.

ARTICLE 2

SALE OF ASSETS

Section 2.1 Sale and Transfer of Project by Seller

(a) Subject to the terms and conditions of this Agreement, and in reliance upon the representations, warranties and agreements herein, Seller shall sell, convey, transfer, deliver and assign to Buyer, and Buyer shall purchase, receive and accept, the Project and its component parts, free and clear of all Liens and other Liabilities not otherwise permitted hereunder. Title to various of the constituent components of the Project will be transferred over time as provided in this Agreement, with overall title to the Project and certain of its components to be transferred at Closing as further defined or described in this Agreement and in the Appendices and Exhibits attached hereto.

(b) At Closing, Seller shall deliver or cause to be delivered to Buyer such documents, deeds, bills of sale, assignments and other instruments of transfer or assignment, together with such releases of Liens, as Buyer shall deem necessary or Buyer may reasonably request to effect the conveyances contemplated by this Agreement at Closing, each in form and substance reasonably satisfactory to Buyer. Such documents, deeds, bills of sale, assignments and other instruments shall include:

(c) For owned Real Property and interests in owned Real Property,

- (i) special warranty deeds in recordable form, properly executed and acknowledged, conforming to and conveying Real Property interests held by or on behalf of Seller;
 - (ii) a Title Policy covering the Real Property interests held by or on behalf of Seller;
 - (iii) a bring-down endorsement issued by the Title Company, procured by Seller and at Seller's expense, in the face amount of the Title Policy and otherwise in such form and with such exceptions as are satisfactory to Buyer, in its sole and absolute discretion;
 - (iv) an endorsement from the Title Company to insure that the foundations of the Plant have been constructed within the boundaries of the Site and in accordance with all applicable easements, covenants and restrictions;
 - (v) a complete and accurate as-built survey of the Project, in form and substance reasonably acceptable to Buyer, in accordance with minimum ALTA/ACSM standards then in effect and sufficient in form and substance to permit issuance of the endorsement described in Section 2.1(c)(iii) hereof, prepared and certified as correct by a licensed land surveyor or registered engineer reasonably satisfactory to Buyer. Such survey shall show the location of the Site and all improvements thereon, including the Plant, and the location of all easements and rights-of-way, whether above or underground, and shall show no encroachments of the Plant or other improvements onto such easements or rights-of-way (except as expressly permitted under the documents governing such easements and rights-of-way) or onto property outside the boundaries of the Site as shown on the survey; and
 - (vi) an affidavit of the Secretary or Assistant Secretary of Seller including Seller's name, address, and taxpayer identification number, certifying that Seller is not a "foreign person" within the meaning of the Foreign Investment Real Property Tax Act of 1980.
- (d) Assignment with assumption and novation of each Project Document, each Contractor Guaranty, and all warranties associated with the Work, with consent of the parties thereto, as may be required or reasonably requested by Buyer;
- (e) Assignment and assumptions for the Plant, Equipment or machinery, labor and other warranties, accompanied by all consents as may be required or reasonably requested by Buyer;
- (f) Deeds, bills of sale and other instruments of transfer or assignment of any other assets of Seller to be transferred hereunder, in a form acceptable to Buyer in its sole discretion;
- (g) Assignment and/or executed requests for Governmental Authority transfer, as appropriate, of all Governmental Approvals identified by Buyer, accompanied by all consents as required or as may be reasonably requested by Buyer;
- (h) Assignment of the right to use all Intellectual Property required in connection with the Project;

(i) At the Closing, the final waiver and release(s) of Lien in the form set forth in Appendix L or posting of a bond or other security satisfactory to Buyer that all Liens will be released ; and

(j) At the Closing, the following certificates of Seller:

(i) a certificate of the Secretary or an Assistant Secretary of Seller certifying: (A) a true copy of the [Certificate of Formation] of Seller and all amendments thereto as in effect at Closing, (B) a true copy of the [Operating Agreement] of Seller as in effect at Closing, (C) copies of resolutions duly adopted by Seller's board of directors (or similar body), authorizing the sale of the Project to Buyer and the execution, delivery and performance of this Agreement and the transactions contemplated hereby and attesting that such resolutions are in full force and effect without amendment or modification at Closing, and (D) the incumbency of the officers of Seller who execute this Agreement or any document or instrument to be delivered pursuant hereto;

(ii) a certificate signed by an Authorized Officer of Seller to the effect that the conditions specified in Section 2.6(a) and Section 2.6(b) have been satisfied; and

(iii) a certificate signed by an Authorized Officer of Seller certifying as to the true and complete nature of attached originals (or copies where originals do not exist) of the Transaction Documents.

Section 2.2 Purchase Price

(a) The aggregate consideration payable by Buyer to Seller for the Project, comprising the sum of Progress Payments (if any) made pursuant to article 3 ("Terms for Progress Payments"), plus the residual amount payable at Closing (but counting as Progress Payments and amounts payable at closing any amounts retained by Buyer as retainage pursuant to Section 3.3 ("Notice of Request for Progress Payment")) is the "Purchase Price."

(b) Basis of Purchase Price

(i) Seller Duty to Inform Itself. Seller shall be deemed to have satisfied itself, through its own due diligence efforts and not based on any representation of Buyer or employees or agents thereof (except as set forth in this Section), as to the nature and location of the Work, the general, local, physical and other conditions of the Work, and all other matters which could in any way affect the Work or the cost thereof under this Agreement. Without limiting the foregoing, Seller shall be deemed to have inspected the Site and to have satisfied itself as to the state and condition (including but not limited to ground, geological, climatic and hydrological condition) of all circumstances affecting the Site (including but not limited to any reasonable safety regulations of Buyer or otherwise applicable to the Work and the project) and to have examined any documentation and information supplied or made available to Seller by Buyer or available for inspection in the public domain, the conditions and/or the Specification (with such drawings, exhibits, plans and information as may be annexed thereto or referred to therein) and to have satisfied itself as to the feasibility of executing the Work at the Site. Seller shall be responsible for its own interpretation of such documentation and information. The failure of Seller to adequately investigate and acquaint itself with any applicable conditions and

other matters shall not relieve Seller from the responsibility for properly estimating the difficulties and costs of successfully performing the Work and completing this Agreement, and shall not be grounds for adjusting either the Purchase Price or the schedule agreed in this Agreement.

(ii) Underground Obstructions. Without prejudicing or limiting the provisions of the preceding paragraph (b)(i) or of Section 10.1 (“Project Schedule”), Seller shall be responsible for ascertaining the location of and avoiding damage to all underground installations including without limitation cable, gas, water pipes, telephone lines, and other underground installations, whether the location of the excavation, digging, or trenching required for performance of the Work is fixed by Buyer or by Seller. Seller shall be responsible for all delays, costs, loss and/or expense arising, whether directly or indirectly, from any ground conditions or artificial obstructions or hazards (excluding hazardous materials encountered by Seller during the execution of the Work) including any Work underground or involving excavation that Seller should have been made reasonably aware of based on information available and Seller shall not be entitled to any additional Cost, any extension to the Time for Completion or any increase in the Purchase Price as a result thereof.

(iii) Surveying. Seller is responsible for performing, and shall include in its pricing, all construction layout surveying required for execution of the Work. Seller shall be held responsible for preserving all established project control monuments unless their removal is requested by Seller and authorized in writing by Buyer. Any costs incurred by Buyer to reestablish control monuments destroyed by Seller shall be borne by Seller.

(iv) Responsibility for Information. Seller shall be responsible for any misunderstanding or incorrect information in connection with the Site (excluding information provided by Buyer or its representative prior to the date of commencement of the Work unless such information could reasonably be verified by Seller).

(v) Existing Foundations, Structures and Work. Seller shall be solely responsible for the consequences of incorporating into the Work any existing foundations, structures, Work, equipment or materials including, without limitation, any existing piling, floor slabs and culverts. To the extent that the same are incorporated into the Work, such pre—existing items shall be subject to the applicable conditions as if they were supplied by Seller hereunder. Without prejudice to the foregoing, Seller shall notify Buyer’s Representative of its intention to incorporate any existing foundations, structures, Work, equipment or materials into the Work other than those specifically identified in the Agreement as soon as is practicable and seek the prior written consent of Buyer’s Representative to the use or utilization thereof, which consent may be withheld in the sole discretion of Buyer’s Representative.

Section 2.3 Closing

(a) Closing Date, Place and Time. The closing (the “Closing”) of the sale and purchase of the Project shall take place at _____, local time, on the first Business Day after Notice of Final Acceptance has been issued pursuant to Section 20.8 (“Notice of Final Acceptance of Work”), at Buyer’s offices in Salt Lake City, Utah, or at such other time and date as the Parties shall designate in writing (such time and date, the “Closing Date”).

(b) Purchase Price Calculation. At least thirty (30) days prior to the Closing Date, Seller shall submit to Buyer a detailed calculation setting forth the Purchase Price, as the same may have been adjusted pursuant to Change Orders, if any, together with supporting documents used by Seller in calculating the Purchase Price, including an allocation of the Purchase Price not yet paid and such other documents reasonably requested by Buyer to support the calculation. At least fifteen (15) days prior to Closing Buyer shall notify Seller of any disputed amounts included in Seller's calculation of the Purchase Price. Within five (5) days prior to Closing Seller shall (a) notify Buyer of any disputes Seller may have regarding Buyer's challenges to amounts, and (b) provide a revised calculation with supporting documents showing agreed changes to the initial calculation statement. Any disputes remaining after such exchange shall be submitted for dispute resolution as set forth in article 32 ("Claims, Claim Notice and Dispute Resolution").

(c) Payment of Purchase Price. At the Closing, Buyer shall pay the Purchase Price, calculated in accordance with Section 2.3(b) ("Purchase Price Calculation"), less two times the amount (if any) then in dispute, in immediately available funds, via wire transfer to an account designated by Seller on or prior to the Closing Date.

Section 2.4 Assumption of Liabilities

Except as otherwise expressly provided herein, Buyer is not assuming, and will not assume, any present or future debt, liability or obligation of Seller, whether known or unknown, fixed or contingent. Seller agrees to indemnify and hold Buyer harmless against all present and future debts, claims, liabilities and obligations of Seller, its Contractor and Subcontractors.

Section 2.5 Further Assurances

From time to time after the Closing Date, Seller shall, at the request of Buyer but without further consideration, promptly execute and deliver to Buyer such other agreements, certificates and further instruments of sale, assignment, transfer and conveyance and take such other and further actions as Buyer may reasonably request in order to vest in Buyer or its assigns and put Buyer or its assigns in possession of the Project and to carry out and implement the transactions contemplated herein, including any financing arrangements of Buyer.

Section 2.6 Conditions to Buyer's Obligation to Close

The obligations of Buyer to effect the transactions contemplated in this Agreement are subject to the satisfaction or waiver by Buyer on or prior to the Closing Date of each of the following conditions:

(a) Accuracy of Representations and Warranties. The representations and warranties of Seller made in this Agreement shall be true and correct in all material respects, as of the date hereof and as of the Closing Date.

(b) Performance. Seller shall have performed or complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied by them on or prior to the Closing Date (including, without limitation, the deliveries required by Section 2.1("Sale and Transfer of Project by Seller")).

(c) Authorizations. The parties shall have or shall have caused to be delivered, made or obtained all notices to, declarations, designations, registrations, filings or submissions with, and authorizations, approvals, orders, consents or waivers from Governmental Authorities and other parties listed on Schedule 2.6, and the same shall not have been withdrawn, suspended or modified.

(d) Absence of Orders. No preliminary or permanent injunction or other order of any Governmental Authority to prevent the consummation of the transactions contemplated in this Agreement shall be in effect or pending and no statute, rule or regulation shall have been enacted by any Governmental Authority that makes consummation of such transactions illegal.

(e) Material Adverse Change. No Material Adverse Change shall have occurred.

Section 2.7 Conditions to Seller's Obligations to Close

The obligation of Seller to effect the transactions contemplated in this Agreement is subject to the satisfaction or waiver by Seller on or prior to the Closing Date of each of the following conditions:

(a) Accuracy of Representations and Warranties. The representations and warranties of Buyer made in this Agreement shall be true and correct in all material respects as of the date hereof and as of the Closing Date.

(b) Performance. Buyer shall each have performed or complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(c) Absence of Orders. No preliminary or permanent injunction or other order of any Governmental Authority to prevent the consummation of the transactions contemplated in this Agreement shall be in effect or pending and no statute, rule or regulation shall have been enacted by any Governmental Authority that makes consummation of such transactions illegal.

ARTICLE 3

TERMS FOR PROGRESS PAYMENTS

Section 3.1 Terms

(a) Procedures. A Progress Payment (if any) shall, subject to Buyer's review as set forth herein, be paid by Buyer in accordance with Appendix I and this article 3 within 30 days after submission of a Notice of Request for Progress Payment that meets the requirements of this Article and satisfaction of the conditions precedent set forth in Section 3.2 ("Conditions Precedent"). Buyer shall pay any Progress Payments (i) to Seller or (ii) either (A) to any Contractor performing or furnishing the Work or (B) jointly to Seller and such other Contractor. In addition to the foregoing, Buyer may require that to the extent Progress Payments to any direct payee (other than Seller) are made via check, that such check contain Lien release provisions and be endorsed personally by payee or payees. To the extent that a Progress Payment Date is other

than a Business Day, no interest shall accrue on such Progress Payment until the next Business Day.

(b) Payment in Dollars. All payments to Seller hereunder shall be paid in Dollars via wire transfer to a bank account of Seller as specified by Seller. All payments to Buyer hereunder shall be paid in Dollars via wire transfer to the bank account as specified by Buyer.

Section 3.2 Conditions Precedent

The obligation of Buyer to pay Progress Payments (including payment of the Purchase Price at the Closing), is subject to the satisfaction on each Progress Payment Date of each the following conditions precedent:

(a) Payments on Business Days. The Progress Payment Date shall be a Business Day. If any Progress Payment becomes payable on a day that is not a Business Day, the Progress Payment shall be paid on the next succeeding Business Day. Seller shall bear the cost of any and all banking charges imposed by Seller's bank with respect to any Progress Payment.

(b) Milestones. Seller shall have achieved the Milestones associated with the Work for which the payment is requested prior to Seller submitting its commercial invoice with respect thereto, and shall have completed all Milestones to have been achieved prior to the date of such Progress Payment.

(c) Representations and Warranties. (i) The representations and warranties made by Seller in each Transaction Document to which it is a party shall be true and correct in all material respects on such Progress Payment Date both before and after giving effect to the making of such Progress Payment, and (ii) the representations and warranties made by each Project Party other than Seller in the Transaction Documents shall be true and correct in all material respects on such Progress Payment Date both before and after giving effect to the making of such Progress Payment. In each case such representations and warranties shall be deemed renewed and re-stated as of the date of such Progress Payment.

(d) No Default. (i) No circumstance, event or condition shall exist which either immediately or with the passage of time or the giving of notice, or both, would permit Seller to withhold payment under any Primary Construction Contract; (ii) no breach, violation or default shall have occurred and be continuing under (A) this Agreement (B) any Contractor Guaranty; (C) any Consent or (D) the Security Documents and (iii) to the extent not already set forth in this Section 3.2(d), no circumstance, event or condition shall exist which either immediately or with the passage of time or the giving of notice, or both, would permit Seller's counterparty to terminate any Transaction Document.

(e) No Proceeding or Litigation. No action, suit, proceeding or investigation by or before any Governmental Authority or any arbitrator shall be pending or to Seller's knowledge threatened against or affecting a Project Party or the Project which would result in a Material Adverse Change, unless such action, suit, proceeding or investigation has been initiated or threatened by Buyer.

(f) Material Adverse Change. Since the date hereof, no Material Adverse Change shall have occurred, except and to the extent that such Material Adverse Change is a result of an act or omission of Buyer.

(g) Notice of Request for Progress Payment. Buyer shall have received a Notice of Request for Progress Payment in compliance with Section 3.3 (“Notice of Request for Progress Payment”), together with all supporting documents.

(h) Governmental Approvals. Except with respect to the Deferred Governmental Approvals, all Necessary Governmental Approvals required to be obtained by such time shall have been obtained and shall be in full force and effect.

(i) Notice to Proceed. Buyer shall have issued the Notice to Proceed.

(j) Right to Withhold Payment. Buyer shall have determined that it is not necessary to withhold payment to protect Buyer from loss relating to any of the following causes:

(i) Work not in accordance with the requirements of the Project Documents;

(ii) Claims filed against Buyer, the Plant, or the Site from Seller’s actions or inactions in connection with the performance of the Work (and not otherwise covered by insurance), unless Seller is disputing such Claims in good faith and if reasonably requested by Buyer, has bonded the Claim with a bonding company or other surety reasonably acceptable to Buyer, and if any Lien is imposed with respect to such Claims, Seller has discharged such Lien; or

(iii) failure of Seller to make payments in respect of material or labor or other obligations incurred as a result of activities covered by this Agreement, unless Seller has, in good faith, disputed such payments and, if any Lien is filed with respect thereto, Seller has posted a bond against such Lien with a bonding company or other surety reasonably acceptable to Buyer.

Section 3.3 Notice of Request for Progress Payment

(a) Notice Required. Prior to being entitled to any Progress Payment Seller shall submit a Notice of Request for Progress Payment in the form attached hereto as Exhibit A and in substance satisfactory to Buyer, that meets all of the requirements of this Section 3.3.

(b) Documents to be attached to Notice for Progress Payment. Each Notice of Request for Progress Payment shall be accompanied by the following documents:

(i) an invoice of Seller substantiating the amounts payable by Buyer in connection with such Progress Payment and the Work covered thereunder. Seller’s invoice shall provide separate invoices or line-items for the following items:

(A) Taxable Items. Tax paid by contractor on Materials and Parts shall be listed as a separate line item and identified as ‘Tax on Parts to be reimbursed.’

(B) Non Taxable Items Listed Separately. The following items shall be listed separately and not taxed on the invoice: (1) Labor to Recondition Materials and Parts (non-taxable) and (2) Freight (non-taxable).

(C) Non Taxable Items able to be Invoiced Together. The following items may be invoiced together but shall be listed separately on the same invoice and shall not be taxed on the invoice: (1) Scheduled and Unscheduled Work including inspection and on-site Turbine Services work (non-taxable) and (2) ‘Scheduled and Unscheduled Work’ and ‘Management Services, Consulting, Administrational, Engineering or Professional Services’ (non-taxable);

(ii) a report (the “Progress Report”) in a form consistent with the progress report included in Appendix D that indicates the percentage completion achieved compared to the planned percentage completion for each activity relating to the Work and where any activity is behind the Schedule giving comments and likely consequences and stating the corrective action being taken. The Progress Report also shall present any other information reasonably requested by Buyer relating to progress of the Work;

(iii) an officer’s certificate signed by an Authorized Officer of Seller certifying that each of the conditions in Sections 3.2(b), 3.2(c) 3.2(d), 3.2(e), 3.2(f), 3.2(h), and 3.2(i) has been and will be satisfied as of the date of such Progress Payment Date and such other items as may be required by this Agreement or as Buyer may reasonably request; and

(iv) A bill of sale transferring title to the Work relating to the Request for Progress Payment.

(c) Address. All Notices of Request for Progress Payment shall be addressed as follows:

PacifiCorp
Attn: _____
201 South Main Street, Suite 2200
Salt Lake City, UT 84111

With a copy provided to: _____
Attn: _____

(d) Review of Notice.

(i) Buyer shall, within fifteen (15) days after receipt of any Notice of Request for Progress Payment, determine whether (A) the Work evidenced by the Notice of Request for Progress Payment has been completed in conformance with the requirements of this Agreement; (B) the Notice of Request for Progress Payment and any required backup information have been properly submitted and (C) the Notice of Request for Progress Payment amount reflects the payment due under Appendix I and shall inform Seller as to whether it disputes any portion of the Notice of Request for Progress Payment. Buyer may also inform

Seller as to whether Buyer disputes any portion of the Notice of Request for Progress Payment due to the failure of Seller (or the Contractor or any Subcontractor) to complete the Work covered by such Notice of Request for Progress Payment, and Buyer may withhold such portion of due under Seller's invoice in the amount reasonably necessary to complete such portion of the Work in accordance with Seller's Notice of Request for Progress Payment and this Agreement.

(ii) Upon receipt of a notice from Buyer that the Notice of Request for Progress Payment is deficient, Seller shall promptly take any and all reasonable steps available to remedy any condition identified by Buyer leading to such claim of deficiency. Subject to a mutually agreed upon resolution of such claim of deficiency or a final determination of a court, payment of the disputed portion of Seller's invoice shall be made by Buyer within ten (10) Business Days following the date of such agreement or determination. In the event that Buyer is entitled to withhold payment to Seller because a condition precedent set forth in this article 3 has not been satisfied, Buyer may elect to pay the amounts due to Contractor under the Primary Contracts directly to such Contractor and such payments shall be credited against the Purchase Price. Provided Buyer has paid such amounts to a Contractor, no action properly taken by Buyer in compliance with this Article 3 shall affect the Guaranteed Substantial Completion Date for the Plant.

(iii) Subject to (A) such determination by Buyer and (B) the satisfaction of the conditions set forth in Section 3.2 ("Conditions Precedent"), and except for disputed portions of any Notice for Progress Payment, Buyer shall pay Seller on the applicable Progress Payment Date the stated amount, less any disputed portion of such Request of Request for Notice for Progress Payment and any withholding permitted under this Agreement. Late payments not excused under the provisions of this Section 3.3(d)(iii) shall accrue interest at the Late Payment Rate at that time from the date due until paid. Excused late payments shall not accrue interest until the event giving rise to the dispute has been remedied; provided, however, that if it is later determined that an excuse or withholding was improper, interest shall accrue at the Late Payment Rate on the amount which should have been paid from the date such funds should have been paid until actual payment is received by Seller. In the alternative, in the event of a disputed amount, Buyer may pay to Seller the entire amount stated in the Notice of Request for Progress Payment, and if it is subsequently determined that Buyer was entitled to withhold all or part of the amount shown on the Notice of Request for Progress Payment, Seller shall pay to Buyer upon demand interest at the Late Payment Rate on the amount that Buyer was entitled to withhold from the date of payment by Buyer until the earlier of the date of repayment to Buyer and the date on which Buyer was no longer entitled to withhold such amount. The determinations made by Buyer pursuant to this Section 3.3(d) and Section 3.2(j) are solely for the purpose of determining whether to pay a Progress Payment, and such determinations shall not prevent Buyer from subsequently asserting that Seller, a Contractor, or any Subcontractor failed to perform its obligations under a Transaction Document, nor shall such determinations be used as evidence that Seller, the Contractor, or any Subcontractor performed such obligations.

(e) A NOTICE OF REQUEST FOR PROGRESS PAYMENT THAT DOES NOT MEET THE REQUIREMENTS OF THIS SECTION MAY RESULT IN A PAYMENT DELAY.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF SELLER

As used in this Article 4, “to Seller’s knowledge” refers to matters within the actual knowledge of Seller. Seller represents and warrants to Buyer on the Effective Date (except as otherwise stated), and on each date the following representations and warranties are made or are deemed made, as follows:

Section 4.1 Organization, Standing and Power

Seller is a [ENTITY TYPE AND DESCRIPTION], duly formed, validly existing and in good standing under the laws of the State of _____ and has the full [corporate/limited liability company] power and authority and possess all material governmental franchises, licenses, permits, authorizations and approvals necessary to enable them to own, lease or otherwise hold its properties and assets (including the Project) and to carry on its business in the places and in the manner currently conducted. Seller is duly qualified to do business in each jurisdiction where the nature of its business or the ownership or leasing of its properties makes such qualification necessary, including without limitation the State of Utah.

Section 4.2 Capital Structure

(a) [ASSUMES LLC STRUCTURE; CORRESPONDING REPRESENTATIONS WILL BE EXPECTED TO REFLECT CORPORATE STRUCTURE IF APPLICABLE] All of the membership interests of Seller (the “Membership Interests”) are issued and outstanding, and no Membership Interests are held by Seller in its treasury. The names of each member of Seller and the amount of Membership Interests Controlled by each such Person are set forth on Schedule 4.2(a).

(b) Except as set forth on Schedule 4.2(b), no Membership Interests or other voting securities of Seller are issued, reserved for issuance or outstanding. There are not any bonds, debentures, notes or other securities or Indebtedness of Seller having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which Membership of Seller may vote.

Section 4.3 Authority; Execution and Delivery: Enforceability

(a) Seller has all requisite power and authority to execute each of the Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of each Transaction Document to which it is a party and the consummation by Seller of the transactions contemplated hereby and thereby has been duly authorized by all necessary [limited liability company/corporate] action on the part of Seller. Seller has duly executed and delivered each Transaction Document to which it is a party, and each Transaction Document to which it is a party constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws from time to time in effect that affect creditors’ rights generally and by legal and equitable limitations on the availability of specific remedies.

(b) The Managing Member(s) of Seller, acting by written consent in lieu of meeting and executed as of _____ unanimously adopted resolutions approving this Agreement, the other Transaction Documents and in accordance with Seller's organizational documents and the [APPLICABLE STATE ORGANIZATIONAL LAWS].

(c) Other than approvals or votes that are required pursuant to [STATE ORGANIZATIONAL LAW] that are required to effect and consummate the Initial Closing and the Closing in accordance with Seller's Organizational Documents and the [STATE ORGANIZATIONAL LAW], no other vote of the Membership with respect to any of the Membership Interests is required under applicable Law or otherwise in connection with Seller's execution and delivery of this Agreement, the other Transaction Documents or the consummation of the transactions contemplated hereby and thereby.

Section 4.4 Validity of Agreement; No Conflict

The execution, delivery and performance by Seller of this Agreement and each other Transaction Document to which Seller is a party, the consummation of the transactions contemplated hereby and thereby, and the compliance with the provisions hereof or thereof, by Seller shall not, with or without the passage of time or the giving of notice or both:

(a) conflict with, constitute or result in a breach, default or violation of any provision of, or give rise to any right of termination, cancellation or acceleration under, or loss of any right and/or benefit under, any contract, lease, license, Governmental Approval, instrument or other agreement to which Seller is a party or by which it, the Project or its assets is bound;

(b) conflict with or violate Seller's Organizational Documents;

(c) result in the creation or imposition of any Lien of any nature on the Project, other than Permitted Liens; or

(d) violate any Applicable Law applicable to Seller.

Section 4.5 Governmental Approvals and Consents

(a) Appendix E sets forth all Governmental Approvals. Such Governmental Approvals that are the responsibility of Buyer to obtain prior to Substantial Completion are separately identified on Appendix E (the "Buyer Governmental Approvals"). All Necessary Governmental Approvals have been obtained, are in full force and effect, and are final and all appeal periods with respect thereto have expired or terminated. Each Deferred Governmental Approval shall be obtained in a final and non-appealable form in the ordinary course prior to the time it is required to be obtained hereunder or under the other Transaction Documents. There is no action, suit, investigation or proceeding pending, or, to Seller's knowledge, threatened, that could result in the modification, rescission, termination, or suspension of any Necessary Governmental Approval obtained prior to the date this representation is made or deemed made. Subject to Section 8.2 ("Planning Permissions, Consents"), except for the Governmental Approvals listed in Appendix E, Seller is not required, and under existing Applicable Law will not in the future be required, to obtain any Governmental Approval in connection with the execution and delivery by Seller of this Agreement or the performance of Seller's obligations hereunder.

(b) Except as set forth on Schedule 4.5(b), no consent or approval of any Person is required to be obtained or made by or with respect to Seller transferring the Project to Buyer or in connection with the execution, delivery and performance of this Agreement, the Transaction Documents or the consummation of the transactions contemplated hereby other than those that may be required solely as result of the specific regulatory status of Buyer.

Section 4.6 No Proceedings

Except as set forth on Schedule 4.6, (a) there are no actions, suits, investigations or proceedings by or before any Governmental Authority or arbitrator pending against Seller or against the Project, or, to Seller's knowledge, threatened against or affecting Seller or the Project, which would result in a Material Adverse Change and (b) there are no actions, suits, investigations or proceedings by or before any Governmental Authority or arbitrator pending or, to Seller's knowledge, threatened, against or affecting any Contractor or Guarantor which would result in a Material Adverse Change.

Section 4.7 Compliance

(a) The Project is being owned, developed, constructed, and permitted in compliance with all Applicable Law in existence as of the Effective Date and in compliance with the requirements of all Governmental Approvals and Prudent Industry Practice. As constructed, based on Applicable Law currently in effect, the Project shall conform to and comply with all zoning, environmental, land use and other Applicable Law and the requirements of all Governmental Approvals.

(b) Seller and the operation of its businesses are, and at all times have been, in compliance in with all Applicable Laws, including those relating to occupational health and safety.

Section 4.8 Taxes

(a) For purposes of this Agreement, (i) "Tax" or "Taxes" shall mean all federal, state, local and foreign taxes and similar assessments, including all interest, penalties and additions imposed with respect to such amounts; (ii) "Pre-Closing Tax Period" shall mean all taxable periods ending on or before the Closing Date and the portion ending on the Closing Date of any taxable period that includes the Closing Date and (iii) "Returns" shall mean returns, reports or forms, including information returns, in respect of Taxes.

(b) Seller has filed or caused to be filed in a timely manner (within any applicable extension periods), all Returns required by applicable Tax laws to be filed by Seller prior to or as of the date hereof, and each such Return is true, complete and correct in all material respects.

(c) Seller has timely paid or caused to be paid all Taxes due and payable, whether or not shown as due and payable, on any Return. The accruals for Taxes not yet due and payable are adequate to cover such Taxes.

(d) All Taxes that Seller is required by Applicable Law to withhold or collect have been duly withheld or collected, and have been timely paid over to the appropriate Governmental Authority to the extent due and payable.

(e) No deficiencies for any Taxes have been proposed, asserted or assessed against Seller, and no requests for waivers of the time to assess any Taxes are pending. No Tax Liens have been filed and no claims are being asserted with respect to any Taxes.

(f) There are no outstanding agreements or waivers extending the statutory period of limitations applicable to any Returns required to be filed by or on behalf of Seller and Seller has not requested any extension of time within which to file any Return, which Return has not yet been filed within the applicable extension period.

(g) Seller does not hold a permit to engage in sales of tangible personal property issued by the State of Utah, and Seller has not within the past twelve (12) months made, and has no current intention of making in the next twelve (12) months, any retail sales of tangible personal property within the State of Utah.

Section 4.9 Environmental Matters

(a) Seller has provided Buyer or its representatives with all environmental reports, assessments and audits, including reports, assessments and audits relating to wetlands, air and emissions or discharges, and studies relating to threatened or endangered species, prepared by or on behalf of Seller in connection with the Project or otherwise in Seller's possession or control with respect to the Site or the Project.

(b) (i) Seller has maintained a due diligence program designed to identify all Necessary Governmental Approvals; (ii) except for Buyer Governmental Approvals, Seller holds and is in compliance with, all Necessary Governmental Approvals; (iii) Buyer appears properly as the permittee, co-permittee or authorized party with respect to all Necessary Government Approvals other than as set forth on Appendix E, (iv) the Project has been constructed and can be operated, and the Work has been performed, in compliance with all Environmental Laws, (v) Seller has not received any notice of a pending or threatened Claim, or inquiry by any Governmental Authority or other Person relating to any actual or alleged violations of Environmental Laws or any actual or potential obligation on the part of Seller to investigate or take any other action relative to any Regulated Material (as defined herein) or threatened Release of any Regulated Material and is and has been in compliance with all Environmental Laws; (vi) Seller has not entered into or agreed to any decree or order with any Governmental Authority and Seller is not subject to any Judgment relating to compliance with any Environmental Law or to the investigation or cleanup of Regulated Materials; (vii) neither Seller nor any other Person has generated, transported, treated, stored, disposed of, arranged to be disposed of, Released or threatened to Release any Regulated Materials at, on, from or under the Site in violation of, or so as would reasonably be expected to result in liability under, any Environmental Laws; (viii) Seller has not assumed any liabilities or obligations arising under any Environmental Law in connection with currently or formerly owned, leased or operated properties or facilities or in connection with any former divisions, subsidiaries or companies owned directly or indirectly by Seller; (ix) Seller has not utilized any underground storage tanks ("USTs"), Equipment using PCBs or asbestos in the conduct of its operations, on or under any property currently owned or operated by Seller.

(c) No Environmental Law imposes any obligation upon Seller or Buyer arising out of or as a condition to any transaction contemplated by this Agreement or any other Transaction

Document (other than those first arising after Closing governing actions by Buyer as owner and operator of the Project), including (i) any requirement to modify or to transfer any Governmental Approval or license, (ii) any requirement to file any notice or other submission with any Governmental Authority, (iii) the placement of any notice, acknowledgment or covenant in any land records, or (iii) the modification of or provision of notice under any agreement, consent order or consent decree. No Lien has been placed upon any of Seller's currently-owned properties related to the Project under any Environmental Law

Section 4.10 Title to Properties

Other than with respect to the Permitted Liens, Seller has good and valid title to all of the tangible and intangible personal property to be transferred to Buyer hereunder, free and clear of all Liens and Claims.

Section 4.11 Real Estate

(a) Seller has heretofore delivered to Buyer true, correct and complete copies of all agreements, contracts or other instruments providing for the sale, lease, transfer or other disposition of the Site (including any options).

(b) Seller represents and warrants to Buyer that:

(i) except as set forth on Schedule 4.11, there is no pending appropriation or condemnation Claim of which Seller has been notified, and, there is no contemplated or threatened appropriation or condemnation Claim affecting the Site or any part thereof or any sale or other disposition of the Site or any part thereof in lieu of condemnation;

(ii) to Seller's knowledge, except for assessments occurring on a regular basis in accordance with Applicable Law or as a result of the sale of the Project contemplated by this Agreement, there is no pending or contemplated reassessment of any parcel included in the Site that is reasonably expected to increase the real estate tax assessment for such properties; and

(iii) There is no violation of any applicable zoning law, regulation or other Applicable Law, relating to or affecting the Site.

Section 4.12 Transaction Documents; Representations and Warranties in Transaction Documents

(a) Set forth on Schedule 4.12(a) is a list of all contracts, agreements, letters of intent, understandings, and instruments to which Seller is a party or by which it or its property is bound (including all amendments, supplements, waivers, letter agreements, interpretations and other documents amending, supplementing or otherwise modifying or clarifying such agreements and instruments) that may affect the Project or any transaction contemplated hereunder, (i) the termination or cancellation of which would result in a Material Adverse Change, or (ii) have a value of twenty-five thousand Dollars (\$25,000) or more;

(b) (i) All representations and warranties made by Seller in each Transaction Document are true and correct in all material respects as of the date made or deemed made, and

(ii) to Seller's knowledge, all representations, warranties and other factual statements made by each Project Party other than Seller in the Transaction Documents are true and correct in all material respects as of the date made or deemed made.

(c) All Transaction Documents ~~required for the ownership, construction, operation and maintenance of the Project~~ are in full force and effect.

(d) Except as set forth on Schedule 4.12(d), no event has occurred that constitutes or, with the giving of notice or passage of time, or both, would constitute, a material Seller Default under any Transaction Document or, to the knowledge of Seller, any third party under any such Transaction Document. To Seller's knowledge, no claim, action, proceeding or investigation, is pending or threatened, that challenges the enforceability of any of the Transaction Documents.

Section 4.13 Sufficiency of Assets

The assets constituting the Project to be sold, transferred, conveyed, assigned and delivered to Buyer pursuant to this Agreement or any other Transaction Document, include all of the assets used, held by or necessary or convenient for the ownership of the Project and to provide an operational Project at the Site in accordance with Prudent Industry Practice and no other Person other than Seller and Buyer owns or has any rights in or to the Project.

Section 4.14 Water Rights

(a) The Project Water Rights will provide sufficient water to operate the Project.

(b) Seller has good and marketable title to the Water Rights.

(c) All of the water available for diversion under the Water Rights has been beneficially used and is not subject to forfeiture or abandonment.

(d) As and when drilled, constructed or installed, the wells, pumps, pipelines, conveyance and discharge systems and other associated equipment necessary to deliver water and discharge water are in good working order and are sufficient for the purposes of operating the Project.

(e) To the extent not already drilled, upon the drilling thereof, the wells used to produce water for the operation of the Project have been drilled and outfitted at the points of diversion approved to deliver the Project Water Rights.

(f) The water to be produced from wells (if any) required for the Project is consistent with the Specifications.

(g) Copies establishing control of a sufficient quantity of Water Rights to operate the Project at a one hundred percent (100%) capacity factor, including summer peaking operations, are attached as Appendix M. These Water Rights shall be acquired no less than six months prior to Substantial Completion.

Section 4.15 Emission Reduction Credits

(a) The Emission Reduction Credits to be transferred to Buyer hereunder are valid and properly registered in the State Emissions Registry established by UDAQ pursuant to R-307-403-8 of the Utah Administrative Code. Upon transfer of the Emission Reduction Credits hereunder, the Emission Reduction Credits will be usable under the Utah Air Quality Rules as emission offsets for the Project, and a sufficient quantity of Emission Reduction Credits will sufficient to satisfy fully any emission offset requirements necessary to obtain the Emissions Approvals.

(b) Documents establishing control of a sufficient quantity of ERCs to operate the Project at a one hundred percent (100%) capacity factor, including summer peaking operations, are attached as Appendix M. These Credits shall be acquired no less than six months prior to Substantial Completion.

Section 4.16 Discharge Permit

The Project is capable of being operated in compliance with UPDES requirements applicable to all discharges from the Plant, including stormwater and process water.

Section 4.17 Security Interests and Liens

The Security Documents create, as security for the Secured Obligations, valid and enforceable perfected first priority Liens on all of the Collateral, in favor of Buyer, subject to no Liens other than the Permitted Liens. All Necessary Governmental Approvals relating to such Liens in favor of Buyer have been duly effected or taken.

Section 4.18 No Defaults

(i) Seller is not in breach of, or in default under, any Transaction Document, or any other agreement or instrument to which it is a party or by which it or its properties or assets may be bound and (ii) no Project Party is in breach of, or in default under, any other agreement or instrument to which it is a party or by which it or its properties or assets may be bound except where such breach or default would not, singly or in the aggregate, result in a Material Adverse Change.

Section 4.19 Expertise

(a) Seller has no reason to believe that (i) the Project will not achieve Substantial Completion by May 1, 2012, 2013 or 2014 or (ii) that the cost to complete the Project will exceed the Purchase Price.

(b) The construction and operation of the Project in accordance with the Transaction Documents and in compliance with Governmental Approvals, Applicable Law and pursuant to this Agreement is technically feasible.

(c) ~~Contractor~~Seller represents it has substantial experience and expertise in the development and management of turnkey construction of combined cycle power plants such as the Plant and the capability to carry out the Work and acknowledge that Buyer is relying on such experience, expertise and capability in executing this Agreement.

~~Contractor~~Seller has not relied on any information supplied by Buyer regarding the environmental condition or Regulated Materials at, on, or under the Site in order to make any representation or warranty in this Agreement accurate or not misleading

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF BUYER

As used in this Article 5, “to Buyer’s knowledge” refers to matters within the actual knowledge of Buyer. Buyer represents and warrants to Seller on the Effective Date (except as otherwise stated) and on each date the following representations and warranties are made or are deemed made as follows:

Section 5.1 Corporate Organization; Etc.

Buyer is a corporation duly organized and validly existing under the laws of the State of Oregon. Buyer has full corporate power and authority to carry on its business as it is now being conducted and to own the properties and assets it now owns.

Section 5.2 Validity of Contract; No Conflict

(a) This Agreement has been duly authorized, executed and delivered by Buyer and is a legal, binding and valid obligation of Buyer enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws from time to time in effect that affect creditors’ rights generally and by legal and equitable limitations on the availability of specific remedies.

(b) The execution, delivery and performance by Buyer of this Agreement, the consummation of the transactions contemplated hereby, and the compliance with the provisions hereof by Buyer shall not, with or without the passage of time or the giving of notice or both:

(i) as to execution, delivery and performance, require any consent or approval of Buyer’s board of directors or any of Buyer’s shareholders which has not been obtained and each such consent and approval that has been obtained is in full force and effect,

(ii) conflict with, constitute a breach or violation of any provision of, or give rise to any right of termination, cancellation or acceleration under, or loss of any right and/or benefit under, any material contract or agreement to which Buyer is a party or to which it or its assets are subject or to any Governmental Approval held by or on behalf of Buyer, the loss of which would reasonably be expected to result in a Material Adverse Change on Buyer’s performance under this Agreement;

(iii) conflict with or violate the certificate of incorporation or bylaws of Buyer;

(iv) violate any Applicable Law applicable to Buyer.

Section 5.3 Consents, Approvals and Authorizations

Appendix E sets forth all Buyer Governmental Approvals. Except for Buyer Governmental Approvals listed in Appendix E, to Buyer's knowledge, Buyer is not required, and under existing Applicable Law, will not in the future be required, to obtain any Governmental Approval in connection with the execution and delivery by Buyer of this Agreement or the performance of its obligations hereunder, the failure to obtain which would materially impair Buyer's performance of its obligations hereunder.

Section 5.4 Resources

Buyer has the financial resources, assets, operating capital, credit and other resources and means necessary to fulfill its obligations under this Agreement on a timely basis.

Section 5.5 No Proceedings

Except as otherwise disclosed by Buyer to Seller prior to the Effective Date, there are no actions, suits, investigations or proceedings by or before any Governmental Authority or arbitrator pending or, to its knowledge, threatened against or affecting Buyer which, to Buyer's knowledge, would result in a Material Adverse Change.

ARTICLE 6

CREDIT REQUIREMENTS

Section 6.1 Credit Requirements

(a) Seller is to utilize the Credit Matrix in the attached Exhibit C to determine the amount of any credit assurances to be provided. The amount of credit assurances will be based upon the Credit Rating of Seller or the entity providing credit assurances on behalf of Seller, and the size of the Project.

(b) The Credit Rating will be the lower of: (x) the most recently published senior, unsecured long term debt rating (or corporate rating if a debt rating is not available) from Standard & Poor's (S&P), or (y) the most recently published senior, unsecured long term debt rating (or corporate rating if a debt rating is not available) from Moody's Investor Services. If Option (x) or (y) is not available, the Credit Rating will be determined by Buyer's Credit Dept. through an internal process review and utilizing a proprietary credit scoring model developed in conjunction with S&P.

(c) If requested by Buyer, Seller shall, within thirty (30) days, provide Buyer with copies of its most recent annual and quarterly financial statements prepared in accordance with GAAP.

Section 6.2 ~~Section 6.2~~ Security

(a) ~~(a)~~ Security for the credit assurances required in the Credit Matrix shall include, but not be limited to, a guaranty in a form acceptable to Buyer, a Letter of Credit or Cash Escrow.

~~(b)~~ (b)——If this Contract is terminated as a result of Seller’s default, Seller shall pay Buyer (i) the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price for Buyer’s cost to replace or otherwise have performed, as determined and calculated by Buyer in its discretion, any Work that Seller was otherwise obligated to provide during the remaining term of this Contract plus (ii) compensation for additional managerial and administrative services and (iii) such other costs and damages as Buyer may suffer as a result of Seller’s breach (“Net Replacement Cost”). Amounts owed by Seller pursuant to this paragraph shall be due within five (5) Business Days after any invoice from Buyer for the same.

If required by Buyer, Seller shall, within five (5) Business Days after the Effective Date, submit to Buyer a Letter of Credit in the amount set forth in the Credit Matrix. The terms of the Letter of Credit shall meet the requirements of the attached Exhibit F as well as the requirements of this Contract and be issued by a bank satisfactory to Buyer. The Letter of Credit shall provide for payment to Buyer of the Letter of Credit face value if Seller defaults under the terms of this Contract. Buyer shall have the right to call the entire amount of the Letter of Credit if Seller has not renewed the Letter of Credit by thirty (30) days prior to its expiration date. Seller’s expenses of complying with this Letter of Credit requirement shall be paid by Seller.

ARTICLE 7

GENERAL OBLIGATIONS OF SELLER

Section 7.1 Seller’s General Obligations

(a) Seller’s general obligation hereunder is to provide Buyer with the Project for the Purchase Price, completed in accordance with the terms of this Agreement.

(b) The finished Work shall be complete in all respects. The intent of this Agreement, the Appendices, Exhibits and the Scope of Work is for Seller to provide to Buyer an engineered solution of first class workmanship in each and every respect. All hardware shall be manufactured, fabricated, assembled, finished and documented with workmanship of the highest quality throughout, and all of its components shall be new and suitable for the purposes specified. In addition, the solution shall be engineered, implemented, tested and documented in accordance with the Prudent Industry Practice and shall be suitable for the purpose specified.

(c) The Work shall be manufactured and executed in the manner set forth in the Specification or, where not so set forth, to the reasonable satisfaction of Buyer and Buyer’s Representative and all Work on the Site shall be carried out in accordance with Prudent Industry Practice and such reasonable directions as Buyer or Buyer’s Representative may give.

(d) Seller shall, in accordance with the terms and conditions of this Agreement, employ the Contractor and the Subcontractors who in turn shall provide all labor, services, management, supervision, Materials, tools, facilities, utilities, Governmental Approvals, licenses and other aspects of the Work necessary for the design, engineering, construction, startup, testing, commissioning and completion of the Plant including those items specifically required in Appendix B.

(e) Seller shall: (i) cause the Contractor and Subcontractors to carry out and complete the Work in accordance with the requirements, duties and obligations imposed on the Contractor and Subcontractors pursuant to Prudent Industry Practice and all applicable Site conditions; (ii) ensure that the Contractor and each and every Subcontractor designs and performs the Work such as to achieve the objective of a Project which complies with the Applicable Law and the other requirements of this Agreement and their respective contracts; (iii) have the resources, experience, qualifications and capabilities as are required to fully perform its obligations under this Agreement; (iv) keep Buyer informed as to the status of deliveries, and if any such materials or Equipment are not being properly manufactured or fabricated in accordance with the requirements of contracts and the requirements pursuant to which they were purchased, or do not otherwise conform with such requirements, promptly making Buyer aware thereof and taking necessary corrective action; (v) acquire the Site, the Water Rights, all Governmental Approvals necessary for the development, construction and operation of the Plant, and the Emission Reduction Credits in accordance with the Milestones; (vi) cause each of the conditions precedent to the issuance of the Notice to Proceed set forth in Section 17.1 (“Notice To Proceed”) to occur; and (vii) maintain at least one office in the State of Utah.

Section 7.2 Physical Obstructions And Conditions (PacifiCorp Sites Only)

If, during the performance of the Work on the Site, Seller encounters unusual or unforeseen (a) threatened or endangered plant and animal species which are regulated or require special handling under Environmental Laws, (b) underground conditions or (c) items of archeological or historical significance, Seller shall notify Buyer as soon as practicable and shall perform its obligations hereunder, including those obligations affected by such discoveries, in compliance with Applicable Law.

Section 7.3 The Contractor and Subcontractors

(a) In connection with its performance of this Agreement, Seller shall either (i) cause the Contractor and each Subcontractor to purchase Equipment from the Approved/Preferred Suppliers set forth in Appendix Q, or (ii) elect to use vendors others than those set forth in Appendix Q, in which event, Seller shall provide a price adjustment to the Purchase Price. Such adjustment shall be set forth in Appendix R, and shall be accepted by Buyer in its sole discretion.

(b) Seller shall be fully liable to the Buyer hereunder for all acts and omissions of the Contractor and each Subcontractor to the same extent as though any such act or omission had been performed or omitted to be performed by Seller directly. In no case shall Seller’s engagement of the Contractor or any Subcontractor relieve Seller of any of its obligations or Liabilities hereunder and, notwithstanding the use of the Contractor or any Subcontractors hereunder, Seller shall remain fully and primarily liable to the Buyer for the full and complete performance of Seller’s obligations hereunder.

(c) ~~(c)~~ Buyer shall have no contractual obligation to, and shall not be deemed to be in privity with, the Contractor or any Subcontractor; provided, however, that in the event Seller’s obligations hereunder terminate for any reason, Seller shall, at Buyer’s request, take such actions and execute such documents as may be necessary or desirable to assign any or all of the contracts set forth on Schedule 4.12 selected by Buyer to Buyer at Seller’s sole cost and expense. Seller

shall include in all contracts with the Contractor, any Subcontractors and all other vendors, a consent by such Contractor, Subcontractor(s) and other vendor(s) in advance to such future assignment(s).

Section 7.4 Compliance With Applicable Law

(a) Seller shall comply with all Applicable Law, and shall cause the Contractor and each Subcontractor to comply with all Applicable Laws applicable to its respective scope of work on the Project, the noncompliance with which could adversely affect the Work, the Plant, the Site or Seller's obligations under this Agreement. Seller shall be responsible for ascertaining the nature and extent of any Applicable Law, which may affect Seller, the Work, the Plant or the Site as a result of the performance by Seller of its obligations under this Agreement or, prior to Substantial Completion, the operation of the Plant. Seller shall ensure that the Work complies with Applicable Law, Prudent Industry Practice and Governmental Approvals ~~and further,~~ except to the extent any non-compliance therewith ~~results~~ is by Buyer resulting from Buyer's gross negligence or willful misconduct or operation of the Work by or for Buyer (other than by Seller) not in compliance with [*insert applicable Equipment manufacturer*] product manual, a copy of which is included in Appendix D.

(b) Subject to the preceding paragraph, Seller shall be responsible for fines and penalties which may arise (including those that Buyer pays or becomes liable to pay) as a direct result of Seller's non-compliance with Applicable Law, or as a result of Buyer's inability to operate the Project in compliance with Applicable Law due to the inaccuracy of Seller's representations and warranties or the breach by Seller of any of its covenants, other than any fines and penalties arising from any act or omission of Buyer, or the agents, employees, contractors (other than the Contractor and each and every Subcontractor), and representatives of Buyer.

Section 7.5 Governmental Approvals

(a) Seller shall obtain all Governmental Approvals designated as Seller's responsibility in Appendix E and all other Governmental Approvals that are not specifically designated as Buyer Governmental Approvals in Appendix E and shall cause the Contractor and the Subcontractors to reasonably support the efforts of Buyer in obtaining all Buyer Governmental Approvals, including providing such engineering and environmental data and statistical information as may be reasonably requested by Buyer. Buyer shall be properly included as the permittee, co-permittee or authorized party with respect to all Governmental Approvals.

Section 7.6 Opportunities for Other Contractors; Labor Relations

(a) Seller shall, in accordance with Buyer's reasonable instructions, afford to other contractors identified by Buyer all reasonable opportunities for carrying out their work at the Site, provided that the same shall not materially obstruct or disturb the progress of the Work. Seller shall also afford access to Buyer's employees, including employees who will operate and maintain the Plant, to perform their work at the Site.

(b) Seller shall be responsible for coordinating Buyer's contractors and employees as it relates to mobilization and laydown space requirements, interconnection with Site construction power and temporary storage facilities, water, emergency evacuation requirements, trash/waste

disposal, Site access, temporary office space, safety and security and other Site regulations and requirements. Each of Buyer's contractors shall be responsible for any costs with respect to that contractor's work, including mobilization and laydown space requirements, interconnection with Site construction power and temporary storage facilities, water, emergency evacuation requirements, trash/waste disposal, Site access, safety and security and other Site regulations and requirements.

(c) Seller agrees that claims resulting from the concurrent Buyer contractor activities shall be brought to Buyer's attention within ten (10) Business Days of their occurrence. Buyer and Seller agree to informally resolve claims as they occur and otherwise in accordance with article 32 ("Claims, Claim Notice and Dispute Resolution").

Section 7.7 Labor and Employment

(a) Seller shall, and shall cause the Contractor to, ensure that all construction contracts and subcontracts of any tier for the Project be awarded (i) in compliance with Utah State and Federal and all other Applicable Law and (ii) on a Merit Shop basis. Seller shall, and shall award construction contracts and subcontracts of any tier for the Work (x) in compliance with the requirements of U.S. Federal and Utah state laws and regulations and (y) on a Merit Shop basis or (z) through a project labor agreement. Each Contractor shall, subject always to the requirements of law or regulation or applicable collective bargaining agreement, and to the fullest extent commercially reasonable, perform the Work using Utah labor.. Any contract or subcontract shall be awarded on the basis of the best value to the Project including an evaluation of the Subcontractors' ability to work in harmony with others working on the Project including the Contractor, the existing labor force, Governmental Authorities, and without regard to whether or not the successful bidder is signatory or non-signatory to agreements with labor organizations. Seller shall, and shall cause the Contractor and each Subcontractor to, refrain from any discrimination against any employee on the basis of such employee's membership in any labor organization, or his or her lack of such membership. All employees working on the Project shall be permitted to exercise their right to engage in protected concerted activity, as defined in Section 7 of the National Labor Relations Act, as amended, or to refrain from doing so, without any discrimination or other adverse consequence. Seller shall, and shall cause the Contractor and each Subcontractor to, comply with Applicable Law regarding labor relations and employment matters. Any administrative or civil proceedings filed against a Project Party or any Subcontractor shall be promptly reported to Buyer. Nothing in this provision shall affect any obligation of a Project Party or Subcontractor under a lawful collective bargaining agreement applicable to some or all of such Person's operations on the Project.

(b) Seller shall be aware of, and familiar with, all collective bargaining agreements, which do or may pertain to or affect the work under this Agreement or other work at the Site. Seller shall plan and conduct its operations so that its employees and subcontractors of any tier will work harmoniously with Buyer employees and other workers employed on the same or related projects to assure that there will be no delays, work stoppages, excessive labor costs, or other labor difficulties. Seller shall ensure that Contractor and each and every Subcontractor comply with all Applicable Law pertaining to such labor.

(c) Scarcity and Quality of Labor. Seller shall have no claim for an extension of the Time for Completion or a claim for loss, damage or additional Costs of any kind in respect of any alleged or proved unsuitability, scarcity, inefficiency of the labor it may engage or wish to engage.

(d) Equal Employment Opportunity and Other Non-Discrimination Clauses.

(i) Seller shall, at all times, comply with all Applicable Law applicable to employees, including without limitation those governing wages, hours, desegregation, employment discrimination, employment of minors, health and safety. Seller shall comply with equal opportunity laws and regulations to the extent that they are applicable.

(ii) Seller shall indemnify, defend and hold harmless Buyer, its Board of Directors, officers, employees and agents from all losses, costs and damages by reason of any violation thereof and from any liability, including without limitation fines, penalties and other costs arising out of Vendor's failure to so comply.

(iii) Seller shall execute and deliver to Buyer a completed Certificate of Compliance using Buyer's form of Certificate before starting to perform Work under this Agreement.

(e) Workers Compensation. Seller shall comply with all applicable Applicable Law regarding workers' compensation and shall, prior to commencing Work, furnish proof thereof satisfactory to Buyer.

Section 7.8 Authority for Access for Inspection

Inspection of the Work at the Site and attendance at meetings (whether conducted in-person, telephonically or through similar medium) relating to the Project which are attended by Seller and Contractor or Subcontractor and related to status, progress, quality, scope, schedule and safety coordination shall at all times be afforded by Seller to Buyer, Buyer's Representative and such other Persons as shall be designated by Buyer or Buyer's Representative. Buyer, in its inspection, shall give due consideration to the needs of Seller to carry out Seller's obligations and strive not to hinder or unduly impede Seller while carrying out such inspection. Buyer, in its inspection, may observe the progress and quality of the Work to determine, in general, if the Work is proceeding in accordance with the Transaction Documents. Inspections under this Section 7.8 are solely for the benefit of Buyer and any inspection or failure to inspect and any objection or failure to object by Buyer shall not (i) relieve Seller, the Contractor, or any Subcontractor of its respective obligations under any Transaction Document or (ii) be used as evidence that Buyer agreed that Seller, Contractor, or any Subcontractor had fulfilled any obligations under any Transaction Document or that Buyer had waived any of its rights under any Transaction Document.

Section 7.9 Seller's Use of Buyer's Drawings

Seller may use Buyer's Drawings only for fulfilling its obligations under this Agreement. Buyer's Drawings, specifications and other information submitted by Buyer to Seller shall remain the property of Buyer. Such materials shall not, without the written consent of Buyer, which consent may be withheld in Buyer's sole discretion, be used, copied or communicated to a third party, other than the Contractor, by Seller unless necessary to fulfill the purposes of this Agreement, and then pursuant to a

full reservation of rights in Buyer. Buyer makes no representations or warranties as to the accuracy, completeness or suitability of Buyer's Drawings and Seller shall not rely on such Buyer's Drawings.

Section 7.10 Contractor Drawings and Manuals

(a) Seller shall at all times keep a copy of the most recent version of the Contractor Drawings and Manuals at Seller's office on the Site to be made available for Buyer's review. In addition, Seller shall provide and make available to Buyer electronic versions of the Contractor Drawings and Manuals accessible by Buyer through a file transfer protocol site to be maintained by Seller.

(b) Seller shall cause to be set forth in the Contractor Drawings and Manuals provided to Buyer such information as is required to operate and maintain the Work, including to the extent applicable, recommended operating and maintenance procedures, system descriptions, product catalogs, drawings, design sheets, specifications, logic diagrams, maintenance and instruction sections, spare parts lists, any vendor-supplied training documents, and current heat balances. The Contractor Drawings and Manuals shall be (i) prepared in accordance with the Specification and when completed, shall be in sufficient detail to accurately represent the Project as constructed. The Contractor Drawings and Manual shall be maintained and be available, with up-to-date drawings, specifications and design sheets, for the training as set forth in Section 7.11 ("Training").

(c) Seller shall prepare initial system descriptions, design basis documents, and operational guidelines for the Project and deliver such to Buyer for its review at least one (1) year prior to the Guaranteed Substantial Completion Date.

(d) At least sixty (60) days prior to the Guaranteed Substantial Completion Date, Seller shall provide Buyer with initial drafts of the final Contractor Drawings and Manuals for review (the "Draft Manuals"). The Draft Manuals shall contain such information described in Section 7.10(b), other than the drawings which, in accordance with this Section 7.10, are being maintained so as to be up-to-date. Two (2) complete sets of the Draft Manuals shall be provided to Buyer at least sixty (60) days prior to Substantial Completion and shall be a condition of Substantial Completion.

(e) Seller shall provide to Buyer both hard and electronic final copies of the Contractor Drawings and Manuals. Seller shall provide to Buyer five (5) final hard copies of the Contractor Drawings and Manuals within sixty (60) days after achievement of Substantial Completion. Buyer shall not be required to deliver the Notice of Final Acceptance until all such Contractor Drawings and Manuals have been so delivered.

(f) Any modifications to the Contractor Drawings and Manuals made necessary as a consequence of any Final Punch List items or modifications to the Work shall be issued as addenda to the Contractor Drawings and Manuals within sixty (60) days following completion thereof.

Section 7.11 Training

(a) Training of Buyer's personnel (or other employees or agents of Buyer) shall be given by Seller or the Contractor prior to the Closing Date as required by the Specification, in accordance with the timetable to be agreed upon with Buyer prior to the Closing Date and shall include training (including on-site and classroom) in connection with the operation and maintenance of the Project. Such training shall be provided directly to Buyer's personnel as specified by Buyer in Section 10 to Appendix B and shall be conducted by a trainer experienced in the operation and maintenance of the Project.

(b) As more fully described in Section 10 of Appendix B, starting at least sixty (60) days prior to the first operation of one of the combustion turbines at the Site of the Project and continuing until Final Acceptance, Seller shall oversee the development of and provide qualified and experienced support for Buyer's execution of a practical and participatory training program at the Site for an adequate number of employees designated by Buyer, which personnel shall be experienced in electric generating facility operation appropriate to their respective job descriptions.

Section 7.12 Safety

(a) Seller shall be solely responsible for being aware of and initiating, maintaining and supervising compliance with all safety laws, regulations, precautions, and programs in connection with the performance of this Agreement, including without limitation the provisions of Section 9.2 ("Site Security"), Section 9.7 ("Fencing, Protection, Lighting"), and Section 9.11 ("Material Safety Data") of this Agreement. Prior to the start and throughout the performance of the Work, Seller shall assure that each of its employees, together with all employees of its Contractor and each Subcontractor, are fully informed concerning all safety, health, and security regulations pertaining to the Work. Seller shall conduct all operations under this Agreement in such a manner as to avoid the risk of bodily harm to persons or risk of damage to any property.

(b) In the event Seller fails to promptly correct any violation of safety or health regulations, Buyer may suspend all or any part of the Work. Seller shall not be entitled to any extension of time or reimbursement for costs caused by any such suspension order. Failure of Buyer to order discontinuance of any or all of Seller's operations shall not relieve Seller of its responsibility for the safety of personnel and property. Seller shall maintain an accurate record of and shall promptly report to Buyer all cases of property damage in excess of \$100 and of death, occupational diseases, or injury to employees or any other third parties and incident to performance of Work under this Agreement. Seller shall promptly notify Buyer and provide a copy of any safety citation issued by any governmental entity. Seller shall perform all Work under this Agreement in strict accordance with its Buyer-approved Health and Safety Plan.

Section 7.13 Intellectual Property Rights and Computer Program Licenses

(a) Seller represents and warrants that it has and upon the Closing will have, (i) all rights necessary with respect to the Work (and each part thereof) and the ownership or operation of the Project after it is constructed and to perform Seller's obligations under this Agreement and

(ii) that the Work (and each part thereof) does not violate or infringe any patent or copyright. Seller shall not take any action that would violate or infringe any patent or copyright.

(b) Seller shall, at its sole expense, settle or defend and pay any costs (including attorney's fees) and damages awarded in connection with, and shall defend, indemnify and hold harmless each of Buyer and Buyer's Representative, and any of its respective officers, directors, employees, contractors, agents or representatives, from and against, any and all Claims, suits or proceedings based on a Claim that the Work (or any part thereof) or the ownership or operation of the Project, infringes or violates any patent or copyright. Buyer shall give Seller notice of any such Claim promptly after Buyer has actual knowledge thereof, provided that the omission of Buyer to give such notice shall not relieve Seller of their obligations hereunder except to the extent that such omission results in a failure of actual notice to Seller and Seller are damaged as a result of such failure. The provisions of article 26 ("Indemnification") and article 32 ("Claims, Claim Notice and Dispute Resolution") shall also apply to any Claim under this Section 7.13(b).

(c) In case the Work (or any part thereof) or the ownership or operation of the Project is held to infringe or violate any patent or copyright and the use of the Work (or part thereof) or the operation of the Project is restricted or prohibited as a result thereof, Seller shall, at its sole cost and expense, at Seller's option, either procure for Buyer the right to continue using the Work (or part thereof), replace the same with non-infringing comparable substitute Work, or modify the Work (or part thereof) so that it becomes non-infringing (provided that such modification does not adversely affect the Work (or any part thereof)).

(d) Seller shall obtain and transfer to Buyer perpetual, fully-paid licenses to use all computer programs necessary or useful for the operation of the Plant, together with all warranties related thereto. Nothing contained in the Computer Program License shall restrict any of Buyer's rights under this Agreement.

Section 7.14 Seller's Representatives

(a) Seller shall employ one or more competent representatives, whose name or names and details of qualifications and previous experience shall have been provided to Buyer and Buyer's Representative by Seller, to manage the project and who shall have Seller's authority in respect of all matters arising out of or in connection with the Agreement and the Work.

(b) Assigned Project Roster.

(i) Seller shall designate a Project Manager, a Project Engineer, a Lead Mechanical and Lead Electrical, a Construction/Site Manager, a Safety Manager and a Startup or Commissioning Manager for the Project, and shall provide to Buyer a list setting forth each such position prior to beginning the Work. All employees assigned by Seller to perform any of Seller's obligations shall be fully qualified to perform the tasks assigned them.

(ii) Such representatives, or if more than one shall be employed, then one of each such representatives, shall be present on the Site during working hours and at all times the Work is in progress during the times relevant to the representative's duties are applicable to the Work, and any orders or instructions which Buyer or Buyer's Representative may give to the said representative of Seller shall be deemed to have been given to Seller.

(iii) Buyer or Buyer's Representative shall each have the right, in its sole discretion, to approve or disapprove Seller's selections for Project Manager, Project Engineer, Lead Mechanical and Lead Electrical, Construction/Site Manager, Safety Manager, Startup or Commissioning Manager and any Subcontractors or independent contractors or consultants utilized by Seller.

(iv) In the event Seller intends to remove or change its Project Manager, Project Engineer, Lead Mechanical and Lead Electrical, Construction/Site Manager, Safety Manager, or Startup or Commissioning Manager assigned to the project or reassign any such personnel to another project, Seller shall give Buyer fifteen (15) days advance written notice of Seller's intentions. Buyer shall give due diligence and consideration to any request by Seller to replace such persons and shall respond within fifteen (15) days to any such requests. Seller shall not replace its Project Manager, Project Engineer, Lead Mechanical and Lead Electrical, Construction/Site Manager, Safety Manager, or Startup or Commissioning Manager assigned to the project without the prior written consent of Buyer.

(v) Buyer shall have the right to approve Seller's senior staff on Site, and may request the removal of any of Contractor's personnel

(vi) Seller shall not remove any of the individuals identified in Section 7.14(b)(i) from the Work or the Site without the prior written consent of Buyer, and then only if a suitable replacement for such representative has been approved by Buyer prior to the removal of such representative.

(c) Objection to Seller or Contractor Representatives or Employees. Buyer shall be entitled by notice to Seller to object to any representative or person employed directly or indirectly by Seller, Contractor or any Subcontractor in the execution of or otherwise about the Work who, in the opinion of Buyer, misconducts itself, is incompetent or negligent, and Seller, Contractor or any Subcontractor, as the case may be, shall remove and exclude such person from the Work.

Section 7.15 Seller's Personnel/Drugs, Alcohol and Firearms

With regard to the performance of the Work, Seller shall, and shall ensure that Contractor shall, only employ persons qualified to perform the Work. Seller shall, at all times, enforce strict discipline and good order among its employees and the employees of the Contractor and any Subcontractor. Seller shall not permit or allow the introduction or use of any firearms, illegal drugs or intoxicants upon the Work under this Agreement, or upon any of the grounds occupied, controlled, or used by Seller in the performance of the Work. Seller shall immediately remove from the Work, whenever requested by Buyer, any person considered by Buyer to be incompetent, insubordinate, careless, disorderly, in violation of the above restriction on firearms, illegal drugs or intoxicating liquor, or under the influence of illegal drugs or intoxicants, and such person shall not again be employed in the performance of the Work herein without the consent of Buyer.

Section 7.16 Use of Premises and Trespassing

Seller shall confine the storage of materials and construction equipment to locations acceptable to Buyer and in accordance with Applicable Law. Seller shall, at all times, prohibit its staff, workers and all other persons employed directly or indirectly by Seller on the Site from poaching or trespassing

and any such person found so doing shall be removed forthwith from the Work and shall not be re-employed without the prior Written consent of Buyer.

Section 7.17 Electricity, Water and Pipeline Natural Gas

(a) During the construction of the Plant, Seller shall provide for its own use, on-Site distribution for all utilities, including, the following: drainage, water, sewage and electrical power. Seller shall pay for electrical power, fuel and raw water used by Seller during the construction of the Plant. Seller shall make provisions in its temporary construction power load center for loads and feeds of Buyer, provided that Seller have been supplied with adequate information relative to such additional uses prior to initial mobilization at the Site; provided, however, distribution of such additional power feeds, and the cost of usage of such electrical power, shall be borne by Buyer or contractors engaged by Buyer.

(b) Seller shall provide all required supplies of demineralized water, pipeline natural gas and other commodities required for the purposes of commissioning and startup activities and the Performance Tests in accordance with manufacturer's and/or contractors' published specifications for the Plant and Equipment. Notwithstanding the foregoing, Buyer shall reimburse Seller for the cost of providing pipeline natural gas in an amount not to exceed the equivalent to two hundred seventy-five (275) hours of full-load CT operation, without duct burners in operation, based on the design documents for the Project, for purposes of commissioning and startup activities and the Performance Tests. Seller shall provide to Buyer in writing not less than 180 days prior to first firing of the Gas Turbines, the design consumption rate to be used in calculating Buyer's reimbursement obligations under this paragraph. Seller shall be responsible for all pipeline imbalance and other charges that may be assessed by any party in connection with the supply of natural gas and/or electric service to the Plant in connection with commissioning and startup activities and Performance Testing. Seller shall be responsible for the initial filling of all chemicals, lubricants, and any other consumables necessary for the startup activities and Performance Tests.

Section 7.18 Temporary Facilities

Seller shall make provisions, at its cost, for all temporary facilities necessary for the construction of the Project and the installation of the Equipment, including arrangements for the supply of telephone, office equipment, sanitary toilet facilities, compressed air and other services for the Work and shall provide and maintain all pipes, cables and services required for its operation. Seller shall provide and maintain on the Site office accommodations for itself and an office for Buyer and Buyer's Representative. Seller shall also install and maintain, at its own cost and expense, a system of lighting to provide a reasonable degree of illumination over the area of its Work during performance of the Work. Seller shall remove any of such temporary installations pursuant to Section 20.7 ("Removal of Equipment").

Section 7.19 Decisions and Instruction of Buyer's Representative

(a) Seller shall proceed with the decisions and instructions given by Buyer's Representative in accordance with this Agreement. Such decisions or instructions may be given orally, but shall be effective only when confirmed in writing unless and only to the extent that

such instructions are necessary to remedy an emergency situation that would make the provision of written instructions impractical.

(b) If Seller disputes or questions any decision or instruction by Buyer's Representative, Seller shall give notice to Buyer within five (5) days after receipt thereof, giving reasons therefor. Buyer shall within a further period of five (5) days by notice to Seller with reasons, confirm, reverse or vary such decision or instruction. If Seller disagrees with Buyer's response, or if Buyer fails to reply to Seller's notice within the stipulated days, the matter shall be resolved in accordance with article 32 ("Claims, Claim Notice and Dispute Resolution"). Notwithstanding the foregoing, to the extent that an instruction by Buyer's Representative is necessary to remedy an emergency situation and Seller disputes the action requested in such instruction, then Seller shall nonetheless comply with Buyer's instruction and the dispute shall be resolved as provided in article 32 ("Claims, Claim Notice and Dispute Resolution").

Section 7.20 Cooperation Between the Parties

The Parties are expected to be called upon to make decisions regarding matters not reasonably anticipated in order to meet their respective obligations under this Agreement. In making such decisions, the Parties shall cooperate with the intent to improve the performance of the Work and reduce the likely operating and maintenance impacts. The vehicle for reaching agreement and causing a change to occur in the Work and/or the schedule for performance and/or the Guaranteed Substantial Completion Date and/or additional substantiated costs as a result of errors and omissions in information supplied by Buyer shall be by Change Order in accordance with article 13 ("Change Orders"). Additionally, if errors or omissions in information provided by Seller affect Buyer's or its other contractors' work during construction of the Plant, Buyer shall be entitled to make a Claim against Seller for Buyer's costs as the result of errors or omissions. [Notwithstanding the foregoing, the Parties at all times shall abide by and be subject to the terms of the Construction Coordination Agreement]. [Final sentence applicable only to PacifiCorp Sites]

Section 7.21 Spare Parts Inventory

(a) Seller shall provide and include in the Purchase Price all spares and consumables necessary for the complete performance of the Work through Final Acceptance and through the ~~Acceptance Period~~Closing. Such spares and consumables shall be located at Site and immediately available to ensure all works, testing and reliability testing continues unimpeded by such unavailability of onsite spares and consumables.

(b) Seller shall prepare a proposed list of spare parts for the Work to be available one hundred eighty (180) days prior to the Guaranteed Substantial Completion Date. Seller shall submit the proposed inventory of spare parts to Buyer in a timely fashion so as to permit thirty (30) days for Buyer to review the list and for Buyer, in Buyer's sole discretion, to procure such spare parts or, at Buyer's option pursuant to a Change Order, to direct Seller to procure such spare parts and have such spare parts delivered to the Site or cause such spare parts to be procured and delivered to the Site, to the extent practical, prior to the Guaranteed Substantial Completion Date. The proposed inventory of spare parts shall describe each component in detail, identify the manufacturer and supplier thereof and set forth the cost and lead time of such item. Upon the request of Buyer, Seller shall meet with Buyer and its designees to discuss the proposed inventory

of spare parts. If available, Buyer shall allow Seller to use any spare parts owned by Buyer, but in no event shall Buyer be liable or shall Seller be entitled to a Change Order in the event that the absence of any particular spare part or parts impacts completion of the Work.

(c) In the event Seller uses Buyer's spare parts, such spare parts shall be expeditiously replaced by Seller at its sole cost and expense.

(d) Buyer does not warrant the condition, quality, suitability, absence of defects, fitness for any purpose or aspect of any Buyer-supplied spare part and if a Seller uses any Buyer-supplied spare part, it does so at its own risk.

Section 7.22 Maintenance of Buyer Lien

Seller shall take or cause to be taken all actions reasonably required by or deemed desirable by Buyer, in its sole discretion, to maintain and preserve the Lien of the Security Documents and the priority thereof. Seller shall from time to time execute or cause to be executed, or authorize Buyer to prepare and file, any and all further Security Documents and register and record such documents and instruments in such offices reasonably requested by Buyer for such purposes. Seller shall take all action reasonably required by Buyer to cause each Additional Project Document to be or become subject to the Lien of the Security Documents (whether by amendment to the Security Documents or otherwise) and shall deliver or cause to be delivered to Buyer such legal opinions, certificates or other documents, including consent agreements that are substantially similar to the Consents, with respect to such Additional Project Documents as Buyer may reasonably request.

Section 7.23 Further Assurances

Seller shall take all such further actions and execute all such further documents and instruments as Buyer may at any time reasonably determine to be necessary to further carry out and consummate the transactions contemplated by the Transaction Documents or to perfect or protect the Lien of Buyer on the Collateral under the Security Documents.

Section 7.24 Indebtedness

Until the Closing shall have occurred, Seller shall not create, incur, assume, suffer to exist or otherwise become or remain directly or indirectly liable with respect to any Indebtedness other than Indebtedness incurred in the ordinary course of business that does not result in a Material Adverse Change.

Section 7.25 Other Liens

(a) ~~(a)~~ Until the Closing shall have occurred, Seller shall not create, incur, assume or suffer to exist, directly or indirectly, any Lien on any of its property now owned or hereafter acquired in connection with the Project, other than the following:

(i) Liens granted to Buyer pursuant to the Security Documents;

(ii) Easements or other encumbrances on Real Property affecting the Project required to be granted (x) pursuant to Applicable Law or (y) by order of a Governmental

Authority; provided, however, that such easements or other encumbrances on Real Property could not reasonably be expected to have a Material Adverse Change;

(iii) Liens set forth on Schedule 7.25 (c);

(iv) Mechanics Liens relating to the Work supplied and performed by the Contractor or by any Subcontractor that have not yet been paid in the ordinary course of business; and

(v) Liens filed with respect amounts payable to the Contractor or any Subcontractor that are being disputed in good faith, provided that Seller have posted a bond against such Liens with a bonding company or other surety reasonably acceptable to Buyer.

(b) ~~(b)~~—Seller shall, and shall cause Contractor, all Subcontractors, and all Suppliers to deliver Lien Releases in the form attached as Exhibit J, Exhibit K, and Exhibit L, respectively, for all Liens that arise with respect to the Project.

Section 7.26 Restriction on Fundamental Changes

(a) Until the Closing shall have occurred, Seller shall not, without Buyer's prior written consent, enter into any merger or consolidation, or liquidate, wind-up or dissolve (or suffer any liquidation or dissolution), discontinue its business.

(b) Until the Closing shall have occurred, and except in the ordinary course of business (such as the replacement of substitution of items from customary wear and tear), Seller shall not convey, sell, lease, assign, transfer or otherwise dispose of any of Seller's assets, except in connection with the Closing, if such sale, lease, assignment, transfer or other disposition would ~~not~~, singly or in the aggregate, result in a Material Adverse Change.

Section 7.27 Contingent Obligations

Until the Closing shall have occurred, Seller shall not create or become or be liable with respect to any Contingent Obligation if, the occurrence of the contingency associated with such Contingent Obligation would result in a Material Adverse Change, other than (a) indemnities of Seller in favor of Buyer pursuant to this Agreement, (b) under the Primary Construction Contracts, (c) indemnities arising in the ordinary course of business under contracts with Subcontractors or (d) any Contingent Obligation to a Governmental Authority arising in connection with Seller's seeking to obtain a Governmental Approval, but only to the extent consented to by Buyer, such consent not to be unreasonably withheld.

Section 7.28 Amendment of Project Documents; Additional Project Documents

Until the Closing shall have occurred, Seller shall not:

(a) without the prior written consent of Buyer (i) assign or permit any Person to assign any of its rights or obligations to or under any Project Document, (ii) terminate any Project Document, or (iii) make any amendment or other modification to any Project Document that would (A) result in a breach of this Agreement or the inaccuracy of any representation or warranty

in this Agreement, (B) increase the Purchase Price, (C) extend the Guaranteed Substantial Completion Date, or (D) have a Material Adverse Change;

(b) to the extent not covered by Section 7.28(a), amend, modify, grant any consent or approval with respect to any obligation under, waive timely performance or observance by any Person (other than Buyer) of any obligation under, exercise any options or remedies or issue any change order, notice or make any elections under any Project Document without providing notice thereof and copies of all material documentation related thereto, to Buyer;

(c) compromise or settle any claim against any Project Party if to do so would have a Material Adverse Change; or

(d) enter into any Additional Project Document that would have a Material Adverse Change. Seller shall deliver copies of all Additional Project Documents to Buyer within three (3) Business Days of the execution thereof.

Section 7.29 Environmental Matters

Until the Closing shall have occurred, Seller shall not permit (a) any underground storage tanks (other than for water or sewage) to be located on any property owned or leased by Seller, (b) any asbestos to be contained in or form part of any building, building component, structure or office space owned or leased by Seller and (c) any polychlorinated biphenyls to be used or stored at any property owned or leased by Seller.

Section 7.30 Records and Accounts

Seller shall maintain all records and accounts in accordance with GAAP consistently applied and in Dollars in order to support any and all invoices, claims and disputes under this Agreement. Seller shall permit Buyer, upon reasonable prior notice and during business hours, to audit Seller's records and accounts to verify invoice amounts and to confirm any increases or decreases to the Purchase Price and any Change Orders.

Section 7.31 Condemnation, Eminent Domain, Casualty Events

(a) In the event that any Governmental Authority or any Person, acting under any Governmental Authority, other than Buyer, takes any action to condemn, seize or appropriate all or any substantial part of the Project (each a "Condemnation Proceeding"), Seller shall promptly notify Buyer of the Condemnation Proceeding and promptly update Buyer on significant events in connection with the Condemnation Proceeding, including with respect to settlement offers, and provide other information reasonably requested by Buyer as often as may be reasonably requested by Buyer. Any monetary offer to settle a Condemnation Proceeding or compensate Seller with respect thereto shall at all times be subject to Buyer's sole and absolute discretion to accept or reject such offer, and in the event that Buyer directs Seller to accept such offer, and provided that no Seller Default, shall have occurred and be continuing, the proceeds thereof shall be applied first as a credit against any cancellation payment that may apply pursuant to Appendix I, and the remainder of such proceeds shall be paid to Buyer.

(b) In the event that any casualty event (other than a Force Majeure) shall occur which causes a suspension of all or a substantial portion of the Work for a period greater than (i) forty-five (45) days after the receipt of insurance proceeds in an amount required to successfully restore or repair the Project without having to increase the Purchase Price or (ii) ninety (90) days after the occurrence of such casualty event, then, provided that no Seller Default shall have occurred and be continuing, the proceeds of any insurance policies in respect of such casualty event shall be applied first as a credit against any cancellation payment that may apply pursuant to Appendix I and the remainder of such proceeds shall be paid to Buyer.

Section 7.32 Seller's Organizational Documents

Within thirty (30) days following the Effective Date, Seller shall deliver to Buyer or its representatives true and complete copies of their [APPLICABLE ORGANIZATIONAL DOCUMENTS] (the "Seller's Organizational Documents"), as amended through (and including) such date.

Section 7.33 Construction Coordination Agreement [PacifiCorp Sites Only]

Seller shall conduct all development, construction, commissioning and testing activities in accordance with the provisions of the Construction Coordination Agreement and in a manner that shall not interfere with the operation of Unit 1.

Section 7.34 Import Permits, Licenses and Duties

Seller shall obtain all import permits or licenses required for any part of the Plant, Equipment or Work within the time stated in the Project Schedule or, if not so stated, in reasonable time having regard to the time for delivery of the Plant, the Equipment and the Time for Completion. Seller shall pay all customs and import duties arising upon the importation of Plant into the applicable port of entry. All such payments shall be deemed to be included in the Purchase Price.

Section 7.35 Compliance with Planning Permissions, Consents

Seller shall comply fully in respect of design and work at Site and all other obligations under the Agreement, with the terms, conditions and requirements of all consents, licenses and planning permissions obtained by Buyer or Seller in accordance with Section 8.2 ("Planning Permissions, Consents").

Section 7.36 Permits

Seller shall, and cause the Contractor and any Subcontractor to, at its sole cost and expense, secure and maintain all applicable construction and construction related permits which are required by Applicable Law (each a "Permit") in order to undertake and perform the Work.

Section 7.37 Lay Out

(a) Seller shall be, and shall ensure that the Contractor and any Subcontractor is, responsible for the true and accurate laying out of the Work by reference to original points, lines and levels of reference given by Buyer's Representative and provide all necessary instruments, appliances and labor ~~therefor~~ therefor.

(b) If, at any time during the execution of the Work, any error appears in the positions, levels, dimensions or alignment of the Work, Seller shall rectify the error.

(c) Seller shall bear the Cost of rectifying any error caused or permitted, directly or indirectly, by Seller.

(d) Seller shall identify and protect bench marks, sight rails, pegs and other monuments or reference points used in laying out the Work.

ARTICLE 8

GENERAL OBLIGATIONS OF BUYER

Section 8.1 Buyer's General Obligations

(a) Buyer's general obligation hereunder is to purchase the Project, upon performance of Seller's obligations as provided in this Agreement.

(b) Additionally, Buyer shall:

(i) keep Seller informed as to the status of any governmental or regulatory or other activities undertaken by Buyer that relates to the Plant and that is likely to materially adversely affect Seller's ability to perform the Work;

(ii) comply with all Applicable Law, the noncompliance with which are likely to materially adversely affect the Work, the Plant, the Site or Seller's or Buyer's obligations under this Agreement; and

(iii) maintain its records and accounts in accordance with GAAP consistently applied in order to support any and all invoices, claims and disputes under this Agreement.

Section 8.2 Planning Permissions, Consents (PacifiCorp Sites Only)

(a) Buyer shall, before the time specified in the schedule for delivery of any Equipment or Plant to the Site, obtain the Planning Consents set forth in Exhibit G. In the event Seller considers that a consent not contained in Exhibit G must be obtained for the execution of the Work and/or operation of the Site and which, as a result of the application of Applicable Law, can only be obtained by Buyer, Seller shall immediately inform Buyer. If Buyer determines, in its sole discretion, that any additional consent is required, Buyer shall use commercially reasonable efforts to obtain such consent.

(b) Except as expressly provided or set out in this Section 8.2 or otherwise agreed in writing, Buyer shall have no obligation to obtain any further planning or similar consents which are or may be necessary for the performance of the Work. The obtaining of any and/or all other necessary consents, permits, planning permission from local or other authorities or adjacent landowners shall be the responsibility of Seller who shall ensure that the same are promptly obtained considering the schedule and the time for delivery of the Equipment, the Plant and the Time for Completion.

(c) Each Party agrees to provide reasonable assistance to the other where such assistance is necessary for any consent, license or permission to be obtained. Seller shall ascertain, comply with, and ensure that the Work complies with, all Applicable Law, and all consents, licenses and permissions relating thereto.

Section 8.3 Operations and Maintenance Staff

Buyer shall provide to Seller reasonable and necessary support during the commissioning and startup of the Plant as set out in this paragraph. Seller shall supply a schedule of requested support not less than sixty (60) days prior to commencing startup and commissioning activities. Buyer shall provide operations and maintenance staff personnel to participate in the commissioning activities and Performance Tests during normal working hours or other times as may reasonably be requested by Seller with advance notice as follows: Buyer shall provide operation and maintenance personnel as may be reasonably required by Seller to carry out the Performance Tests for purposes of commissioning, Performance Tests, training and system turnover, not to exceed 10 FTE (full-time equivalent) personnel for a period not to exceed 180 consecutive days. Buyer's operation and maintenance personnel shall work under the direction of Seller to perform their work in connection with the startup and commissioning activities. Subject to the following sentence, Buyer's personnel shall have acceptable minimum skill levels to operate the equipment. This participation shall be considered on the job training for Buyer's personnel.

Section 8.4 Certificate of Convenience and Necessity

Prior to the issuance of the Notice to Proceed, Buyer shall open a docket before the PSCU with respect to the CCN. Promptly after obtaining the CCN, Buyer shall provide notice thereof to Seller. Seller agrees to take commercially reasonable and prudent steps to represent themselves in the PSCU's regulatory proceedings in support of the CCN, including causing the Contractor and each Subcontractor to provide cooperation and assistance to Buyer in connection therewith. Such regulatory participation by Seller shall be at Seller's sole cost and expense.

Section 8.5 Buyer's Representative

(a) Buyer's Power to Delegate. Buyer may at any time and from time to time delegate to its representative (the "Buyer's Representative") any of its duties and obligations (other than its payment obligations) under the Agreement. Except as explicitly provided herein, any written decision, instruction or order given by Buyer's Representative to Seller in accordance with such delegation shall have the same effect as though it had been given by Buyer.

(b) Duties of Buyer's Representative. Buyer's Representative shall carry out such duties in issuing certificates, decisions, instructions and orders as are specified in the Agreement but except as expressly provided in the conditions neither the performance of or the failure to perform such duties whether properly or at all by Buyer's Representative, nor the fact that a representative has been appointed by Buyer shall in any way relieve Seller of any responsibility or liability for any of its obligations under the Agreement. No approval of, or consent to or failure to approve or disapprove of any matter by Buyer or Buyer's Representative shall relieve Seller of any liability or any of its obligations under the Agreement.

Section 8.6 Standard of Conduct

Unless explicitly stated otherwise in this Agreement, whenever the Parties or their representatives are required to exercise discretion by: (a) giving a decision or consent, (b) expressing satisfaction or approval, (c) determining value, or (d) otherwise taking action which may affect their respective rights and obligations hereunder, the exercise of such discretion shall be made in a reasonable manner and in good faith consistent with this Agreement so as to reasonably minimize any disruption to the other Party, and having regard to all the circumstances reasonably applicable thereto.

ARTICLE 9

WORKING ARRANGEMENTS

Section 9.1 Site Regulations

Seller, while performing Work at the Site, shall make itself aware of and adhere to Buyer's Site regulations, if any, including without limitation environmental protection, loss control, dust control, safety, and security, as well as any plant Site special conditions.

Section 9.2 Site Security

(a) Site security shall be under the direct control of Buyer and shall be in accordance with Buyer's established procedures, which include the requirements stated in this Section. Seller and its personnel and its Subcontractor's personnel of any tier shall strictly adhere to all Site security provisions. Buyer will furnish within fenced-in areas of the Site a guard force to control access to and from the Site.

(b) All personnel working at the Site and all repeat visitors may be provided and where provided, shall be required to keep in their possession at all times, while on the premises, an identification tag ("ID Tag") provided by Buyer. Visitor's ID Tags will be available, but persons with such ID Tags may be required to be escorted by a designated representative of Buyer.

(c) Seller shall be assigned a personnel gate through which its employees must enter and depart. ID Tags issued to Seller's employees may, at Buyer's option, be utilized as "brass", and Seller shall be responsible for the control of ID Tags issued to its employees, subcontractors, suppliers and visitors.

(d) Notwithstanding Buyer's provision of guard service, Seller shall be fully responsible for all Equipment, as well as Buyer-furnished material and Equipment in the care, custody and control of Seller.

(e) Buyer shall designate parking areas for all persons outside the fenced-in area of the Site. Certain individuals, authorized specifically by Buyer, may drive vehicles onto the Site and may enter and leave through the main gate at times designated by Buyer. Access to the Site between the hours of 3:30 P.M. local time and 7:00 A.M. of the normal work week and all hours on weekends shall be subject to the consent of Buyer. Seller shall follow the procedure designated by Buyer in obtaining consent for access to the Site at other than normal working hours.

(f) Seller shall maintain and submit to Buyer an up-to-date inventory of Equipment and tools brought onto the Site.

(g) A representative of Buyer shall have the unqualified right to demand identification of and/or search all persons and all vehicles entering or leaving the Site. Materials leaving the Site must have an appropriate material pass issued by Buyer. Seller shall make, and cause its Subcontractors to make, advanced arrangements for tool inventory when leaving the Site upon completion of the Project. The inventory shall be coordinated with Buyer and can be conducted on weekdays between 9:00 A.M. to 2:00 P.M.

(h) Buyer shall inform Seller of all restricted areas of the Site. Before entering any such restricted area, Seller shall obtain prior consent from Buyer Representative. Any individual found in restricted areas without Buyer consent shall be subject to removal from the Site.

Section 9.3 Preservation of Public and Private Access

Seller shall not damage, close, or obstruct any highway, road, or other public or private easement, except to the extent allowed by Permits. If such facilities are closed, obstructed, damaged, or made unsafe by Seller, Seller shall, at its sole cost and expense, make such repair as necessary and shall also provide such temporary guards, lights, and other signals as necessary or required for safety or as reasonably requested by Buyer.

Section 9.4 Night, Weekend or Holiday Work

In the event Seller determines it necessary to undertake the Work at night, on weekends, or on holidays, and such Work is on the Site, Seller shall provide Buyer's Representative forty-eight (48) hours notice, unless the Work is necessary for the protection of life or property or for the safety of the Work, in which case Seller shall immediately advise Buyer's Representative. Such Work shall be performed in accordance with all Applicable Law, Permits, consents and licenses, and without inconvenience to third parties. Seller explicitly agrees and acknowledges that full consideration and payment for the satisfactory completion of the Work includes all necessary labor hours inclusive of Work during night, weekends and holidays and explicitly agrees and acknowledges that Seller shall not file Change Orders because of the need to attract labor to perform Work at night, weekends or on holidays.

Section 9.5 Avoidance of Noise and Disturbance

All Work at the Site (including night, weekend or Holiday Work subject to the requirements of Section 9.4 ("Night, Weekend or Holiday Work")) shall be carried out in such a way as to minimize noise and disturbance and Seller shall indemnify and keep indemnified Buyer against any costs, losses or expenses, including without limitation, liability for damages arising out of or in connection with noise or other disturbance, falling outside of the limits specified in the Applicable Law and created by Seller in performing the Work.

Section 9.6 Opening Up of Work

(a) No major material part of the Work shall be covered up or put out of view without the prior written consent of Buyer's Representative. Seller shall timely inform Buyer's

Representative and shall afford full opportunity for Buyer's Representative to inspect any part of such Work which is about to be covered up or put out of view and to examine foundations before any part of the Work is placed thereon.

(b) Seller shall uncover any part of such Work or make openings in or through the same as Buyer's Representative may from time to time direct and shall reinstate and Repair such part. The cost of such uncovering, repair or reinstatement shall be borne by Seller unless (i) the requirements of Section 13.2(c), if applicable, have been fulfilled with respect to such part, (ii) such part is found to have been executed in accordance with the Agreement, and (iii) it was not reasonable to have requested the opening up given the existence of Defects of a similar nature in other parts of the Work, in which event the cost of such uncovering, repair, or reinstatement shall be borne by Buyer.

(c) Notwithstanding any other provision of this Section, if Defects are uncovered, Buyer shall be entitled to either accept the defective Work or to accept them only partially remedied and, provided that Seller has had a reasonable opportunity to remedy the Defects (except where such work has been deliberately concealed by Seller) the Purchase Price shall be reduced by an amount mutually agreed by Buyer and Seller, and in the absence of such agreement, an amount as is determined pursuant to the provisions of article 32 ("Claims, Claim Notice and Dispute Resolution").

Section 9.7 Fencing, Protection, Lighting

Seller shall provide adequate safety barriers, signs, lanterns, and other warning devices and service to properly protect any person having access to or near the Site. Seller shall be solely responsible for any act of trespass or any damage to adjacent property resulting from or in connection with its operations under this Agreement.

Section 9.8 Site Services

Seller shall be responsible for obtaining any and all electricity, water, fuel, air and other services as Seller may require for the purposes of the Work, and Seller shall be responsible for the cost thereof.

Section 9.9 Cleanup

Seller shall keep the Work area, including storage areas used by it, free from accumulation of waste materials or garbage arising out of the Work, and shall, prior to completion of the Work, remove and properly dispose of any such waste materials or garbage from and about the Work area as well as remove all tools, equipment and materials not property of Buyer. Upon completion of the Work, Seller shall leave the Work area in a condition reasonably satisfactory to Buyer. In the event of Seller's failure within a reasonable time to comply with any of the foregoing, Buyer may, after written notice to Contractor of such failure, perform the cleanup and removal at the sole cost and expense of Seller.

Section 9.10 Contamination

Seller shall, at all times, be responsible for keeping the Site free from any Contamination brought to or generated at the Site by Seller, the Contractor or any Subcontractor. Prior to the Closing,

Seller shall manage any Contamination, whether brought on to the Site or pre-existing, according to Applicable Law and within the requirements of Buyer's policies and programs for management and disposal of Contamination. Seller shall not be responsible for the remediation or disposal of any pre-existing Contamination. Prior to the disposal or disposition of any Contamination, Seller shall obtain the written approval of Buyer for such disposal or disposition.

Section 9.11 Material Safety Data

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

(a) Seller shall require that suppliers furnish appropriate Material Safety Data Sheets (collectively, "MSDS") and appropriate labels of all purchased chemicals.

(b) For materials that a Contractor plans to bring onto the Site, MSDS for those materials must first be presented to Buyer for review by Buyer's Plant Safety Coordinator. Contractors coming onto the Site will provide to Buyer an MSDS for the materials to be used. Materials will be contained so as to meet any State or Federal Regulations.

(c) Seller and its employees shall review the MSDS of the appropriate hazardous chemicals, and follow the requirements of the OSHA Hazard Communication Standard.

(d) Seller is responsible for all applicable training and adherence to the program by its employees, Subcontractors, and Subcontractor's employees, subcontractors and agents.

(e) Any employee of Seller working in an area where hazardous chemicals are or may be present shall be notified in writing by Seller of the chemicals present and provided with appropriate MSDS. It will be the responsibility of Buyer to inform Seller of the hazardous chemicals at the Site to which its employees may be exposed.

Section 9.12 Historical Artifacts (PacifiCorp Sites Only)

In the event that any relics, items or structures with archaeological, geographical or historical value or any Articles (including but not limited to fossils, coins, Articles of value or antiquity and any Native American relics) are discovered by Seller or any of its subcontractors of any tier or any of their representatives or employees, Seller shall leave said items undisturbed and shall immediately notify Buyer and await its direction before proceeding with any work in the vicinity. All such historical artifacts shall be deemed to be the absolute property of Buyer and under no circumstances shall Seller take possession of any item discovered.

ARTICLE 10

PROJECT SCHEDULE

Section 10.1 Project Schedule

Attached hereto as Exhibit C is a preliminary general project timetable setting forth the major tasks that must be completed by Seller (each a "Milestone") and completion dates for such tasks ("Milestone Completion Dates") as provided by Seller in accordance with the Specification. One such Milestone is the final approval by both parties of a more detailed project timetable (the "Project Schedule") setting forth in more detail Milestones and Milestone Completion Dates, including all design, development and other Milestones to be achieved. In the event that the Notice to Proceed is delayed, within thirty (30) days from the date of the Notice to Proceed, Seller shall submit to Buyer's Representative an updated version of the Project Schedule for the approval of Buyer's Representative.

Section 10.2 Form of Project Schedule

The Project Schedule shall be in a form acceptable to Buyer. Such Project Schedule shall specify any tasks, obligations, or responsibilities (each a "Buyer Obligation") which Buyer must perform or fulfill in order for Seller to achieve the Milestone Completion Dates for each Milestone, and the date by which Buyer is to fulfill each and every Buyer Obligation.

Section 10.3 Rejection of the Project Schedule

(a) Buyer's Representative shall have the right to reasonably reject, vary, amend, substitute or otherwise change the Project Schedule prior to approval thereof. Any such variation, amendment, substitution, or other change (other than a rejection) shall be considered a Buyer-Initiated Change under Section 13.1 ("Changes").

(b) If, under Section 10.3(a), Buyer's Representative rejects any Project Schedule submitted by Seller, Seller shall, within seven (7) days of such rejection, submit four (4) copies of the final form of a revised Project Schedule for approval by Buyer's Representative and of the Project Schedule.

Section 10.4 Alterations to Project Schedule

Seller shall not, without the prior written consent of Buyer's Representative, make any material alteration to the Project Schedule.

Section 10.5 Revision of Project Schedule

If Buyer or Buyer's Representative determines, each in its sole discretion, that progress of the Work does not or is unlikely to match the Project Schedule, or otherwise to enable the Work to be completed by the Time for Completion, Buyer's Representative may order Seller to revise the Project Schedule. Seller shall thereafter revise the Project Schedule to show the modifications necessary to ensure completion of the Work within the Time for Completion. Seller shall notify Buyer's Representative as soon as possible of any circumstances of which Seller is or becomes aware which might result in progress not matching the Project Schedule.

Section 10.6 Seller's Responsibility to Comply with Milestone Completion Dates

Seller shall undertake sole and complete responsibility to complete and to commit sufficient manpower and resources to insure the completion of each Milestone by the appropriate Milestone Completion Date.

Section 10.7 Rate of Progress

(a) Buyer's Representative shall notify Seller if Buyer's Representative decides that the rate of progress of the Work is, in its opinion, too slow to meet the Time for Completion due to a circumstance for which Seller is or is not entitled to an extension of the Time for Completion under the provisions of this Agreement.

(b) Following receipt of such a notice Seller shall at its own cost take such steps as may be necessary and as Buyer's Representative may approve to remedy or mitigate the likely delay, including revision of the Project Schedule. Seller shall not be entitled to any additional payment or additional Cost or any increase in the Purchase Price for taking such steps.

Section 10.8 Progress Reports

(a) Seller shall submit to Buyer's Representative on the third (3rd) working day of each month or such other date as is agreed upon between Seller and Buyer, a progress report ("Progress Report") in compliance with the requirements set forth in the Specification. Seller shall submit two (2) copies of each Progress Report to Buyer's Representative.

(b) The written progress reports submitted by Seller shall specify in detail:

(i) any problem or circumstance (each a "Project Problem") encountered by Seller or Contractor during the preceding month (including without limitation the failure of Buyer to perform any Buyer Obligations under the Agreement or the inadequacy of any such performance by Buyer) which might (A) prevent Seller from completing any Milestone by its Milestone Completion Date or (B) cause Seller to incur additional expenses in completing any Milestones;

(ii) the estimated length of any delay and the estimated amount of any additional expenses, if any, which may be chargeable to Buyer hereunder, as a result of any Project Problem identified pursuant to the Agreement, and

(iii) to the best of Seller's knowledge, after due inquiry and analysis, the cause of any Project Problem specified pursuant to the Agreement and the specific steps taken or proposed to be taken by Seller to correct such problem.

(c) In the event that Seller fails to specify in writing any Project Problem (an "Unidentified Project Problem") with respect to a given monthly period in the appropriate report and in such manner and at such time as specified pursuant to the Agreement as a Project Problem, Seller shall not be entitled to rely on any such Unidentified Project Problem as a purported justification for either (i) claiming that it is entitled to receive any additional amounts pursuant to the Agreement (including without limitation, damages arising out of any alleged failure by Buyer

to perform any of Buyer Obligations) or (ii) failing to complete any Milestone by the specified Milestone Completion Date.

(d) The submission by Seller of any Progress Report shall not alter, amend or modify Seller's or Buyer's rights or obligations pursuant to this Agreement, including the Purchase Price. In the event and to the extent any Milestone is not completed by the specified Milestone Completion Date as a direct and unavoidable result of Buyer's failure (other than as a result of Seller's failure to perform any of its obligations on a timely basis) to fulfill any Buyer Obligation by its respective completion date, then the Milestone Completion Date for such Milestone shall be extended by one (1) day for each day in which completion of any such Buyer Obligation is delayed beyond its respective completion date and all extra costs actually incurred by Seller by reason of such delay shall be paid by Buyer, unless the delay in completing any Buyer obligation results from Seller's failure to perform any of its obligations on a timely basis.

Section 10.9 Progress Meetings

Progress meetings will be held as deemed necessary by Buyer, but normally shall not be less than once a week. Such meetings shall be at Buyer Site unless Buyer requests to change the location of such meetings. Progress meetings will be utilized to review the Work schedule and discuss any delays, unusual conditions or critical items, which have affected or could affect the progress of the Work.

ARTICLE 11

DELIVERY, SHIPPING, AND HANDLING OF PLANT AND EQUIPMENT

Section 11.1 Delivery Responsibility.

Seller shall be responsible for the safe delivery of all Plant and Seller's Equipment to the Site. Seller shall abide by the requirements of Appendix B for delivery of major items of Equipment, Plant or Seller's Equipment to the Site. Seller shall be responsible for the reception and unloading on Site of all Equipment, Plant and Seller's Equipment delivered for the purposes of the Agreement.

Section 11.2 Packing

(a) Seller is responsible for assuring that the Equipment is suitably packaged to ensure against damage under normal handling and transportation methods. All Equipment or components thereof shall be identified with Buyer's equipment number or tag number, if required by the technical specifications. All shipping shall be in accordance with Appendix B.

(b) The Equipment and all related parts shall be shipped FOB the Site, Freight Prepaid and Allowed, with Seller retaining risk, liability and responsibility, financial or otherwise, until Substantial Completion, and then only in accordance with this Agreement.

(c) Prior to the shipment of any Equipment, Seller shall become knowledgeable of transportation conditions, such as clearances and restrictions, height and width, bridge load limits and other limitations affecting such shipment. Notwithstanding any other provision of this

Agreement, any limitations or the lack of transportation facilities shall not become the basis for Claims or damages, or for an extension of time for completion of Work under this Agreement.

Section 11.3 Transportation

Seller shall observe all Applicable Law in relation to and obtain all necessary consents and permissions for the transport of Plant, Equipment and Seller's Equipment over highways, bridges or culverts and shall indemnify Buyer against all claims for the repair of any such highways, bridges or culverts arising out of the execution of the Work and in respect of all proceedings, damages, costs, charges and expenses arising out of or in connection with such transportation.

Section 11.4 Extraordinary Traffic

Seller shall use best efforts to prevent damage to any of the highways, bridges or culverts on the routes to the Site by any traffic of Seller or any of his subcontractors. Seller shall be responsible for the cost of protecting or strengthening any highway, bridge or culvert as necessary to facilitate the moving of the Equipment, Plant or Seller's Equipment and shall be liable for any damage or injury to highways, bridges or culverts arising out of the execution of the Work, and shall indemnify Buyer in respect of any claim, proceedings, damages, cost, charges and expenses in relation thereto which may be incurred as a result of Seller's default under this Section.

Section 11.5 Allocation

In the event of a partial failure of Seller's sources of supply, Seller will first meet all of Buyer's requirements hereunder prior to any allocation among other customers

ARTICLE 12

SELLER'S EQUIPMENT

Section 12.1 Seller's Equipment

Seller shall, within thirty (30) days after the Effective Date, provide to Buyer an indicative list of Seller's Equipment that Seller intends to use on the Site, which shall be updated from time to time during the carrying out of the Work and which shall be available for inspection by Buyer's Representative.

Section 12.2 Seller's Equipment on Site

All Seller Equipment shall, when brought on to the Site, be deemed to be exclusively intended for the execution of the Work. Seller shall not thereafter remove the same or any part thereof from the Site without the consent of Buyer, which shall not be unreasonably withheld in the case of Seller's Equipment not currently required for the execution of the Work on Site.

Section 12.3 Loss or Damage to Seller's Equipment

Seller shall be liable for loss or damage to any of Seller's Equipment which may occur otherwise than through the default of Buyer or those for whom Buyer is responsible.

Section 12.4 Maintenance of Seller's Equipment

Seller shall be responsible for maintaining Seller's Equipment on Site in safe working order.

ARTICLE 13

CHANGE ORDERS

Section 13.1 Changes

(a) From time to time circumstances may arise which justify a Change.

(b) No Change shall be effective unless authorized by Buyer by issuance of a Change Order pursuant to the provisions of this article 13.

(c) Buyer shall, when reviewing each potential Change and determining the nature and extent of any Change Order which is to be granted in accordance with the subsequent paragraphs of this Article, consider in detail the following information:

(i) The nature, scope and extent of the Change, including but not limited to any additions or deletions from the Scope of Work;

(ii) The effect, if any, of the Change on the Project Schedule or on the Guaranteed Substantial Completion Date(s), as applicable;

(iii) The effect, if any, of the Change on the amount the Purchase Price; provided, however, that in no event shall the amount of the Purchase Price be subject to change for any Change that does not constitute a material change in the Scope of Work requested by Buyer; and

(iv) Such other information as may reasonably be necessary for the implementation of the Change Order, including but not limited to the effect on any other provisions hereof which may be impacted by the Change.

Buyer shall, in the case of an Buyer-Initiated Change or, if it elects to do so, in the case of Seller Initiated Changes, and in all events in the case of Required Changes, thereafter issue such Change Order having regard to all such circumstances as is just and equitable and in a form substantially similar to the Change Order Form attached hereto as Exhibit D-1 which shall address, to the extent required, all of the issues set out in this Section 13.1(c).

(d) In the case of any request for a Change Order which is permitted to be made in accordance with this Agreement, it shall take the form of a Change Order Request (each a "Change Order Request") which shall be delivered to Buyer in writing as soon as possible and in any event within ten (10) days after Seller becomes aware of the circumstances which it believes (or through the exercise of Best Recognized Practice should believe) necessitates a Change. In no case shall Seller be entitled to recover costs as a Change Order in connection with conditions that give rise to such Change Order arising prior the date on which Seller requests the Change Order, except to the extent that such costs are incurred reasonably and properly in order to achieve the

Substantial Completion Date. Any Change Order Request shall be in a form substantially similar to the Form of Change Order Request attached hereto as Exhibit D-2 and comprising the following information: (a) the factors necessitating or the basis for the Change; (b) the impact, if any, which the proposed Change is likely to have on the Purchase Price; (c) the impact, if any, which the proposed Change is likely to have on the Project Schedule (including the Guaranteed Substantial Completion Date); (d) other impacted provisions hereof; and (e) such other information which Buyer may reasonably request in connection with such proposed Change.

(e) The issuance of a Change Order shall not result in invalidation of this Agreement.

(f) Except with respect to a Buyer Initiated Change, as to which the disregarded amount shall be \$25,000, no circumstances will constitute grounds for a Required Change Order or a Seller Initiated Change Order unless and to the extent that (i) the costs of such Change Order, in either case, is in excess of \$5,000, or (ii) the effect of such Change Order request impairs the achievement of an Buyer Critical Schedule Milestone or a Seller Critical Schedule Milestone, as applicable, by more than 3 days (except in circumstances where Seller has no means of recovering such schedule impairment in which case Seller shall be entitled to a Change Order if Seller would otherwise have been so entitled). Neither party shall game or otherwise manipulate the foregoing process, by aggregating or disaggregating cost and/or circumstances as the case may be (or otherwise), for the purpose of recovering or avoiding additional cost or time in accordance with the foregoing.

(g) Change Orders (in each case in excess of the applicable disregarded amount) shall address the change, if any, in the amount of the Purchase Price in one of the following manners:

(i) Buyer and Seller shall agree upon the amount by which the Change will impact the Purchase Price; or

(ii) Buyer and Seller shall agree as to the nature and extent of the Change, but in lieu of changing the Purchase Price, Seller shall perform the activities associated with the Change on a cost-reimbursement basis, in which event no change shall be made in the amount of the Purchase Price.

Section 13.2 Procedure for Changes

(a) Changes Initiated by Seller. Seller may, at any time and from time to time, make proposals to Buyer for improvements, efficiencies, cost savings and other similar Changes to the Work (each a "Seller-Initiated Change"), but no such proposal shall be carried out by Seller except as instructed in writing by Buyer in the form of a Change Order, which Buyer may in its discretion elect to issue as it sees fit. Such proposals of Seller shall be submitted in the form of a written Change Order Request in the manner substantially as set out in 13.1(d), and shall also contain and be supplemented with such information or additional information as Buyer may reasonably require in order to effect a reasoned decision as to the implementation, or rejection, (as the case may be) of the Change Order Request.

(b) Changes Initiated by Buyer. If Buyer desires to make a Change (each a "Buyer-Initiated Change") not comprising rectification or recovery Work due to Seller's negligence or breach of this Agreement, Buyer will submit a written Change Order Notice to Seller,

substantially in the form of Exhibit D-3, comprising the nature and extent of the proposed change to the Scope of Work together with, to the extent available and/or applicable, Buyer's opinion as to those matters required to be taken into account in accordance with Section 13.1 ("Changes"). Seller will promptly review the Change Order Notice and notify Buyer in writing within a reasonable amount of time of the options for implementing the proposed Change (including, if possible, any option that does not involve an extension of time) and the estimated effect(s), if any, that each such option would have on the Purchase Price and Project Schedule, and any other affected provision herein, as applicable. Such response shall also contain all those matters required to be set out in a Change Order Request. Based upon such information, Buyer may, in its sole discretion, issue a Change Order making a Change.

(c) Required Change Orders. Seller shall be entitled to the issuance of Change Orders pursuant to this article 13 in connection with any circumstances which constitute a Change and which are attributable to the matters identified in subparagraphs (a) through (g) below (each a "Required Change"):

(i) Due to Change in Law Applicable Law/Permit or Site Condition. If and to the extent that a change in any Requirement of Law or Permit after the Effective Date ~~or~~ results in an increase in the cost of the Work or extends the Project Schedule, and in each case only to the extent that such increase or extension is greater than the threshold amounts identified in Section 13.1(f) above.

(ii) Change Order Due to Suspension of Work by Buyer. In the event that Buyer suspends the Work (i) in the circumstances with respect to which Seller is entitled to a Change Order as set out in Section 13.1 ("Changes"), or (ii) in the circumstances set out in article 16 ("Suspension of Works, Delivery or Erection").

(iii) Change Order Due to Non-Performance by Buyer. If Buyer fails to perform or is late in performing in any material way any material obligation of Buyer under this Agreement and the cost to Seller is in excess of \$25,000 or a delay of more than 3 days. Neither party shall game or otherwise manipulate the foregoing process, by aggregating or disaggregating cost and/or circumstances as the case may be (or otherwise), for the purpose of recovering or avoiding additional cost or time in accordance with the foregoing.

Seller shall in all cases use or have used commercially reasonable efforts to mitigate potential delays to the Project Schedule and/or potential increases to the Purchase Price (the cost of such mitigation efforts to be addressed in any applicable Change Order).

(d) Except in the circumstances as set out in this Section 13.2 and with respect to which an application is properly made in accordance with this article 13, Seller shall not be entitled to seek either a Change, Change Order or extension of the Guaranteed Substantial Completion Date, nor to receive additional remuneration or reimbursement with respect to the Work.

Section 13.3 Continued Performance Pending Resolution of Disputes

Notwithstanding and pending the resolution of any dispute with respect to a Change or Change Order, Seller must proceed with the Work and the performance of any Change ordered by Buyer or any

Required Change, unless Buyer directs Seller not to so proceed, provided that Seller is being paid on a current basis for all undisputed Work and for all disputed Work which has been ordered to be paid through a Claim proceeding dispute resolution relating thereto in accordance with this Agreement.

Section 13.4 Preservation of Schedule and Purchase Price

Where any proposed Change or Change Order Request may give rise to an extension of any of the Project Schedule or an increase in the Purchase Price, then Buyer reserves, in its sole discretion and to the extent possible, the right to require Seller to vary, amend or effect such other Change to the Work in such a manner as will mitigate or avoid the requirement for such extension of time or increase in price.

ARTICLE 14

WORKMANSHIP AND MATERIALS

Section 14.1 Manner of Execution

The Work to be supplied, including all materials, manufactured components and labor and services to be performed, shall be designed and executed in the manner set out in this Agreement. Except where the manner of design, manufacture and execution is otherwise specifically set out in this Agreement, the Work shall be designed and executed in a proper and workmanlike manner, all in accordance with accepted industry standards and Prudent Industry Practice.

Section 14.2 Condition of Materials

The materials, Equipment (including any rented Equipment), fixtures, software, any related items of personal property and other tangible personal property of Seller, any Subcontractor or the Contractor constituting the Project shall be OEM Certified, and shall be suitable for their current use in the generation of energy and the transportation of natural gas in accordance with the Specifications. All Equipment shall be procured solely for use in connection with the Project. Seller shall not allow any Equipment to be placed into storage for more than one year prior to shipping to the Site, nor utilize any Equipment in the Project that has been so stored.

Section 14.3 Inspection

(a) In addition to the inspection rights of Buyer under Section 7.8 (“Authority for Access for Inspection”), within sixty (60) days after the Effective Date, Seller shall submit to Buyer a schedule (the “Witness Point Schedule”), including but not limited to those events identified in Appendix T of tests and inspections (the “Witness Point Events”) reasonably acceptable to Buyer which shall include locations where the Equipment shall be manufactured or tested and the location at which such tests and inspections can be viewed by Buyer. Seller shall provide no less than three (3) Business Days’ advance confirmation of the actual date of each Witness Point Event identified on the Witness Point Schedule. Buyer shall be entitled to attend and witness all Witness Point Events. To the extent that any Witness Point Events have been completed prior to the date on which the Witness Point Schedule is submitted to Buyer, at Buyer’s sole discretion, Seller shall (i) allow Buyer to observe the materials and workmanship of the Project and to review documentation which may be available in lieu of viewing or witnessing the

Witness Point Event, or (ii) re-open the affected portion of the Project for inspection by Buyer and repair or correct (if necessary) and restore the affected portion of the Project at no additional cost to Buyer. All inspections shall take place on the Site, on a Contractor's or a Subcontractor's premises or such other reasonable site as the Parties may agree, as appropriate, during normal working hours. No such inspection or examination or witnessing of tests shall release Seller from any obligation or liability under this Agreement. Inspections under this Section 14.3 are solely for the benefit of Buyer and any inspection or failure to inspect and any objection or failure to object by Buyer shall not (i) relieve Seller or any Contractor of any of their obligations under any Transaction Document or (ii) be used as evidence that Buyer agreed that either or both of Seller or any Contractor or Subcontractor had fulfilled any obligations under any Transaction Document or that Buyer had waived any of its rights under any Transaction Document.

(b) If, as a result of an inspection or examination referred to in paragraph (a) above, Buyer decides that any portion of the Work is nonconforming or otherwise not in accordance with this Agreement, Buyer shall promptly notify Seller thereof. Such notice shall state Buyer's objections and its reasons therefor in reasonable detail. Seller shall make good the nonconformity or ensure that any such portion of the Work complies with this Agreement at no additional cost to Buyer.

(c) For purposes hereof, "nonconforming" means defective or not in conformity with the Specification.

ARTICLE 15

DRAWINGS

Section 15.1 Drawings

(a) Following receipt and approval of the Project Schedule, Seller shall prepare a contract documentation and drawing list identifying those key data, calculations (as required for regulatory purposes and consents), drawings, technical specifications and concepts required for review for conformance with the Agreement.

(b) Seller shall, within the time detailed in the Project Schedule or elsewhere in this Agreement, submit to Buyer's Representative in hard copy and electronic form (the specific form of which shall be agreed to by the Parties) such key data, calculations, drawings, technical specifications and concepts.

(c) Seller shall timely submit to Buyer's Representative drawings of temporary and permanent buildings and structures and any other information required under the terms and conditions of consents, licenses and planning permissions obtained by Seller or Buyer.

(d) Buyer's Representative may, in its sole discretion, disapprove any drawing; provided, however, it shall notify Seller of any such disapproval within twenty (20) days of receipt, except for documents and information (including calculations) which are required by Buyer's Representative for consultation with Buyer's third party contractors for the purposes of the interconnections at terminal points, where the period shall be thirty (30) days. Seller shall

supply additional copies of documents or information (including calculations) in the form and numbers stated in the Agreement. Without waiver of or prejudice to any rights of Buyer, Seller shall bear all risk in relation to its performance of work arising from or in relation to all documents or information (including calculations).

Section 15.2 Consequences of Documents not in accordance with Agreement

Any documents or information (including calculations) which Buyer's Representative identifies as not being in accordance with the Agreement shall be modified and resubmitted without delay.

Section 15.3 Drawings Submitted

Seller shall not deviate from drawings accepted by Buyer or issued by Seller as approved for construction, except with the prior written consent of Buyer.

Section 15.4 Inspection of Drawings

Seller shall maintain and provide to Buyer's Representative from time to time or upon request a complete list of drawings identifying which is approved for construction. Buyer shall have the right at all reasonable times to inspect all drawings of any part of the Work.

Section 15.5 Operating and Maintenance Instructions

(a) Not less than six (6) months prior to the scheduled Guaranteed Substantial Completion Date, Seller shall deliver to Buyer's Representative one (1) set of preliminary operating and maintenance manuals sufficiently complete that the Plant and Equipment may be safely commissioned and Buyer's personnel properly trained pursuant to Section 7.11 ("Training"). Seller shall, at its sole cost and expense, continuously update such manuals so that, as of the Closing Date, such operating and maintenance manuals are substantively in their final form with any amendments made as necessary.

(b) Within three (3) months of the scheduled Closing Date, Seller shall supply to Buyer three (3) copies of final operation and maintenance manuals and drawings of the Work as-built plus five (5) CD-ROMs incorporating any changes made during testing and/or Commissioning of the Work.

(c) All operating and maintenance manuals and drawings of the Work as-built shall be in such detail as will enable Buyer to operate, maintain, dismantle, reassemble, adjust and repair all parts of the Work. Where the employment of Seller is terminated for default or in the case of Seller's Material Adverse Change prior to the Transfer of Possession and Control of Project to Buyer Date, Seller shall provide to Buyer such information including copy drawings and Draft Manuals as is reasonable and as is necessary for Buyer to complete, use and maintain the Work.

(d) The provision by Seller of the final operation and maintenance manuals and drawings of the Work as-built in accordance with the provisions of this Section shall be identified as a Milestone in Appendix C and the provisions of article 10 ("Project Schedule") shall apply.

Section 15.6 Buyer's Use of Drawings

(a) Drawings and information created by Seller for purposes of designing, developing, constructing, commissioning and operating the Project constitute "work made for hire," and Seller hereby transfers and assigns all rights in and to such drawings and information to Buyer.

(b) Drawings and information supplied by Seller that are not created by Seller specifically for or in connection with the Project, but that are necessary or useful for the operation and maintenance of the Project, the Work or any portion of them, may be used by Buyer for the purposes of completing, maintaining, operating, improving, adapting, renewing, enlarging, dismantling, re-assembly, adjusting and repairing the Work, and for any other legal purpose, pursuant to the license granted in paragraph 15.6(c).

(c) Seller grants to Buyer an irrevocable perpetual royalty free license to use all drawings and information for the foregoing purposes and Seller shall provide Buyer with copies of such drawings and information.

Section 15.7 Manufacturing Drawings

In the event of a Defect resulting in outage of the Plant in excess of two (2) days during the applicable Warranty Period, Seller shall immediately give Buyer full, unimpeded, and unqualified access to all information, documents, processes and operations, processes or operations so as to enable Buyer to satisfy itself that the Plant and Equipment shall in all respects be properly and timely repaired and/or replaced and so as to be in full compliance with the requirements of the Agreement.

Section 15.8 Errors in Drawings Supplied by Seller

(a) Seller shall be responsible for the accuracy, completeness and suitability of all drawings, samples, patterns, models, calculations or information submitted by Seller, Contractor any Subcontractor in connection with the Work. Notwithstanding Buyer's or Buyer's Representative's inspection or approval of drawings, samples, patterns, models, calculations or information submitted by Seller, Seller shall not be relieved of any responsibility or liability imposed on it by any provisions of the Agreement and shall be responsible for any errors, omissions or discrepancies therein.

(b) Seller shall bear any and all costs Seller or Buyer may incur as a result of delay in providing such drawings, samples, patterns, models, calculations or information or as a result of errors, omissions or discrepancies therein or for the correction thereof.

(c) Seller shall, at its sole cost and expense, carry out or cause to be carried out any alterations or remedial work necessitated by such errors, omissions or discrepancies for which it is responsible and modify the drawings, samples, patterns, models, calculations or information accordingly.

ARTICLE 16

SUSPENSION OF WORKS, DELIVERY OR ERECTION

Section 16.1 Order to Suspend

(a) Buyer may, at its sole option, upon not less than seven (7) days' prior written notice to Seller, suspend at any time (a) the performance of all or any portions of the Work, (b) delivery of a component of the Work, or (c) erection of any portion of the Work that has been delivered to the Site. Such notice shall specify the length of time that Buyer anticipates the Work shall be suspended.

(b) If the cumulative days of Work suspension totals One Hundred and Eighty (180) days, or if the Work is suspended four (4) or more separate times for a period of more than 45 days in any single instance or 180 days in aggregate, Seller may terminate this Agreement by thirty (30) days' written notice to Buyer unless the suspension is lifted within such 30-day period, and such termination shall be treated as a Buyer voluntary termination pursuant to Section 30.1(eb) ("Voluntary Termination").

(c) Unless otherwise instructed by Buyer, Seller shall during any suspension affecting the progress of the Work on Site, maintain its staff, labor and equipment on or near the Site ready to proceed with the Work upon receipt of the further instructions of Buyer.

(d) If Buyer desires to extend the period of suspension for a longer time than that specified in the original notice given by Buyer, Buyer shall so notify Seller in writing and the same procedures described in article 10 ("Project Schedule") shall be followed to determine whether to actually extend the suspension and the amount of the costs and charges which shall be incurred as a result of any such extension.

Section 16.2 Protection of Work

(a) Seller shall, during such suspension, store, preserve, protect and otherwise secure each of the Work, Equipment and the Plant.

(b) If Buyer is unwilling or unable to receive any of the Equipment as a result of a suspension by Buyer under Section 16.1 ("Order to Suspend"), Seller shall, upon notice to Buyer and giving Buyer reasonable opportunity to designate a mutually acceptable destination, place such Equipment in storage. If any Equipment is placed into storage pursuant to this provision, delivery thereof shall not be deemed to occur until such Equipment is delivered to the Site or Buyer has notified Seller that it is prepared to accept delivery at some other location.

Section 16.3 Resumption of Work

(a) Following any suspension by Buyer under this article 16, after receipt of notice to resume progress of the Work, Seller shall examine the Work affected by the suspension. Seller shall, within twenty-one (21) calendar days after receipt of notice to resume the suspended Work, submit to Buyer a written report detailing any deterioration, nonconformities and losses to the Project or any portion thereof and a Change Order Proposal related to such damages, losses and

deterioration. Seller shall, pursuant to a Change Order, correct, repair or replace any deterioration to, nonconformity in or loss of the Work that occurred during the suspension; provided, however, that no Change Order shall be required or issued for any deterioration, nonconformity or loss resulting from Seller's negligence or wrongdoing during the period of suspension; and shall promptly resume performance on the suspended Work to the extent required in the notice.

(b) Any claims on the part of Seller for extensions of time in connection with a suspension shall be made in accordance with the appropriate provisions of this Agreement. Notwithstanding any other provision of this Agreement, no compensation or extension of time shall be granted to the extent that suspension results from Seller's non-compliance with the terms of the Agreement.

Section 16.4 Change Order in Event of Suspension

(a) Seller may, at any time prior to thirty (30) days after receipt of notice to resume progress of the Work under Section 16.3 ("Resumption of Work"), notify Buyer of its request for a Change Order as a result of suspension by Buyer under Section 16.1 ("Order to Suspend").

(b) Seller shall, within seven (7) Business Days following receipt of any notice from Buyer indicating Buyer's intention to suspend the performance of all or any portion of the Work pursuant to Section 16.1 ("Order to Suspend"), deliver to Buyer an itemized account of the estimated charges and costs which Seller believes will be incurred by Buyer pursuant to as a result of such suspension. Seller shall make a good faith estimate of such charges and cost that will be accurate within a range of plus or minus five percent (5%). Following receipt of such estimate, Buyer shall have the right by written notice to Seller at any time prior to the effective date of suspension specified in Buyer's suspension notice to either (i) revoke its decision to suspend performance, in which event Seller will not suspend performance of such Work, (ii) instruct Seller to suspend performance in accordance with the terms of Buyer's suspension notice and to confirm that the charges and costs quoted by Seller are acceptable, or (iii) instruct Seller to suspend performance in accordance with the terms of Buyer's suspension notice, with Buyer reserving the right to contest the charges and costs quoted by Seller.

(c) In the event of such suspension, Seller shall, unless the notice requires otherwise:

(i) ~~(i)~~—Discontinue the Work on the date and to the extent specified in the notice;

(ii) ~~(ii)~~—Place no further orders or subcontracts for Equipment, Plant or services with respect to the suspended Work, other than to the extent required in the notice;

(iii) ~~(iii)~~—Promptly make every reasonable effort to obtain suspension, upon terms reasonably satisfactory to Buyer, of all orders, subcontracts and rental agreements to the extent they relate to performance of the Work suspended; and

(iv) ~~(iv)~~—Unless otherwise specifically stated in the notice, continue to protect and maintain the Work theretofore completed, including the Work suspended hereunder.

(d) As full compensation for any such suspension, Seller shall be reimbursed for the following costs, reasonably incurred, without duplication of any item, to the extent that such costs directly result from such suspension of Work, up to a maximum of one hundred and five percent (105%) of the estimate submitted by Seller pursuant to the Agreement hereof:

(i) If determined necessary by Buyer, a standby charge to Seller during the period of suspension of the Work, which standby charge shall be sufficient to compensate Seller for the reasonable costs of keeping, to the extent required in the notice, its personnel and equipment committed to the Work in a standby status;

(ii) Expenses reasonably and necessarily incurred by Seller in connection with storage of Equipment pursuant to Section 16.2 (“Protection of Work”), including preparation for and placement into storage, handling, transportation, storage, inspection, preservation, taxes and insurance and any necessary rehabilitation prior to installation; and

(iii) Reasonable costs associated with demobilization of Seller’s personnel and equipment to the extent such costs are not recovered by Seller in using such personnel and equipment on other projects during the standby period; and an equitable amount to reimburse Seller for the actual cost to Seller, if any, of maintaining and protecting that portion of the Work upon which activities have been suspended;

Buyer shall have the right, upon reasonable advance written notice to Seller, to inspect and audit Seller’s books and records in order to verify the accuracy of and/or to determine the amount of any cost-based reimbursement associated with any suspension of the Work.

(e) Seller shall not be entitled to be paid any additional amounts under this article 16 if and to the extent suspension is necessary by reason of default on the part of Seller or persons for whom Seller is responsible or for the proper execution or the safety of the Work, Equipment or Plant.

ARTICLE 17

PROJECT COMMENCEMENT AND COMPLETION

Section 17.1 Notice To Proceed

(a) Upon satisfaction or waiver by Buyer of each of the conditions in Section 17.1(b), Buyer shall issue to Seller the Notice to Proceed. Following issuance of the Notice to Proceed Seller shall proceed with developing the Project and performing the Work. Buyer shall provide at least three (3) Business Days’ prior notice of its intention to issue the Notice to Proceed. At Buyer’s option, Buyer may issue one or more limited notices to proceed prior to issuing the Notice to Proceed, pursuant to which Seller shall perform or cause to be performed certain development activities specified in any such limited notice to proceed.

(b) The obligation of Buyer to issue the Notice to Proceed to Seller is subject to the satisfaction or waiver by Buyer of all of the following conditions precedent:

(i) CCN and Governmental Approvals. Buyer's receipt of and satisfaction with the terms of the ~~CCN and all Governmental Approvals~~;

(ii) Network Resource Integration. PacifiCorp Transmission shall have demonstrated to Buyer that the Project can be integrated with PacifiCorp Transmission's System as a network resource on or prior to May 1, 2012, 2013, or 2014.

(iii) Accounting Treatment. Buyer shall be satisfied that the accounting treatment relating to PacifiCorp's obligations under any Transaction Document or in connection with the Project will not result in the addition of liabilities to the balance sheet of PacifiCorp.

(iv) Appendices, Exhibits and Schedules. Each Appendix, Exhibit and Schedule to this Agreement shall be in final form and substance satisfactory to Buyer and Buyer's Representative, each in its sole discretion.

(v) Transaction Documents. Buyer shall have received the Transaction Documents, the Security Documents (including any Guaranty), and the Consents, (together with all amendments, supplements, schedules, and exhibits thereto), each of which shall (A) have been duly authorized, executed and delivered by each party thereto, (B) be in the form of the applicable form attached hereto (if such a form is attached) and otherwise in form and substance satisfactory to Buyer, and (C) be in full force and effect.

(vi) Officers' Certificates. Buyer shall have received the certificate of an Authorized Officer of Seller certifying that (A) each of the conditions precedent to the issuance of the Notice to Proceed has been satisfied (other than to the extent that the satisfaction of a condition is dependent on the judgment of Buyer) (B) that each of the conditions in Sections 3.2(b), 3.2(c) 3.2(d), 3.2(e), 3.2(f), 3.2(h) and 3.2(i) has been and will be satisfied as of the date of the issuance of the Notice to Proceed; and (C) each of the representations of Seller set forth in article 4 ("Representations and Warranties of Seller") is true and correct. The form of such aforementioned certificate is attached hereto as Exhibit E.

(vii) Security Documents; Filings. The Security Documents and all financing statements or other instruments with respect thereto, as may be necessary, shall have been duly filed or recorded in such manner and in such places as are required by Applicable Law to establish and perfect first priority Liens, in favor of Buyer, as granted pursuant to the Security Documents. Buyer shall have received either copies of all such documents (including copies of all acknowledgment copies of filed financing statements and all other recordings made pursuant hereto) or other evidence satisfactory to Buyer of the filing of all such financing statements and other recordings. All taxes (including, but not limited to, mortgage recording taxes and recording fees), fees, and other charges payable in connection therewith shall have been paid in full by Seller.

(viii) Record Searches. A search, made no more than thirty (30) days prior to the date of issuance of the Notice to Proceed, of the Uniform Commercial Code filing offices or other registers in each jurisdiction in which Seller is organized, has an office, or in which assets of Seller are located, as certified by an Authorized Officer of Seller, shall have revealed no filings, recordings or equivalent standard with respect to any of the Collateral (except such filings and

recordings with respect to the Permitted Liens) in favor of any Person other than Buyer. A list of all of such filings and recordings or equivalent standard is set forth on Schedule 17.1(b)(xi). Buyer shall have received a copy of the search reports received as a result of such search.

(ix) Water Rights. Seller shall have provided a detailed attorneys' opinion addressed to Buyer evaluating and opining on the title of each of the Water Rights, together with all conveyance documents other supporting documentation related to the Water Rights, and Buyer shall be satisfied with the quality and marketability of title with respect thereto.

(x) Emission Reduction Credits. Buyer shall be satisfied with the form, substance and quantity of ERCs to provide for the lifetime operation of the Project.

(xi) Equipment. Buyer shall be satisfied with the Equipment and all anticipated storage plans with respect thereto.

(xii) Additional Matters. Buyer shall have received such other certificates, documents and instruments relating to the transactions contemplated hereby as may have been reasonably requested by Buyer, and all corporate or other organizational actions and other matters and all other documents (including all documents referred to herein and not appearing as exhibits hereto) and all legal matters in connection with such transactions shall be satisfactory in form and substance to Buyer.

Section 17.2 Time for Completion

Seller shall complete the Work and the Performance Tests in accordance with the Project Schedule and the terms of this Agreement. Without limiting the foregoing, Seller shall cause the Substantial Completion Date to occur no later than the Guaranteed Substantial Completion Date.

Section 17.3 Buyer's Request for Earlier Completion

Buyer may request completion of the Project earlier than the Guaranteed Substantial Completion Date and Seller shall make all commercially reasonable efforts to comply with such request.

Section 17.4 Delay in Completion

If Seller fails to meet the Substantial Completion Criteria by the Substantial Completion LD Commencement Date, Buyer shall be entitled to liquidated damages under article 24 ("Liquidated Damages").

ARTICLE 18

PERFORMANCE TESTING

Section 18.1 Performance Tests

Seller shall conduct or cause to be conducted the Performance Tests as soon as practicable in accordance with the Specifications, procedures and protocols of Appendix H and the other tests, procedures and protocols to be developed by the Parties. At least nine (9) months prior to the

Guaranteed Substantial Completion Date, Seller shall deliver to Buyer a supplement to Appendix H further outlining the tests and procedures to be followed in conducting the Performance Tests criteria. Such supplement shall include, at a minimum, provisions addressing (a) testing procedures for each item of Equipment, (b) functional performance tests for starting up the Plant under different specified operating conditions and (c) any other activities that, in accordance with Prudent Industry Practices, should be included. Thereafter, the Parties shall promptly agree on modifications to such supplement so that Appendix H, as supplemented, is satisfactory to Buyer. Seller shall provide Buyer with notice when the Plant is ready for Performance Testing.

Section 18.2 Emissions Guarantee

Seller shall conduct the Performance Tests in accordance with Appendix H and, as a condition of Substantial Completion, shall demonstrate that emissions from the Project meet the Guaranteed Emissions. If the Guaranteed Emissions are not met, either in whole or in part, Seller shall, at its sole cost and expense, to diligently make such changes, modifications and/or additions to the Plant or any part thereof as may be necessary to achieve the Guaranteed Emissions. Seller shall notify Buyer upon completion of the necessary changes, modifications or additions, and Seller shall repeat the Performance Tests as necessary until the Guaranteed Emissions have been met. Nothing contained in this Section 18.2 shall relieve Seller of Seller's obligation to pay liquidated damages under this Agreement.

Section 18.3 Cost and Direction

(a) The Performance Tests shall be conducted by and under the direction of Seller. Buyer will cooperate with Seller's reasonable requests in connection with the Performance Tests, but shall not be required to provide any materials, electricity, fuel, water or stores.

(b) Seller shall provide all materials, electricity, fuel, water and stores, and all personnel necessary to supervise startup and the conducting of the Performance Tests and shall provide all necessary technical assistance and advice in connection with the Performance Tests. Except as approved by Buyer in writing, Seller shall not use personnel in excess of the normal contingent of Plant operations staff to operate the Plant during the performance tests. During training and conducting the Performance Tests Buyer's operating personnel shall be working under the technical direction and instruction of Seller and Seller shall be responsible for the accuracy of its instructions/directions provided to Buyer's operating personnel.

Section 18.4 Buyer's Right to Validate

Buyer and Buyer's Representative, in connection with the performance of this Agreement by Seller, shall have the right and opportunity to be present and observe the Performance Tests and shall have the right and opportunity in advance or during the Performance Tests to inspect and validate all meters, meter readings and other pertinent data necessary to verify the results of the Performance Tests. Buyer shall provide reasonable notice to Seller of any such observation and inspection, including the specific information desired and method of obtaining such information. Seller and Buyer shall coordinate such observation, inspection and validation so as not to interfere with the Performance Tests yet provide for a verifiable result. Buyer shall have the same rights with respect to any other Performance Tests conducted by Seller as set forth above.

Section 18.5 Additional Tests; Test Energy

(a) After the Substantial Completion Date with respect to the Work, Seller may, unless Buyer reasonably objects, make any additional tests which Seller considers desirable at their own risk and cost; provided, however,

(i) if such tests require any change in Buyer's dispatch schedule for the Project, then Seller shall reimburse Buyer for all costs and Claims associated with such change in dispatch;

(ii) if such tests damage the Project in any way, then Seller shall bear all costs of making good such damage and of all Claims resulting from such damage; and

(iii) if such test may cause the Project to no longer meet the Performance Guarantees, then Seller shall, at its sole cost, re-conduct the Performance Tests and compensate Buyer for all costs and Claims associated with reconducting the Performance Tests.

(b) Buyer shall have the exclusive right to all electric energy generated by the Plant during any Performance Tests.

Section 18.6 Timing

Seller shall give Buyer at least ninety (90) days' prior notice of the date on which the first Performance Tests will begin and at least five (5) days' prior notice of a change in the Performance Test schedule. Buyer may request that Seller conduct the Performance Tests at another time more convenient to Buyer, which request shall set forth the reasons therefor.

Section 18.7 Test Reports

(a) Seller shall deliver to Buyer a preliminary test report, including the test data sheets and calculated results for each Performance Test or retest (the "Preliminary Performance Test Report"), promptly after completion of each Performance Test, together with a notice to Buyer certifying completion of the Performance Tests in accordance with this Agreement and results of such Performance Tests. Promptly after receipt of such Preliminary Performance Test Report, Buyer and Seller shall consult concerning the results of such tests, and within three (3) days thereafter, Buyer shall (i) state it concurs with the results of the Performance Tests or (ii) state it disputes the results of the Performance Tests and stating in detail the reasons therefor.

Within fifteen (15) Business Days following completion of the Performance Tests, Seller shall provide to Buyer a final test report, including test data sheets and calculated results of each Performance Test or retest (the "Final Performance Test Report") and a final notice to Buyer certifying completion of the Performance Tests. Within fifteen (15) days of receipt of such documentation from Seller, Buyer shall either (i) accept the Performance Test results or (ii) state it disputes the results of the Performance Tests and the reasons therefor. If Buyer disputes the accuracy of the Performance Tests results in the Final Performance Test Report, then Seller shall re-perform the applicable Performance Tests (or part thereof) in accordance with the procedures set forth in Appendix H. If the results of the re-test confirm the accuracy of the initial test, then Buyer shall pay the increased costs directly resulting from the re-test. If the results of the re-test do not confirm the accuracy of the initial test, then Seller shall pay for

the costs of the re-test and any subsequent tests necessary to confirm compliance with all Performance Guarantees.

Section 18.8 Failure on Tests or Inspection

If after inspection, examination or witnessing the testing of any of the Work, Buyer decides, in its sole discretion, that such Work or any part thereof is defective or not in accordance with the Agreement, it may reject the said Work or part thereof by giving to Seller, within ten (10) days, notice of such rejection, stating therein the grounds upon which the said decision is based. Following any such rejection, Seller shall replace or repair the Equipment, the Plant or part thereof rejected and re-submit the same for test or inspection in accordance with this Clause. All expenses reasonably incurred by Buyer in attending or in consequence of such re-testing or inspection and Buyer's or Buyer's Representative's attendance and that of entities providing finance in connection with the Project and their representatives' attendance shall be deducted from the Purchase Price.

Section 18.9 Duty to Advise of Defects, Errors and Omissions in Plant and Equipment

Seller shall advise promptly Buyer forthwith upon it becoming aware of any design, engineering, manufacturing or other Defect, error or omission that might effect the Work and its operability, operational life and maintenance and warrants and represents that, prior to the acceptance of any certificate by Buyer or Buyer's Representative and except in relation to such matters that have been notified to or by Buyer in Writing, there are no such Defects, errors and/or omissions to the best of its knowledge and belief.

ARTICLE 19

DEFECTS BEFORE TRANSFER OF POSSESSION AND CONTROL OF WORK

Section 19.1 Identification of Defects

(a) If, in respect of any part of the Work not already transferred and under control by Buyer, and in all cases prior to Closing, Buyer's Representative, at any time: (i) determines, in its sole discretion, that any Work done or Equipment or Plant supplied or materials used by Seller, Contractor or any Subcontractor is or are defective or otherwise not in accordance with the Agreement (each a "Defect"), or that any part thereof is defective or does not fulfill the requirements of the Agreement and (ii) as soon as reasonably practicable notifies Seller of the said decision, specifying particulars of the Defects alleged and of where the same are alleged to exist or to have occurred, then Seller shall with all speed, at its sole cost and expense, remedy the Defects so specified.

(b) If Seller fails to remedy such Defect, Buyer may take, at the sole cost and expense of Seller, such steps as may in all the circumstances be reasonably necessary or convenient to remedy such Defects. The cost of remedying such Defect may be deducted from any payment due under the Agreement and be recoverable as a debt.

Section 19.2 Replacement of Defects

All Equipment or Plant provided or Work done by Buyer to replace defective Equipment or Plant shall comply with the Agreement and shall be obtained at reasonable prices and where reasonably practicable under competitive conditions. Seller shall be entitled at its own expense to remove and retain all defective Equipment or Plant that Buyer may have replaced. Nothing contained in this Section shall affect any Claim by Buyer under article 32 (“Claims, Claim Notice and Dispute Resolution”).

ARTICLE 20 NOTICE OF SUBSTANTIAL COMPLETION, NOTICE OF FINAL ACCEPTANCE AND TRANSFER OF CARE, CUSTODY AND CONTROL

Section 20.1 Notice of Substantial Completion of Work

(a) When the Work meets the Substantial Completion Criteria set forth in Appendix H, Seller shall so notify Buyer and provide Buyer a certificate of an Authorized Officer of Seller certifying that the Substantial Completion Criteria have been met and the date thereof (such notice and affidavit, the “Request for Substantial Completion”).

(b) Within five (5) days after receipt of the Request for Substantial Completion, Buyer shall by notice (“Notice of Substantial Completion”) either: (i) reject such Request for Substantial Completion and refuse to issue the Notice of Substantial Completion and state what Substantial Completion Criteria Seller failed to achieve; or (ii) accept the Request for Substantial Completion as given or with punch list items, and issue the Notice of Substantial Completion with Substantial Completion deemed to occur on the date set forth in said Request for Substantial Completion.

(c) If Buyer rejects the Request for Substantial Completion, Seller shall promptly provide to Buyer a plan and schedule for remedying the deficiencies specified in Buyer’s rejection, shall carry out such plan at its own cost and expense, and, upon completion thereof, shall issue a new Request for Substantial Completion.

(d) The foregoing procedure shall apply again and successively thereafter until Substantial Completion Criteria have been achieved. Disputes as to whether Seller has achieved Substantial Completion shall be resolved pursuant to article 32 (“Claims, Claim Notice and Dispute Resolution”).

Section 20.2 Care, Custody and Control; Punch List Items

(a) Seller shall be responsible for care and custody, ~~and control and risk of loss~~ of the Work and shall make good at Seller’s own cost, ~~or at Buyer’s cost if Seller does not remedy the same~~, any loss or damage that may occur to the Work or any part thereof from any cause whatsoever until the Substantial Completion Date. Seller shall also be responsible for loss or damage thereto caused by the Contractor or any Subcontractor in the course of any work carried out under or the Project Documents or in connection with the Project until Final Acceptance. Seller hereby waives any and all claims or causes of action it might have now or in the future against Buyer, whether by way of affirmative action, offset, cross claim or otherwise, resulting

from any negligence of Buyer for any loss or damage that may occur to the Work or any part thereof caused by Buyer in the course of any work to the extent carried out by Buyer at Seller's direction or with Seller's consent in connection with the Project. Seller shall be liable for any loss or damage to any Materials.

(b) Care, custody and control of the Work shall be transferred to Buyer as of the Substantial Completion Date. Buyer shall begin to compile a preliminary punch list as the Work progresses (with Seller and Buyer in good faith mutually determining the Dollar value of such list). Buyer shall submit to Seller the completed preliminary punch list at least ten (10) Business Days prior to the anticipated Substantial Completion Date. Within five (5) Business Days following the Substantial Completion Date, Buyer shall issue to Seller a final punch list (the "Final Punch List"). After receipt thereof, Seller and Buyer shall mutually agree on the punch list items, the value related thereto and on a schedule for completion of such items. Buyer shall withhold from its Progress Payment at the Closing an amount equal to 1.5 times the agreed upon value of the Final Punch List, but shall make periodic pro-rata payments as Seller demonstrate completion of the items on the Final Punch List to Buyer. All of the items on the Final Punch List shall be completed expeditiously after the Substantial Completion Date. Buyer shall provide to Seller for such purpose reasonable access to the Work.

Section 20.3 Dispatch Coordination

During the startup, testing and commissioning of the Plant, Seller shall coordinate with Buyer's Representative and Buyer's operating personnel the orderly startup and shut-down of the Plant. Ninety (90) days prior to the initial startup of the Plant, Seller shall provide to Buyer a schedule of dispatch for the Plant during the commissioning period, including expected net plant output, duration of the commissioning activity and expected fuel usage. Within thirty (30) days of the initial startup of the Plant, Seller shall provide to Buyer an update to this schedule and thereafter on a weekly basis until Substantial Completion is achieved. Seller shall also provide 72 hours' advance notice to Buyer of the planned Plant dispatch profile including net plant output, duration of the commissioning period and expected fuel usage.

Section 20.4 Use Before Acceptance Date

Buyer shall not operate or assume control of all or a portion of the Work prior to the Substantial Completion Date; provided, however, that in no event shall Buyer be limited in its operation of any joint facilities or facilities adjacent to the Work or the Project except as may expressly be provided in the Construction Coordination Agreement.

Section 20.5 Title and Risk of Loss

(a) Risk of loss with respect to the Project and the Work shall remain with Seller until the Closing Date, whereupon the same shall pass to Buyer.

(b) The Equipment and Plant to be supplied pursuant to the Agreement shall become the property of Buyer at whichever is the earlier of the following times:

(i) the Closing Date;

- (ii) when Seller becomes entitled to have the contract value of the Equipment and Plant in question included in an Interim Certificate of Payment, or
- (iii) when the Equipment and Plant is appropriated for the purpose of the Project.

Seller shall indemnify and keep indemnified Buyer against any claims, losses or damage arising from any defect in title or encumbrances or charge upon any of the Equipment and Plant supplied pursuant to the Agreement.

Section 20.6 Marking of Equipment and Plant

- (a) Where, prior to delivery, the property in Equipment and Plant passes to Buyer, Seller shall, so far as is practicable, set the Equipment and Plant aside and mark it as Buyer's property in a manner reasonably required by Buyer.
- (b) Until the Equipment and Plant has been so set aside and marked, Buyer shall be entitled to withhold any interim Progress Payment to which Seller might otherwise be entitled.
- (c) Seller shall permit Buyer at any time upon reasonable notice to inspect any Equipment or Plant which has become the property of Buyer and shall grant Buyer or procure the grant of access to Seller's premises for such purposes or any other premises where such Equipment and Plant may be located. Such inspection shall not constitute acceptance of the Equipment and Plant.
- (d) All such Equipment and Plant shall be in the care and possession of Seller solely for the purposes of the Agreement and shall not be within the ownership or disposition of Seller.
- (e) No Progress Payment or interim Certificate of Payment issued by Buyer shall prejudice its right to reject Equipment or Plant which is not in accordance with the Agreement. Upon any such rejection the property in the rejected Equipment or Plant shall immediately revert to Seller.
- (f) Seller shall transfer title to the Work to Buyer at the earliest to occur of (i) when the Equipment and/or Materials are brought on the Site; (ii) the specific Equipment and/or Materials are included in a request for a Progress Payment; and (iii) when the Equipment and/or Materials are appropriated for use in the Project. Seller shall cause the Contractor to transfer the Work supplied and performed by the Contractor to Buyer (x) prior to the Closing, free and clear of all Liens other than (A) mechanics liens relating to the Work supplied and performed by the Contractor's Subcontractors that have not yet been paid and (B) amounts payable to Contractor's Subcontractors that are being disputed in good faith provided that the Contractor has posted a bond against such Liens with a bonding company or other surety reasonably acceptable to Buyer, and (y) upon the Closing, free and clear of all Liens. Seller shall indemnify and keep indemnified the Buyer against any claims, losses or damage arising from any defect in title or encumbrances or charge upon any of the Equipment and Plant supplied pursuant to this Agreement.

~~Where, prior to delivery, the property in Equipment and Plant passes to Buyer, Seller shall, so far as is practicable, set the Equipment and Plant aside and mark it as Buyer's property in a manner reasonably required by Buyer. Until the Equipment and Plant has been so set aside and marked, Buyer shall be~~

~~entitled to withhold any Progress Payment to which Seller might otherwise be entitled. Seller shall permit Buyer at any time upon reasonable notice to inspect any Equipment or Plant which has become the property of Buyer and shall grant Buyer or procure the grant of access to Seller's premises for such purposes or any other premises where such Equipment and Plant may be located. Such inspection shall not constitute acceptance of the Equipment and Plant.~~

~~All such Equipment and Plant shall be in the care and possession of Seller solely for the purposes of the Agreement and shall not be within the ownership or disposition of Seller.~~

(g) With respect to any Lien or Claim relating to the Project other than Permitted Liens (i) arising through the Contractor or any Subcontractor, Seller agrees to cause the Contractor or Subcontractor to promptly remove or cause, or cause to be removed, any such Lien or Claim and (ii) Seller agrees promptly remove or cause, or caused to be removed, any such other Liens or Claims not covered by the immediately preceding clause (a).

(h) Ownership of the Non-Buyer Materials used in connection with the Work shall remain with Seller, the Contractor or the Subcontractors. Notwithstanding the transfer of title of the Work pursuant to Section 20.5 ("Title and Risk of Loss") the responsibility for care, custody and control thereof, together with the risk of loss or damage thereto shall remain with Seller until the Substantial Completion Date.

Section 20.7 Removal of Equipment

Prior to Final Acceptance, Seller shall remove from the Site all equipment, materials, temporary structures constructed by or on behalf of Seller or other items of any nature required for execution or completion of the Work, but excluding equipment, materials, appliances or other items intended to form or forming part of the Work. Prior to disposition of such items, Seller shall make a written offer to sell items to Buyer which Seller or any Contractor desires to sell. Seller shall leave the Site in good order and in neat and presentable condition. Any surplus items will become property of Buyer if not removed by Seller or its Contractor within thirty (30) days after Final Acceptance (or such later date contemplated in any completion and demobilization procedure mutually agreed by Buyer and the Project Parties). All costs to dispose of any such items not removed by Seller within the thirty (30) days following Final Acceptance (or such later date contemplated in any completion and demobilization procedure mutually agreed by Buyer and the Project Parties) and which Buyer does not wish to keep shall be for the account of Seller. Prior to removing any equipment from the Site Seller shall provide to Buyer a detailed list of Seller Equipment to be removed. No equipment shall be Seller Equipment unless it is included in the then-current list approved pursuant to Section 12.1 ("Seller's Equipment").

Section 20.8 Notice of Final Acceptance of Work

Upon completion of all the criteria for Final Acceptance set forth in Appendix H, Seller shall give notice to Buyer by request for Final Acceptance, together with an affidavit that all requirements for Final Acceptance set forth in Appendix H have been met. Thereafter, the same procedures as specified in Section 13.1 ("Changes") shall apply until Buyer issues notice to Seller accepting Seller's request for Final Acceptance ("Notice of Final Acceptance"). Disputes as to whether Seller has achieved Final Acceptance shall be resolved pursuant to article 32 ("Claims, Claim Notice and Dispute Resolution").

ARTICLE 21

CODES AND STANDARDS

Section 21.1 Comparable Quality

Appendix B sets forth all major systems/sub-systems/Equipment/components which will be supplied in performance of the Work. Notwithstanding the foregoing, the Parties recognize that Appendix B is not all inclusive and does not specify all Equipment/components required for Plant completion. Therefore, the Parties agree that for Equipment/components not specifically set forth in Appendix B, the quality standards of such unspecified Equipment/components shall be consistent with the requirements of article 14 (“Workmanship and Materials”).

ARTICLE 22

ENVIRONMENTAL MATTERS

Section 22.1 General

Seller shall prepare and submit to Buyer appropriate materials management and emergency response procedures covering any Regulated Materials Seller expects to be used in the completion and testing of the Work, which procedures shall be satisfactory to Buyer. Seller shall comply, and shall cause Contractor and all Subcontractors to comply, at all times with such materials management and emergency response procedures, all Environmental Laws and all Governmental Approvals applicable to the Work and the Site. No Regulated Materials and shall be improperly released, disposed of or buried on the Site.

Section 22.2 Release On-Site

Seller shall immediately notify Buyer and applicable Governmental Authorities of any Release by Seller or any Subcontractor of Regulated Materials at the Site which is reportable to Governmental Authorities under applicable Environmental Laws and take such emergency measures as are prudent and necessary to protect the environment consistent with the materials management and emergency response procedures referred to above and Applicable Law. Seller shall take all appropriate steps consistent with the materials management and emergency response procedures referred to above and Applicable Law for immediate containment of any such Release and Remediation of the affected area.

Section 22.3 Release Off-Site

In the event of a Release by Seller, the Contractor or any Subcontractor of a Regulated Material off the Site but related to the Work which is reportable to Governmental Authorities under applicable Environmental Laws, Seller shall be responsible for notifying all applicable federal, state and local regulatory agencies in accordance with Applicable Law or for causing such notification to occur by the party responsible for such action. To the extent required, Seller shall take all appropriate steps consistent with the materials management and emergency response procedures referred to above and Applicable Law for immediate containment of any such Release and Remediation of the affected area.

Section 22.4 Liability

To the extent any Release referred to in Section 22.2 (“Release On-Site”) and Section 22.3 (“Release Off-Site”) above is caused by an act or omission of Seller, the Contractor, or any Subcontractor, Seller shall be responsible for all Liabilities with respect to such Release and the indemnification provisions set forth in Section 26.1 (“Indemnification for Third Party Claims”) shall apply.

Section 22.5 Pre-existing Regulated Materials

(a) Seller shall develop a contingency plan to address contaminated soils or groundwater that Seller may encounter during construction of the Project. The purpose of the contingency plan is to avoid any delays in construction of the Project by planning in advance how to respond to unexpected pre-existing environmental conditions that could impact the Schedule or the Guaranteed Substantial Completion Date. The contingency plan shall, at a minimum, provide for:

(i) a contaminated soils staging area so that construction of the Project can continue without delays. Such contaminated soils (that must be removed for construction purposes) can be placed in the staging area while testing and subsequent disposal decisions are made;

(ii) the handling of any contaminated groundwater that might be extracted, including the prospective procurement of a UPDES permit in the event the contingency plan calls for such extracted water being discharged into an area that is subject to Clean Water Act jurisdiction; and

(iii) the final disposal of all Regulated Materials and contaminated materials encountered on the Site.

(b) Seller shall be responsible for implementing any recommendations relating to pre-existing Regulated Materials contained in any environmental surveys or reports.

Section 22.6 Notice

Seller shall immediately notify Buyer of the occurrence of any event that would or could reasonably be expected to result in any violation or noncompliance or potential violation or noncompliance of any Environmental Law relating to the Work, the Plant, or the Site, or otherwise constitutes a Material Adverse Change under this Agreement.

ARTICLE 23

WARRANTIES OF WORK

Section 23.1 Warranties

(a) Seller warrants that, for the duration of the Warranty Period, the Work shall be (i) free from Defects in design, engineering, workmanship materials and operations, (ii) in accordance with the Agreement, and (iii) in compliance with Applicable Law. Seller further

warrants that all Equipment and Plant shall be new and of standard quality, free of Defects and deficiencies in design, material, workmanship and title (the “Warranty”).

(b) The Warranty shall not extend to Defects or deficiencies to the extent resulting from (i) operation by Buyer’s personnel in a manner inconsistent with or contrary to instructions contained in the Operation and Maintenance Manuals, (ii) repairs or alterations by Buyer’s personnel in a manner inconsistent with or contrary to instructions provided by Seller or as contained in the Operation and Maintenance Manuals provided by Seller, or (iii) normal wear and tear.

Section 23.2 Warranty Period

Subject to the provisions in this article 23, the Warranty shall remain in full force and effect regarding all phases of the Work for a period beginning on the Closing Date and ending eighteen (18) months thereafter (such period, the “Warranty Period”). In no event shall any Warranty terminate less than eighteen (18) months following the Closing Date.

Section 23.3 Repair of Defects

If Buyer or Seller discovers that the Work, or any portion thereof, fails to meet the Warranty, the it shall notify the other Party of such failure promptly upon discovery, along with the reasonable basis ~~therefore~~therefor. Upon receipt of such notice, or upon Seller’s own discovery thereof, Seller shall promptly (i) cure such failure in accordance with the Warranty and (ii) perform such tests as Buyer may reasonably require to demonstrate the cure of such failure. Seller shall coordinate repairing, replacing or re-performing any of the Work with Buyer so as to minimize any adverse effects on the operation of the Project.

Section 23.4 Warranty Period Extension

(a) Extension for Corrected Work. Any Work re-performed and any part of the Site that is reworked, repaired or replaced in satisfaction of Seller’s obligations in connection with the Warranty will be re-warranted by Seller pursuant to the same Warranty set forth in this article 23 , and Seller will have the same obligations in relation thereto as set forth in this article 23 for a period equal to eighteen (18) months from the date such re-performance, rework, repair or replacement is completed.

(b) Extension for Total Shutdown. If, during the Warranty Period, the Site is shut down (other than for the purpose of scheduled or routine maintenance) and such shutdown is caused by a defect or failure covered by the Warranty, then the Warranty Period will be extended by a period equal to the duration of the shutdown required to repair such defect or failure.

Section 23.5 Contractor and Subcontractor Warranties

Seller will procure from the Contractor and each Subcontractor warranties with respect to services, Plant and Equipment provided by such entity for a period of no less than eighteen (18) months after the Closing Date and for a further eighteen (18) months after any warranty repair with respect to the subject of the repair. Seller shall obtain and maintain all such warranties in full force and effect.

Section 23.6 Delay in Remedying Defects

If any such Defect or damage is not remedied by Seller within a reasonable time or requires prompt remediation as a result of an emergency situation existing at the Site, Buyer may proceed to do the Work at Seller's risk and expense provided that it does so in a reasonable manner and notifies Seller of Buyer's intention so to do. All Costs incurred by Buyer shall be deducted from the Purchase Price or be paid by Seller to Buyer.

Section 23.7 Removal of Defective Work

Seller may, with the consent of Buyer, remove from the Site any part of the Work which is defective or damaged, if the nature of the Defect or damage is such that repairs cannot be expeditiously carried out on the Site.

Section 23.8 Further Tests

If repairs or replacements are of such a character as may affect the operation of the Work or any part thereof, Buyer may, within one (1) month after such repair or replacement, give to Seller notice requiring further testing to be conducted, in which case such tests shall be carried out at Seller's cost and as provided in article 18 ("Performance Testing").

Section 23.9 Seller to Diagnose

Seller shall, if required by Buyer's Representative in writing and under the direction of Buyer's Representative, diagnose the cause of any Defect. Unless such Defect or its cause shall be one which Seller would otherwise be responsible for repairing, the costs incurred by Seller in diagnosing such defect shall, subject to this article 23, be borne by Buyer and added to the Purchase Price.

Section 23.10 Latent Defects

(a) Latent Defects Liability Period. Seller's liability for latent defects shall remain in full force and effect during all phases of the Work for a period beginning on the Closing Date and ending five (5) years thereafter (the "Latent Defects Liability Period").

(b) If any Latent Defect (as defined in Section 23.10(d)) shall appear in any part of the Work during the Latent Defects Liability Period, such Latent Defect shall be Repaired by Seller at Seller's option, with all possible speed and at Seller's sole cost expense, provided that the Latent Defect existed and would not have been disclosed by a reasonable examination conducted in accordance with Prudent Industry Practice prior to the expiration of the Defects Liability Period.

(c) Seller agrees that any examination of the Work undertaken by Buyer at a relevant time shall, in respect of that part of the Work examined, constitute a reasonable examination conducted in accordance with Prudent Industry Practice within the meaning of this Article.

(d) During Latent Defects Liability Period, in the event Seller's OEM issues any notice, including Technical Information Letters, service bulletins or similar notices recommending replacement or repair of one or more parts of the Equipment and such repair or replacement is necessary for continued safe operation of the Equipment or is issued to address a defect in

material, or workmanship (each a “Latent Defect”), Seller shall repair or replace the affected parts in accordance with and subject to all the terms of the Warranty provided that Purchaser shall make the affected Work reasonably available for performance of the repairs or modifications and Seller shall cooperate with Purchaser in scheduling such modifications or repairs in order to avoid disruption to Purchaser’s operations.

Section 23.11 Significant Defects

- (a) Seller warrants and guarantees to Buyer that there will be no Significant Defects.
- (b) Consequences of Significant Defects. In the event that a Significant Defect occurs, Seller shall make good the Significant Defect.

ARTICLE 24

LIQUIDATED DAMAGES

Section 24.1 General

The Parties agree that it is difficult or impossible to determine with precision the amount of damages that would be incurred by Buyer as a result of Seller’s failure to timely complete the Project or to meet the Guaranteed Substantial Completion Date or Performance Guarantees. Accordingly, the Parties expressly agree that if Seller fails to timely complete the Project or to meet the Guaranteed Substantial Completion Date or the Performance Guarantees, any sums which would be payable under this article 24 because of such failures are liquidated damages and not a penalty, and are fair and reasonable and any such sums represent a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such failures.

Section 24.2 Critical Milestone Guarantee Liquidated Damages

(a) The Project Schedule designates certain times as critical milestones (each a “Critical Milestone”) by which Seller represents that each such Critical Milestone will occur by its respective Target Date. While timely completion of each step in the Project Schedule is important to the success of the project, the occurrence of each Critical Milestone by its respective Target Date is of critical importance to completion of the Project in a timely manner consistent with Buyer’s vital business interests.

(b) The Parties agree that it will be very difficult to determine the cost to Buyer for late delivery of Critical Milestones; therefore, the Parties agree upon the amounts set forth below, as liquidated damages for such late delivery and not a penalty, as consideration for delay in delivery and the resulting loss of beneficial use of the Work associated with each Critical Milestone. Such amounts being Critical Milestones Liquidated Damages (“Critical Milestone LDs”).

(c) For each day of delay after the relevant Target Date in achieving any Critical Milestone, the amounts otherwise payable to Seller pursuant to this Agreement shall be reduced by \$[] per day for each day of delay beyond the relevant Target Date in achieving any Critical Milestone (“Reduction Amount”).

(d) The Reduction Amount (i) shall arise independently with respect to each such delay and (ii) shall arise independently with respect to Late Substantial Completion LDs as defined in Section 24.3 (“Liquidated Damages for Delay in Substantial Completion”). At Buyer’s option and in its sole discretion, Buyer may either require Seller to pay to Buyer the Reduction Amount or may deduct the Reduction Amount from any monies subsequently payable to Seller.

Section 24.3 Liquidated Damages for Delay in Substantial Completion

If Seller fails to achieve Substantial Completion prior to the Substantial Completion LD Commencement Date, then commencing on the Substantial Completion LD Commencement Date, Seller shall pay Buyer liquidated damages, for each day until Seller achieves Substantial Completion, in an amount equal to (a) fifty thousand Dollars (\$50,000.00) per day if the Project is Dispatchable and (b) one hundred thousand Dollars (\$100,000.00) per day if the Project is not Dispatchable (collectively, “Late Substantial Completion LDs”).

Section 24.4 Liquidated Damages for Net Capacity and Net Heat Rate

Seller shall pay liquidated damages in accordance with the terms and conditions set forth in Section 14 of Appendix H as a result of the failure of the Work to achieve the Guaranteed Net Capacity, the Guaranteed Incremental Net Capacity or the Guaranteed Net Heat Rate and the Guaranteed Incremental Net Heat Rate in accordance with the Performance Guarantees. Seller shall be granted the Cure Period to allow remedial actions to be taken to achieve the Guaranteed Net Capacity and the Guaranteed Incremental Net Capacity or the Guaranteed Net Heat Rate and the Guaranteed Incremental Net Capacity, prior to Seller’s being liable for payment of the liquidated damages as provided in Section 14 of Appendix H.

Section 24.5 Liquidated Damages for Startup and Commissioning

If in connection with startup, commissioning and Performance Testing Seller exceeds ninety (90) Equivalent Starts and/or three hundred (300) Fired Hours per Combustion Turbine, then Seller shall pay to Buyer, in addition to any other Liquidated Damages, and amount equal to (a) Twelve Thousand Dollars (\$12,000) per Equivalent Start in excess of ninety (90) Equivalent Starts for either Combustion Turbine; plus (b) Three Hundred Dollars (\$300) per Fired Hour in excess of three hundred (300) Fired Hours for either Combustion Turbine.

Section 24.6 Calculations and Payments of Liquidated Damages

(a) Unless otherwise set forth in this article 24, all calculations with respect to amounts payable as liquidated damages under this article 24 shall be made by Seller and provided to Buyer within (i) in the case of Section 24.2 (“Critical Milestone Guarantee Liquidated Damages”) and Section 24.3 (“Liquidated Damages for Delay in Substantial Completion”), ten (10) Business Days after the final day of each month during which amounts become payable thereunder; and (ii) in the case of Section 24.4 (“Liquidated Damages for Net Capacity”) and Section 24.5 (“Liquidated Damages for Startup and Commissioning”), ten (10) Business Days after Buyer’s receipt of the Final Performance Test Report, but no later than ten (10) Business Days after the end of any applicable cure period. Buyer shall have the right to audit such calculations. Seller shall itemize such calculations and such calculations shall include supporting documentation as Buyer shall reasonably request and shall be in sufficient detail to permit Buyer to verify each

calculation. Buyer shall notify Seller as soon as reasonably possible of any portion of the calculations with which Buyer disagrees.

(b) Liquidated damages shall bear interest at the Late Payment Rate, compounded daily from the date such amount was due, but not to exceed the maximum rate of interest permitted by Applicable Law.

ARTICLE 25

LIMITATIONS OF LIABILITY

Section 25.1 Duty to Mitigate

In all cases, but subject to any right or remedy which the Party may have under or by virtue of this Agreement, the Party establishing or alleging a breach of Agreement or a right to recover pursuant to any Article under this Agreement or a right to be indemnified in accordance with this Agreement shall be under a duty to take all necessary measures to mitigate the loss which has occurred provided that the Party can do so without unreasonable inconvenience or cost.

Section 25.2 Limitation of Buyer's Liability

Subject to the obligation of Seller to pay or allow Liquidated Damages to Buyer under this Agreement, neither Seller nor Buyer shall be liable to the other by way of indemnity or by reason of any breach of this Agreement or of statutory duty or by reason of tort (including negligence but excluding any damages payable to a third party caused by a trespass or nuisance for which Seller is responsible pursuant to this Agreement) for any loss of profit or income, loss of use, loss of production, loss of contracts or for any indirect or consequential, multiple, punitive or exemplary damages that may be suffered by the other.

Section 25.3 Enforceability of Liquidated Damages

(a) Enforceability of Liquidated Damages. If the provisions for the payment of Liquidated Damages in this Agreement are held to be unenforceable, Seller agrees to pay to Buyer all actual damages suffered by Buyer due to the circumstances giving rise to the liability to pay Liquidated Damages (had they been enforceable) including loss of profit or income, loss of use, loss of production, loss of contracts and indirect and consequential damages but subject to the maximum amounts which would have been payable if the Liquidated Damages provisions had been enforceable.

(b) If, however, the provisions for the payment of Liquidated Damages in this Agreement are held to be unenforceable as a result of a claim, objection, defense, dispute or proceedings raised or brought by Seller as part of or during the hearing of which Seller argues that the said provisions are unenforceable on the grounds that such liquidated damages should be construed at law as and/or amount to a penalty as opposed to an argument or suggestion that Seller is not liable to pay Liquidated Damages pursuant to this Agreement, Seller expressly agrees to pay to Buyer all costs, losses and damages whatsoever (including loss of profit, loss of use and loss of production, loss of contracts and indirect and consequential damages) incurred or payable

by Buyer arising from or in connection with the circumstances giving rise to the claim for the payment of Liquidated Damages which has been made by Buyer, WHICH PAYMENTS SHALL NOT BE SUBJECT TO ANY CAPS ON LIABILITY.

Section 25.4 Limitations on Liquidated Damages

(a) The aggregate amount of liquidated damages payable by Seller as Reduction Amounts under Section 24.2 (“Critical Milestone Guarantee Liquidated Damages”) shall not exceed, in the aggregate, an amount equal to 5% of the Purchase Price.

(b) The amount of liquidated damages payable by Seller for delays in achieving Substantial Completion under Section 24.3 (“Liquidated Damages for Delay in Substantial Completion”) shall not exceed, in the aggregate, an amount equal to 30% of the Purchase Price.

(c) The amount of liquidated damages payable by Seller attributable to failure to meet the Guaranteed Net Capacity pursuant to Section 24.4 (“Liquidated Damages for Net Capacity”) shall not exceed, in the aggregate, an amount equal to 15% of the Purchase Price.

(d) The amount of liquidated damages payable by Seller attributable to failure to meet the Guaranteed Net Heat Rate pursuant to Section 24.4 (“Liquidated Damages for Net Capacity”) shall not exceed, in the aggregate, an amount equal to 20% of the Purchase Price.

(e) ~~(e)~~ The amount of liquidated damages payable by Seller attributable to failure to meet the startup and commissioning requirements pursuant to Section 24.5 (“Liquidated Damages for Startup and Commissioning”) shall not exceed, in the aggregate, an amount equal to 15% of the Purchase Price.

(f) ~~(f)~~ The amount of liquidated damages under paragraphs (a) through (e) shall not exceed, in the aggregate, an amount equal to 50% of the Purchase Price.

(g) ~~(g)~~ Without prejudice to or limitation of Seller’s liabilities and obligations set forth under paragraphs (a) through (e), all of which shall be in excess of and not subject to the limitation contained in this paragraph (e), the aggregate liability of Seller to Buyer shall not exceed one hundred percent (100%) of the amount of Purchase Price. In calculating the unexpended amounts of Seller’s limitations of liability under this Section, no account shall be taken of any insurance proceeds payable to Seller (whether payable directly to Seller or payable to Seller through Buyer) under insurance coverage obtained by Buyer operate to reduce such unexpended limits of liability unless and to the extent that such proceeds are not paid due to circumstances beyond the control of Seller within a reasonable time following final determination in accordance with the relevant policy of insurance that they are payable. The limitations of liability set out in this Article shall not apply in relation to any failure by Seller to fulfill its obligations due to its gross negligence or willful misconduct under this Agreement.

ARTICLE 26

INDEMNIFICATION

Section 26.1 Indemnification for Third Party Claims

(a) Seller shall defend, indemnify and hold harmless Buyer, its shareholders and Affiliates, and their respective directors, officers, employees and agents, from and against all third party Claims and Liabilities for injury, including death, and property damage caused by, arising out of, or in connection with the performance by any Project Party of the Transaction Documents to the extent any of such Claims or Liabilities were caused by the negligence, gross negligence or willful misconduct of Seller, the Contractor, any Subcontractor, and its respective employees or agents.

(b) Buyer shall defend, indemnify and hold harmless Seller and its managers, officers, employees and agents, from and against all third party Claims and Liabilities for injury, including death, and property damage caused by, arising out of, or in connection with the performance of the Transaction Documents to the extent any of such Claims or Liabilities were caused by the negligence, gross negligence or willful misconduct of Buyer, its employees or agents.

(c) Either Party seeking indemnification under this Agreement (the “Indemnified Party”) shall give notice to the Party required to provide indemnification hereunder (the “Indemnifying Party”) promptly after the Indemnified Party has actual knowledge of any Claim as to which indemnity may be sought hereunder, and the Indemnified Party shall permit the Indemnifying Party (at the expense of the Indemnifying Party) to assume the defense of any Claim or litigation resulting therefrom; provided that:

(i) counsel for the Indemnifying Party who shall conduct the defense of such Claim or litigation shall be reasonably satisfactory to the Indemnified Party;

(ii) the Indemnified Party may participate in such defense at its own expense, except the Indemnifying Party shall reimburse the Indemnified Party for its participation in such defense to the extent that the Indemnifying Party requests the Indemnified Party to participate in its own defense; and

(iii) the omission by the Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its indemnification obligations hereunder except to the extent that such omission results in a failure of actual notice to the Indemnifying Party and Indemnifying Party is damaged as a result of such failure to give notice.

Notwithstanding the foregoing, the Indemnifying Party may not settle any Claim related to the indemnity being provided hereunder without the consent of the Indemnified Party, such consent not to be unreasonably withheld.

(d) With regard to any Claim or Liability which is the result of the joint or concurrent fault or negligence of Seller and Buyer, the Parties agree to jointly defend any Claim with respect thereto that is based on such joint or concurrent fault or negligence of Buyer and Seller. Any Claim of contribution or indemnification between Buyer and Seller relating to such Claims shall

be resolved on the basis of the percentage of fault or negligence and the Parties agree to reserve the determination of such percentage until after resolution of such Claim. Such pro rata share shall be based upon a final judicial determination of the Parties' comparative fault or negligence or, in the absence of such determination, by mutual agreement.

(e) Nothing in this Section 26.1 is intended to allow any Indemnified Party to be indemnified from and against any third party Claims and Liabilities caused by, arising out of, or in connection with the performance of this Agreement to the extent any of such Claims or Liabilities were caused by, arose out of, or were in any way incidental to or in connection with its own negligence or intentional misconduct.

Section 26.2 Title Indemnity and Liens

(a) Seller shall promptly pay when due all obligations for labor and material in connection with the Work. Seller shall discharge at once, or bond with a bonding company or surety acceptable to Buyer or otherwise secure against all Liens and attachments which are filed in connection with the Work.

(b) ~~(b)~~——Seller shall keep the Work free and clear of and shall promptly release or cause the release of all Liens, recorded notices, Claims for nonpayment and lis pendens filed of record by the Contractor or any Subcontractor.

(c) ~~(c)~~Seller shall (i) indemnify, defend, and hold harmless Buyer from all laborers', material men's and mechanics' Liens, or Claims made or filed upon the Work, or the property on which the Work is located on account of any labor performed or labor, services, equipment, and materials furnished by Seller's Subcontractors of any tier and all laborers, materialmen, mechanics, and other persons in connection with the work, and (ii) keep the work and said property free and clear of all liens or claims arising from the performance of any Work covered by this Agreement by Seller, its Subcontractors of any tier, and all laborers, materialmen, mechanics and other such persons.

(d) ~~(d)~~——If any Lien arising out of this Agreement is filed before or after Work is completed, Seller, within ten (10) calendar days after receiving from Buyer written notice of such lien, shall obtain release or provide financial assurance satisfactory to Buyer to protect Buyer from or otherwise satisfy such lien. If Seller fails to do so, Buyer may take such steps and make such expenditures as in its discretion it deems advisable to obtain release of or otherwise satisfy any such lien or liens, and Seller shall upon demand reimburse Buyer for all costs incurred and expenditures made by Buyer in obtaining such release or satisfaction.

(e) ~~(e)~~Seller's obligation to indemnify, defend and hold harmless Buyer from liens shall not in any way be rendered unenforceable, or altered, amended, eliminated or otherwise conditioned by any laws and regulations related to processing such liens. Buyer shall have no obligation to deliver a copy of any notice of claim or right to a lien to Seller or any other person or entity.

(f) ~~(f)~~If Seller shall default in discharging any Liens, Claims or encumbrances filed or asserted against the Work, Buyer shall promptly provide notice to Seller, and Seller shall then satisfy or defend any such Liens, Claims or encumbrances. If Seller either does not promptly

satisfy such Liens, Claims or encumbrances or does not give Buyer reasons satisfactory to Buyer for not paying such Liens, Claims or encumbrances, within fifteen (15) days of Seller's receipt of such notice, Buyer shall have the right, at its option, after providing notice to Seller, to pay or settle such Liens, Claims or encumbrances by agreement, and Seller shall, within fifteen (15) days of request by Buyer, reimburse Buyer for all costs incurred by Buyer to discharge such Liens, Claims or encumbrances, including administrative costs, attorneys' fees and other expenses or Buyer shall have the right to deduct the amount of such costs from the amount payable to Seller. Seller shall have the right to contest any such Lien, Claim or encumbrance, provided that Seller first provide to Buyer financial assurances in amount, form and substance satisfactory to Buyer and otherwise complies with Applicable Law with respect to removal of Liens.

~~(g)~~ ~~(g)~~——Seller shall at its own expense defend any suit or proceeding based on any Claim for which Seller is responsible under this Section. Buyer shall give Seller such assistance as Seller may reasonably require in the defense of such suit, and Buyer shall have the right to be represented herein by counsel of its own choosing at its own expense. If Seller fails to defend diligently any such suit or proceeding, Buyer may, in its reasonable discretion, either defend the suit or proceeding or settle the Claim which is the basis thereof without the consent of Seller and without relieving Seller of the obligation to indemnify as provided herein. In such a case Seller's obligation to defend shall include reimbursement of Buyer's reasonable legal fees and related costs incurred in defending or settling the suit.

Section 26.3 Indemnity Period

Seller's obligation to indemnify Buyer consistent with the provisions of this article 26 shall continue after the closing in accordance with the following (collectively, the "Indemnity Period"):

- (a) With respect to Claims and Liabilities brought by third parties, Seller's obligation to indemnify Buyer shall continue for a period of two years following the Closing Date.
- (b) With respect to Claims and Liabilities relating to the title of the Site, Project, or the Work, Seller's obligation to indemnify Buyer shall continue indefinitely.
- (c) With respect to all other Claims and Liabilities, Seller's obligation to indemnify Buyer shall continue for a period of eighteen months following the Closing Date.

ARTICLE 27

INSURANCE

Section 27.1 Contractor's and Subcontractors' Insurance Coverage

Seller shall maintain and shall require and cause the Contractor and all Subcontractors, while performing work on the Site, to provide, pay for and continuously maintain in full force and effect with insurers having an A.M. Best Insurance Reports rating of A-:VII or better the following insurance coverages:

- (a) Employers' Liability insurance with a minimum limit of \$1,000,000.

(b) Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 with \$3,000,000 annual aggregate to protect against and from all loss by reason of injury to persons or damage to property based upon and arising out of the work performed under this Agreement.

(c) Umbrella or Excess Liability insurance with minimum limits of \$10,000,000 per occurrence and \$10,000,000 annual aggregate to cover claims in excess of the underlying limits for Employer's Liability, General Liability, and Automobile Liability.

(d) Business Automobile Liability insurance with a minimum single limit of \$1,000,000 for bodily injury and property damage with respect to Seller's vehicles whether owned, hired or non-owned, assigned to or used by Seller in the performance of the work.

(e) Professional Liability insurance (Errors and Omissions) with a minimum single limit of \$1,000,000 to cover claims arising out of Consultant's professional services hereunder. This policy shall be maintained until one year after Buyer's acceptance of Consultant's work..

(f) Transit and Installation insurance with a minimum single limit of \$500,000 to cover damage to property and other claims arising out of the loading, unloading, transportation, lifting, lowering, or other handling of such property.

(g) For Commercial General Liability insurance, the policy shall include:

(i) Provisions or endorsements naming Buyer, its Board of Directors, officers and employees as additional insured;

(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.

(h) All policies, except professional liability and transit and installation, shall include provisions that such insurance is primary insurance with respect to the interests of Buyer and that any other insurance maintained by Buyer 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:

(i) Ten (10) days' prior written notice to Buyer if canceled for nonpayment of premium

(ii) Thirty (30) days' prior written notice to Buyer if canceled for any other reason.

(iii) A certificate in a form satisfactory to Buyer certifying to the issuance of such insurance shall be furnished to Buyer and included at Exhibit H.

(i) Commercial general liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate.

(j) If requested by Buyer, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to Buyer.

(k) 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 any award and for such other length of time necessary to cover liabilities arising out of the work.

(l) 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 Work.

(m) Seller shall ensure that the Contractor and each and every Subcontractor maintains in full force and effect the insurance coverage and limits required under this Section 27.1 (“Contractor’s Insurance”) at all times on and after the commencement of the Work and continuing until the Closing Date, unless otherwise indicated herein. The coverage under Contractor’s Insurance shall be primary to the extent of the Contractor’s obligations to indemnify Seller and Buyer without regard to other insurance available to Buyer. Within thirty (30) days prior to the commencement of the Work at the Site, Seller shall provide Buyer applicable insurance certificates of such coverage completed by duly authorized representatives of the insurer certifying that (a) the coverages required hereunder are in effect, and (b) the coverages will not be canceled, nonrenewed or materially changed by endorsement or through issuance of other policies of insurance without thirty (30) days’ prior notice to Seller and Buyer. The acceptance by Buyer of Seller’s delivery of any certificate of insurance evidencing the insurance coverages and limits required hereunder shall not be deemed to constitute approval or agreement that (i) the insured party has satisfied the insurance requirements set forth herein or (ii) the insurance policies described in such certificates of insurance comply with such requirements.

(n) If Seller fails to require the Contractor and the Subcontractors to maintain the insurance required hereunder, Buyer shall have the right, but not the obligation, to purchase such insurance at Seller’s expense.

(o) The Contractor’s insurance carrier and the Subcontractors or Subcontractors’ insurance carriers shall use commercially reasonable efforts to provide Seller and Seller will provide Buyer written notice of cancellation, termination or material alteration.

(p) Anything in this Agreement to the contrary notwithstanding, the occurrence of any of the following shall in no way relieve Seller from any of its obligations under this Agreement; (a) failure by the Contractor or any Subcontractor to procure the insurance required by this Agreement; (b) failure by the Contractor or any Subcontractor to comply fully with any of the insurance provisions of this Agreement; (c) failure by the Contractor or any Subcontractor to secure such endorsements on the policies as may be necessary to carry out the terms and provisions of this Agreement; (d) the insolvency, bankruptcy or failure of any insurance company providing insurance to the Contractor or any Subcontractor; or (e) failure of any insurance company to pay any claim accruing under its policy.

(q) In the event that liability for any loss or damage is denied by the underwriter or underwriters in whole or in part due to the breach of said insurance by the Contractor or any

Subcontractors, or for any other reason attributable to the Contractor or any Subcontractor, or if the Contractor or any Subcontractor fails to maintain any of the insurance herein required, then Seller shall defend, indemnify and hold Buyer harmless against all losses which would otherwise have been covered by said insurance.

Section 27.2 Buyer's Insurance

(a) Owner shall procure at its own expense and maintain in full force and effect during the life of this Contract, with responsible insurance companies authorized to do business in the State of Utah, the types and limits of insurance as set forth below. Such companies shall have an A.M. Best Insurance Reports rating of A-:VII or better. Buyer, at its own cost, may purchase any additional insurance it believes necessary to protect its interests.

(b) **Builder's All-Risk Insurance.** Effective the earlier of 1) the point of groundbreaking at the Site or 2) the date of the first shipment of any Material, Equipment, supplies or other elements of the Work, Buyer shall obtain and thereafter at all times during performance of the Work, maintain Builder's All-Risk Insurance. Coverage shall remain in effect until replaced by permanent property insurance which will be placed by Buyer upon Final Completion. Such Builder's All-Risk Insurance shall insure as an insured, Seller, Contractor, their respective affiliates and Subcontractors of any tier, Buyer and its affiliates, and shall cover all property in the course of construction, including the Work, Materials and Equipment, miscellaneous equipment and furnishings (other than equipment covered under Seller's or Contractor's equipment floater), from physical loss or damage caused by perils covered by a Builder's All-Risk form or equivalent coverage. Such insurance shall include mechanical and electrical breakdown coverage during start-up and testing, and other operations of the Project prior to Final Completion. The limit of liability shall be the full replacement cost of the Work including primary cost of equipment plus freight. The required deductible for all such insurance shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000), except as noted below, and except during the Performance Testing, when the applicable deductibles shall be \$500,000 per occurrence, or in the case of turbine/generator units \$1,000,000 per occurrence. The Builder's All-Risk coverage shall not contain an exclusion for resultant damage caused by faulty workmanship, design or materials. Buyer and Seller agree, and Seller shall require Contractor and all Subcontractors to agree, to waive all rights of recovery against each other for damages caused by fire and/or other perils to the extent covered by the "All Risk" policy.

(c) The following additional coverages shall be provided:

(i) Flood coverage with a sublimit of \$25,000,000 per occurrence and in the aggregate, with a deductible of 5% of the values at risk at the time of loss, subject to a deductible of \$1,000,000;

(ii) Expediting expense with a sublimit of \$10,000,000 except \$5,000,000 for air-freight per loss;

(iii) Earthquake coverage with a sublimit of \$25,000,000 per occurrence and in the aggregate, with a deductible of 5% of the values at risk at the time of loss, subject to a deductible of \$1,000,000;

(iv) Coverage for Equipment and Material at laydown areas or temporary storage off of the actual construction site (including freight expense) with a sub-limit of \$25,000,000 per location. Should the values at risk at any location exceed this sublimit, Seller shall secure such additional coverage as may be required to insure the full values then at risk at its own cost;

(v) Removal of debris with a sublimit of 10% of Project value, subject to \$25,000,000 maximum per loss; and

(vi) Transit coverage with a \$15,000,000 limit for turbines and generators only and a \$5,000,000 limit for all other property including ocean and air transit if any Equipment is to be moved by vessel or aircraft, with sublimits sufficient to insure the full replacement value. Coverage shall protect the interest of Seller and of Buyer, and their directors, officers, employees and agents.

(d) Endorsements. Buyer's insurance policies shall be endorsed to provide that Seller, Contractor and its Subcontractors, and their respective officers, directors and employees shall be named as additional insured with a waiver of insurer's right of subrogation. In addition, Seller, Contractor and its Subcontractors shall be extended the benefit of any operating property insurance, including being named additional insured and a waiver of insurer's right of subrogation through Final Completion.

Section 27.3 Waiver of Rights

In regards to any property insurance maintained by any Party, each such Party shall waive all rights of recovery and subrogation against the other Party.

Section 27.4 Seller's Cooperation with Buyer

(a) Seller agrees to cooperate with and assist Buyer, as reasonably requested by Buyer, in Buyer's procurement of any insurance required by this Agreement or otherwise to be procured in connection with the Project.

(b) Seller agrees to provide such assistance and documentation as Buyer may request in connection with Claims Buyer may make under its insurance policies purchased in connection with the Project for damage or events that occur after the Effective Date and prior to the expiration of the applicable warranty period.

ARTICLE 28

FORCE MAJEURE

Section 28.1 Effect of Force Majeure

Neither Party shall be considered to be in default or in breach of its obligations under this Agreement to the extent that performance of such obligations is prevented by any event of Force Majeure arising after the date of this Agreement.

Section 28.2 Notice of Occurrence

If either Party considers that any event of Force Majeure has occurred which may affect performance of its obligations under this Agreement, it shall promptly notify the other Party thereof stating the full particulars and anticipated duration of the event and the performance obligations that will be affected by the event.

Section 28.3 Performance to Continue

Upon the occurrence of any event of Force Majeure, Seller shall use commercially reasonable efforts to continue to perform its obligations under this Agreement. Seller shall notify Buyer of the steps Seller proposes to take, including any reasonable alternative means for performance, which is not prevented by Force Majeure. Seller shall not take any such alternative steps unless directed so to do by Buyer pursuant to a Change Order. In any such case, Seller shall use reasonable efforts to mitigate all such costs and impacts on the schedule for performance and on the Guaranteed Substantial Completion Date.

Section 28.4 Termination in Consequence of Force Majeure

If circumstances of Force Majeure have occurred that have materially affected the Work and have continued for a period of forty-five (45) days in the aggregate, and there is a corresponding delay in the schedule for performance and the Guaranteed Substantial Completion Date of forty-five (45) days in the aggregate caused by the Force Majeure, then, notwithstanding that Seller may by reason thereof have been granted an extension of the schedule for performance and the Guaranteed Substantial Completion Date, by Change Order, Buyer shall be entitled to provide notice of its intent to terminate this Agreement upon thirty (30) days notice to Seller. If at the expiration of such thirty (30)-day period such Force Majeure shall still continue, Buyer may elect to terminate this Agreement.

Section 28.5 Risk of Loss

Prior to termination of this Agreement, nothing in this article 28 shall change the allocation to Seller of the risk of loss or damage prior to the Closing Date, and any Change Order or payment to Seller resulting from a Force Majeure shall take into account such allocation of the risk of loss or damage.

ARTICLE 29

DEFAULT

Section 29.1 Seller's Default

Seller shall be in default ("Seller Default") hereunder if:

- (a) A Project Party fails in any material respect to comply with its obligations under the Transaction Documents; provided, however, that if all material adverse consequences of a breach of an obligation can be cured or remedied by Seller within a period of thirty (30) days after such breach, such breach shall not become a Seller Default until thirty (30) days after such breach;

(b) A Project Party assigns the Transaction Documents to which it is a party other than as permitted both hereunder and thereunder;

(c) A Project Party shall commence a voluntary case under the Bankruptcy Code; file a petition seeking to take advantage of any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts; consent to or fail to contest in a timely and appropriate manner any petition filed against it in an insolvency case under such bankruptcy laws or other laws; apply for, or consent to or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or the like of itself or of a substantial part of its assets; admit in writing its inability to pay, or generally not be paying, its debts (other than those that are the subject of bona fide disputes) as they become due; make a general assignment for the benefit of creditors; take any action for the purpose of effecting any of the foregoing; or a case or other proceeding shall be commenced by a third party against a Project Party seeking (i) relief under the Bankruptcy Code or under any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts or (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of such Project Party of all or any substantial part of its assets, and such case or proceeding shall continue undismissed or unstayed for a period of sixty (60) days;

(d) any representation or warranty made by Seller for which an express remedy is not provided shall prove to have been false in any material respect as of the date made;

(e) any Judgment shall be entered against any Project Party (i) decreeing such Person's involuntary dissolution or split up or (ii) any (x) such Judgment shall award non monetary relief which results in a Material Adverse Change or (y) such Judgment shall award monetary damages in an amount of (I) \$ _____ with respect to Seller or (II) with respect to Project Parties other than Seller, such Judgment shall award monetary damages in an amount that would cause a Material Adverse Change;

(f) as a result of an act or omission of any Project Party, any of the Security Documents shall for any reason cease to be in full force and effect, or shall cease to give Buyer the Liens, rights, powers and privileges purported to be created thereby in any material respect. At any time, as a result of an act or omission of any Project Party, Buyer shall fail to have a first priority perfected security interest in all the Collateral;

(g) a Material Adverse Change shall have occurred and be continuing, unless such Material Adverse Change is a result of an act or omission of Buyer; or

(h) Seller fails to pay liquidated damages to Buyer or to the Substantial Completion LD Delay Account when due, except to the extent such payments are being disputed in good faith.

Section 29.2 Buyer's Default

Buyer shall be in default ("Buyer's Default") hereunder if:

(a) Buyer fails to pay Seller any undisputed amount due Seller under article 2 ("Sale of Assets") or article 3 ("Terms for Progress Payments"), and fails to cure such default within ten (10) Business Days after receiving notice of default from Seller;

(b) Buyer has failed in any material respect to comply with its other material obligations under this Agreement; provided, however, that if all material adverse consequences of a breach of an obligation can be cured or remedied by Buyer within a period of thirty (30) Business Days after such breach, such breach shall not become a Buyer's Default until thirty (30) Business Days after such breach;

(c) Buyer shall commence a voluntary case under the Bankruptcy Code; file a petition seeking to take advantage of any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts; consent to or fail to contest in a timely and appropriate manner any petition filed against it in an insolvency case under such bankruptcy laws or other laws; apply for, or consent to or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or the like of itself or of a substantial part of its assets; admit in writing its inability to pay, or generally not be paying, its debts (other than those that are the subject of bona fide disputes) as they become due; make a general assignment for the benefit of creditors; take any action for the purpose of effecting any of the foregoing; or a case or other proceeding shall be commenced by a third party against Buyer seeking (i) relief under the Federal bankruptcy laws (as now or hereafter in effect) or under any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts or (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of Buyer of all or any substantial part of its assets, and such case or proceeding shall continue undismissed or unstayed for a period of sixty (60) days;

(d) any representation or warranty made by Buyer in this Agreement for which an express remedy is not provided shall have been false in any material respect as of the date made;

(e) any suspension of the Work requested by Buyer continues for more than thirty (30) days, and Buyer and Seller are unable to agree on a Change Order, unless such dispute is being resolved under article 32 ("Claims, Claim Notice and Dispute Resolution").

Section 29.3 Removal of Seller's Equipment

Upon termination due to Buyer's default, Seller shall be entitled to remove during normal working hours all the Seller Equipment which are on the Site. Prior to removing any Seller Equipment from the Site Seller shall provide to Buyer a detailed list of Seller Equipment to be removed. No equipment shall be Seller Equipment unless it is included in the then-current list approved pursuant to Section 12.1 ("Seller's Equipment").

Section 29.4 Remedies on Default

(a) Step-In Rights. During the occurrence and continuance of any Seller Default or occurrence of any event described in Section 30.1(b) ("Termination by Buyer"), and in addition to any other rights Buyer may have hereunder or at law or in equity, Buyer shall have the right, but not the obligation, take all actions necessary to perform any and all work and labor it deems necessary to complete, operate or maintain the Project in accordance with the terms of this Agreement, including causing Seller to vacate the Project and surrender possession of the Project and all proprietary information, Equipment, spare parts and other supplies located at the Project to

Buyer. If Buyer at any time exercises its rights under this Section 29.4(a), Buyer shall be relieved of its obligations of payment during such time as it is exercising its right under this Section, and shall be entitled to recover all costs incurred by Buyer, plus 20% for general and administrative costs in connection with work performed during that time. Notwithstanding the foregoing, nothing set forth in this Section shall excuse Seller of its obligations to remedy its default and perform its obligations hereunder.

(b) Cure Rights. During the occurrence and continuance of any Seller Default or occurrence of any event described in Section 30.1(b) (“Termination by Buyer”) and upon receipt of any notice that Seller is in default of any of its obligations under any of the Project Documents, and in addition to any other rights Buyer may have hereunder or at law or in equity, Buyer shall have the right, but not the obligation, to cure any default of Seller under any Transaction Document. If Buyer at any time exercises its right under this Section 29.4(b), Buyer shall be relieved of its obligations of payment during such time as it is exercising its right under this Section. Notwithstanding the foregoing, nothing set forth in this Section shall excuse Seller of its obligations to remedy its default and perform its obligations hereunder.

(c) Buyer Rights Following Termination due to a Seller Default. Upon termination of this Agreement pursuant to Section 30.1(b) (“Termination by Buyer”), Buyer may, but shall not be obligated to:

(i) remove Seller from the Site with risk of loss of the Work transferring to Buyer. In addition, Buyer may, but shall not be obligated to, require Seller, at no additional cost to Buyer, to take all steps necessary or requested by Buyer to assign Seller’s rights and obligations under the Transaction Documents and Governmental Approvals identified by Buyer to Buyer and to transfer to Buyer all other property, whether tangible or intangible, in which Seller has rights which is necessary or desirable for the development, construction ownership or operation of the Project at Seller’s actual cost;

(ii) in addition to the foregoing, upon the occurrence and during the continuance of any Seller Default, Buyer may exercise all of its rights as a secured party, under the Security Documents or under applicable Law or otherwise (and all remedial provisions in the Security Documents are hereby incorporated by reference); and

(iii) pursue any and all remedies available at law or in equity.

ARTICLE 30

TERMINATION

Section 30.1 Termination by Buyer

~~(a) Buyer’s Termination Right for Failure to Obtain the CCN. Buyer may elect to terminate this Agreement at any time prior to and including _____, without any further liability to Seller other than with respect to unpaid Progress Payments accruing prior to the date of such termination, in the event that Buyer does not reasonably expect to obtain or has not obtained the CCN on or prior to such date. In the event that (i) Buyer has not obtained the CCN prior to and~~

including _____, and (ii) Buyer has not elected to terminate this Agreement, the provisions of article 16 (“Suspension of Works, Delivery or Erection”) shall apply.

(a) ~~(b)~~ Default Termination Rights. Upon the occurrence or continuation of a Seller Default, Buyer may elect to terminate this Agreement as follows:

(i) with respect to a Seller Default described in subsection 29.1 (c), immediately terminate this Agreement and remove Seller from the Site with risk of loss of the Work transferring to Buyer as provided in Section 29.4(c) hereof; and

(ii) with respect to a Seller Default described in any subsection other than subsection (c) of Section 29.1 (“Seller’s Default”), after having given notice to Seller of such Seller Default and Seller’s having failed to cure such Seller Default within the cure period specified in such subsection, or, if no cure period is specified, then fourteen (14) days after such notice, terminate this Agreement.

(b) ~~(c)~~ Voluntary Termination. Following the achievement by Seller of the Notice to Proceed Milestone, Buyer may elect to terminate this Agreement at any time without cause upon not less than thirty (30) days’ notice to Seller.

Section 30.2 Termination by Seller

(a) Default Termination Rights. Upon the occurrence or continuance of a Buyer Default, Seller may elect to terminate this Agreement as provided in this Section 30.2.

(i) with respect to a Buyer’s Default described in Section 29.2(c), immediately terminate this Agreement; and

(ii) with respect to a Buyer’s Default described in any subsection other than Section 29.2(c), after having given notice to Buyer of such default and Buyer having failed to cure such Buyer’s Default within the cure period specified in such subsection, or, if no cure period is specified, then fourteen (14) Business Days after such notice, terminate this Agreement.

(b) Suspension Termination Rights. Seller may elect to terminate this Agreement due to Suspension of the Work as provided in Section 16.1(b) (“Order to Suspend”).

Section 30.3 Procedures Following Termination by Seller or due to Force Majeure

(a) Upon any termination of this Agreement pursuant to Section 28.4 (“Termination in Consequence of Force Majeure”), Section 30.1(a) (~~“Buyer’s Termination Right for Failure to Obtain the CCN”~~), Section 30.1(~~eb~~) (“Voluntary Termination”) or Section 30.2(a) (“Default Termination Rights”), the following provisions shall apply: (i) Buyer shall pay to Seller the amount, if any, by which the applicable termination amount set forth in Appendix I corresponding to the effective date of the termination (partial month to be appropriately pro-rated) exceeds the cumulative payments made by Buyer prior to such date; (ii) at Buyer’s option, title (to the extent not already transferred) and risk of loss to some or all of the Site and the Materials shall transfer to Buyer; and (iii) Buyer shall be responsible for, as applicable, any transportation, storage and insurance of and for the Materials for which Buyer has elected to take title.

(b) In addition to the foregoing, upon any such termination of this Agreement pursuant to Section 28.4 (“Termination in Consequence of Force Majeure”), Section 30.1(a) (“~~Buyer’s Termination Right for Failure to Obtain the CCN~~”), Section 30.1(b) (“Voluntary Termination”) or Section 30.2(a) (“Default Termination Rights”) the following provisions shall apply: Buyer may, but shall not be obligated to, at no additional cost to Buyer (i) require that Seller take all steps necessary or requested by Buyer to assign its rights and obligations under the Transaction Documents and Governmental Approvals identified by Buyer to Buyer and to transfer to Buyer all other property, whether tangible or intangible, in which Seller has rights which is necessary or desirable for the development, construction ownership or operation of the Project and (ii) exercise all of Seller’s rights including the right to request performance under and to enforce any and all rights to, the Collateral, as provided in the Security Documents (and all remedial provisions in the Security Documents are hereby incorporated by reference); and (iv) enter onto the Site and to remove all Materials for which it has elected to take title.

Section 30.4 Exclusivity

THE RIGHTS AND REMEDIES OF SELLER SET FORTH HEREIN FOR DEFAULT AND TERMINATION ARE EXCLUSIVE AND NO OTHER REMEDIES OF ANY KIND WHATSOEVER SHALL APPLY IN THE EVENT OF SUCH DEFAULT AND TERMINATION.

ARTICLE 31

TAXES

Section 31.1 Buyer’s Obligation

In addition to the Purchase Price, Buyer shall be obligated to pay the amount of any property, privilege, license, sales, use, excise, gross receipts, value added, privilege or similar taxes or assessments applicable to the sale of the Work or to the use of the Work. Seller shall use all reasonable efforts to minimize the amount of such taxes and assessments payable by Buyer. All real or personal property taxes related to the Project shall be paid by Buyer and shall not be apportioned at the Closing.

Section 31.2 Seller’s Obligation

Seller have included in the Purchase Price the amount of any customs duties, and related customs broker fees and charges or similar charges, for delivery of any components to the United States from countries outside of the United States and transportation to the Site. Seller shall be liable for all payroll and other employee related taxes and costs, for all property taxes related to the Site prior to Closing and for all taxes based on its income. Contractor shall cooperate with Buyer’s reasonable requests with respect to any challenge that Buyer elects to make with respect to any taxes imposed in connection with the Project.

ARTICLE 32

CLAIMS, CLAIM NOTICE AND DISPUTE RESOLUTION

Section 32.1 Claims

(a) Submission of Claims

(i) In the event Seller has a claim or request for a time extension, additional compensation, any other adjustment of the Agreement terms and conditions, or any dispute arising out of the Work (each a “Claim”), Seller shall notify Buyer in writing within five (5) Business Days following the occurrence of the event giving rise to the Claim. Seller’s failure to give notice as required will constitute a waiver of all of Seller’s rights with respect to the Claim.

(ii) As soon as practicable after Claim notification, Seller shall submit the Claim to Buyer with all supporting information and documentation. Seller shall also respond promptly to all Buyer inquiries about the Claim and its basis.

(iii) Any Claim which is not disposed of by mutual agreement between the Parties shall be decided by Buyer, which shall provide a written decision to Seller. Such decision shall be final unless Seller, within thirty (30) days after such receipt of Buyer’s decision, provides to Buyer a written protest, stating clearly and in detail the basis thereof, and such protest shall be resolved in accordance with Section 32.2 (“Dispute Resolution”). It is agreed that Seller’s failure to protest Buyer’s decision shall constitute a waiver by Seller of its Claim.

(iv) Seller shall continue its performance of this Agreement notwithstanding the submission of any Claim.

(b) Notification Prior to Incurring Costs. In any circumstances which might give rise to a claim pursuant to this Article, Seller shall, before incurring any cost or expense, first give Buyer every opportunity to determine whether the cost or expense should be incurred or whether any act or forbearance shall or might mitigate the cost of any such claim.

(c) Buyer’s Liability to Pay Claims. Buyer shall not be liable to make payment in respect of any claim for an additional payment unless Seller has complied with each and all of the requirements of this article 32, whether as to the time within which claims must be made and/or information provided or otherwise, it being acknowledged and agreed that the absence of complete compliance herewith will involve significant prejudice to Buyer.

Section 32.2 Dispute Resolution

All disputes in connection with this Agreement between Buyer and Seller or between Buyer and any Transaction Party shall be settled, if possible, by negotiation of Buyer Representative and Seller Representative. If the matter is not resolved by such negotiations, either party may, by giving written notice to the other party, cause the matter to be referred to a meeting of a Buyer Senior Procurement Representative and Seller’s Management Representative. Such meeting shall be held within fifteen (15) days following the giving of the written notice. If the matter is not resolved by such negotiations,

either party may, by giving written notice to the other party, cause the matter to be referred to a meeting of appropriate higher management representatives of the parties. Such meeting shall be held within thirty (30) days following the giving of the written notice. If the matter is not resolved within thirty (30) days after the date of the notice referring the matter to the appropriate high management or such later date as may be mutually agreed upon, the parties may then, subject to the terms of this Agreement, commence legal action in court of competent jurisdiction in order to resolve the dispute.

ARTICLE 33

ASSIGNMENT

Section 33.1 Assignment of Seller's Interests

Seller shall not assign any of its rights and obligations hereunder, except with Buyer's prior written consent.

ARTICLE 34

CONFIDENTIALITY

Section 34.1 Confidentiality

(a) It is understood that certain information may be exchanged among Buyer and Seller that the disclosing Party considers proprietary and confidential. Each Party agrees that it shall (and shall cause its Affiliates and its and their officers, directors, consultants, employees, legal counsel, agents and representatives (together with the Affiliates, the "Confidentiality Affiliates") to): (i) hold confidential and not disclose other than to its Confidentiality Affiliates having a reasonable need to know in connection with the permitted purposes hereunder, without the prior consent of the other Party, all confidential or proprietary written information which is marked confidential or proprietary or oral information or data which is reduced to writing within five (5) days of such disclosure and marked as confidential or proprietary (including sources of equity and/or other financing, development strategy, competitor information, cost and pricing data, warranties, technical information, research, developmental, engineering, manufacturing, marketing, sales, financial, operating, performance, business and process information or data, know how and computer programming and other software techniques) provided or developed by the other Party or its Confidentiality Affiliates in connection herewith or the Work ("Confidential Information"); and (ii) use such Confidential Information only for the purposes of performing its obligations hereunder or where reasonably necessary to enjoy the benefits of this Agreement. In no event shall any Confidential Information be disclosed to any competitor of Seller or Buyer.

(b) The obligations contained in the preceding paragraph shall not apply, or shall cease to apply, to Confidential Information if or when, and to the extent that, such Confidential Information (i) was known to the receiving Party or its Confidentiality Affiliates prior to receipt from the disclosing Party or its Confidentiality Affiliates; (ii) was, or becomes through no breach of the receiving Party's obligations hereunder, known to the public; (iii) becomes known to the receiving Party or its Confidentiality Affiliates from other sources under circumstances not involving any breach of any confidentiality obligation between such source and the disclosing

Party's or discloser's Confidentiality Affiliates or a third party; (iv) is independently developed by the receiving Party or its Confidentiality Affiliates; or (v) is required to be disclosed by law, governmental regulation or applicable legal process. Seller acknowledges that Buyer is subject to regulation as a public utility, and as such may be required to disclose all or substantially all information provided by Seller pursuant to this Agreement by order of state and federal regulators, and that such disclosure shall in no event be deemed a violation of this Section 34.1. As to Confidential Information that is not a trade secret under Applicable Law, the foregoing obligations shall expire three (3) years after the Closing Date.

(c) When required by the appropriate Governmental Authority, a Party may disclose the Confidential Information of the other Party to such Governmental Authority provided, however, that prior to making any such disclosure, such Party shall: (i) provide the owning Party with timely advance notice of the Confidential Information requested by such Governmental Authority and the intent of such Party to so disclose; (ii) minimize the amount of Confidential Information to be provided consonant with the interest of the owning Party, Seller, the Contractor, and each and every Subcontractor and the requirements of the Governmental Authority involved; and (iii) make every reasonable effort (which shall include participation by the owning Party, Seller, Contractor or any Subcontractor, as applicable in discussions with the Governmental Authority involved) to secure confidential treatment and minimization of the Confidential Information to be provided. In the event that efforts to secure confidential treatment are unsuccessful, the owning Party shall have the prior right to revise such information to minimize the disclosure of such Confidential Information in a manner consonant with its interest and the requirements of the Governmental Authority involved.

(d) Buyer's disclosure of Seller Drawings and Manuals to third parties in accordance with its obligations hereunder shall not be a breach of this article 34.

ARTICLE 35

MISCELLANEOUS PROVISIONS

Section 35.1 Notices, Consents and Approvals

Contact information for notices, requests, demands and other communications required or permitted hereunder is as follows:

(a) if to Seller, to:

with copies to:

or to such other person or address as Seller shall furnish to Buyer;

(b) if to Buyer, to:

PacifiCorp
825 NE Multnomah, Suite 600
Portland, Oregon 97232-2315
Attn: _____

Tel: _____
Fax: _____

with copies, in connection with default notices, to:

or to such other person(s) or address(es) as Buyer furnishes to Seller from time to time.

(c) All notices, including, acceptances, consents, approvals, agreements, deliveries of information, designations, requests, demands and other communications required or permitted hereunder shall be in writing, properly addressed as provided in paragraph (a) above, and given by (i) hand delivery, (ii) a national overnight courier service, (iii) confirmed facsimile transmission, followed by a hard copy, or (iv) certified or registered mail, return receipt requested, and postage prepaid. Any such notice or other communication shall be deemed to have been duly given as of the date delivered if by hand delivery, national overnight courier service or confirmed facsimile transmission (provided a hard copy promptly follows by other means provided herein), or five (5) calendar days after mailing if by certified or registered mail.

Section 35.2 Entire Agreement

This Agreement, together with the appendices and exhibits delivered in connection with it, contains the entire agreement and understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral, of the Parties relating to the subject matter hereof. Any oral or written representation, warranty, course of dealing or trade usage not contained or referenced herein shall not be binding on either Party.

Section 35.3 Amendment; Waiver

No amendment or other modification of any provision of this Agreement shall be valid or binding unless it is signed by each of the Parties. No waiver of any provision of this Agreement shall be valid or binding unless it signed by the Party waiving compliance with such provision. No delay on the part of either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver or any partial exercise of any such right, power or privilege preclude any further exercise thereof or the exercise of any other such right, power or privilege. No waiver of any breach, term or condition of this Agreement by any Party shall constitute a subsequent waiver of the same or any other breach, term or condition.

Section 35.4 Successors and Assigns

Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the Parties hereto and, to the extent permitted by this Agreement, their respective successors and assigns.

Section 35.5 Third Party Beneficiaries

The provisions of this Agreement shall only be for the benefit of, and enforceable by, the Parties hereto and shall not inure to the benefit of or be enforceable by any third party.

Section 35.6 Severability

In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

Section 35.7 Further Assurances

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

Section 35.8 Publicity

Except as required by law, Seller agrees that Seller will not issue or release for external publication any press release, Article, advertising or other publicity matter in any form (including print, electronic, or interview) relating to the Project, or to this Agreement without first consulting with and obtaining the prior consent of Buyer, which consent shall not be unreasonably withheld or delayed.

Section 35.9 Independent Contractor

Seller is an independent contractor with respect to the Work, and each part thereof, and in respect of all work to be performed hereunder. Neither Seller, the Contractor, nor any Subcontractor, the employees of any of such entities, employed in connection with the Work shall be deemed to be agents, representatives, joint ventures, employees or servants of Buyer by reason of their performance hereunder or in any manner dealt with herein. Neither Party shall perform any act or make any representation to any Person to the effect that Seller, or any of its agents, representatives, the Contractor or Subcontractors, is the agent of Buyer.

Section 35.10 Survival

The provisions of Articles 4 (“Representations and Warranties of Seller”), 12 (“Seller’s Equipment”), 23 (“Warranties”), 24 (“Liquidated Damages”), 25 (“Limitations of Liability”), 26 (“Indemnification”), 27 (“Insurance”), 32 (“Claims, Claim Notice and Dispute Resolution”), and 34 (“Confidentiality”), and Sections 6.2 (“Security”), 7.10 (“Contractor Drawings and Manuals”), 7.13 (“Intellectual Property Rights and Computer Program Licenses”), Section 7.22 (“Maintenance of

Buyer's Lien"), Section 7.25 ("Other Liens"), 7.29 ("Environmental Matters"), 7.30 ("Records and Accounts"), 7.33 ("Construction Coordination Agreement"), 9.1 ("Site Regulations"), 9.2 ("Site Security"), 9.9 ("Cleanup"), 15.6 ("Buyer's Use of Drawings"), 15.7 ("Manufacturing Drawings"), 22.4 ("Liability"), 29.3 ("Removal of Seller's Equipment"), and 35.11 ("Governing Law; Waiver of Jury Trial") of this Agreement shall survive the expiration or earlier termination of this Agreement indefinitely, provided that the foregoing enumeration shall not be interpreted to bar survival of any other provision hereof which would otherwise be deemed to survive by operation of law.

Section 35.11 Governing Law; Waiver of Jury Trial

(a) THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH (WITHOUT GIVING EFFECT TO THE PRINCIPLES THEREOF RELATING TO CONFLICTS OF LAW).

(b) EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT OR ANY MATTER ARISING HEREUNDER OR THEREUNDER. 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 TRANSACTION DOCUMENT OR ANY MATTER ARISING HEREUNDER OR THEREUNDER IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

Section 35.12 Counterparts

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

Section 35.13 Captions

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

Section 35.14 Consent Agreements

Seller agrees to cooperate with Buyer's efforts to obtain on a timely basis such direct agreements, consents, opinions and related documents from Project Parties or any of Seller's counterparties to any Additional Project Document as may be reasonably requested by Buyer, its financing parties, or any entity that is Controlled by or is under common Control with Buyer.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Agreement as of the first date set forth above:

PACIFICORP,
as Buyer

By: _____

Print Name: _____

Title: _____

Attest:

By: _____

Print Name: _____

Title: _____

 , LLC,
as Seller

By: _____

Print Name: _____

Title: _____

Attest:

By: _____

Print Name: _____

Title: _____

Document comparison done by DeltaView on Tuesday, October 03, 2006 9:24:21 AM

Input:	
Document 1	file://C:/Documents and Settings/p16331/Local Settings/Temporary Internet Files/OLK18/July 11 version - rejected all changes in IE Redline (2).doc
Document 2	file://U:/LegalDept/Bally/Deltaview/Final APSA AB 100205.doc
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	166
Deletions	172
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	338

ASSET PURCHASE AND SALE AGREEMENT

dated as of [DATE]

by and between

PACIFICORP, as Buyer

and

as Seller

Completion Date as a direct and unavoidable result of Buyer's failure (other than as a result of Seller's failure to perform any of its obligations on a timely basis) to fulfill any Buyer Obligation by its respective completion date, then the Milestone Completion Date for such Milestone shall be extended by one (1) day for each day in which completion of any such Buyer Obligation is delayed beyond its respective completion date and all extra costs actually incurred by Seller by reason of such delay shall be paid by Buyer, unless the delay in completing any Buyer obligation results from Seller's failure to perform any of its obligations on a timely basis.

Section 10.9 Progress Meetings

Progress meetings will be held as deemed necessary by Buyer, but normally shall not be less than once a week. Such meetings shall be at Buyer Site unless Buyer requests to change the location of such meetings. Progress meetings will be utilized to review the Work schedule and discuss any delays, unusual conditions or critical items, which have affected or could affect the progress of the Work.

ARTICLE 11

DELIVERY, SHIPPING, AND HANDLING OF PLANT AND EQUIPMENT

Section 11.1 Delivery Responsibility.

Seller shall be responsible for the safe delivery of all Plant and Seller's Equipment to the Site. Seller shall abide by the requirements of Appendix B for delivery of major items of Equipment, Plant or Seller's Equipment to the Site. Seller shall be responsible for the reception and unloading on Site of all Equipment, Plant and Seller's Equipment delivered for the purposes of the Agreement.

Section 11.2 Packing

(a) Seller is responsible for assuring that the Equipment is suitably packaged to ensure against damage under normal handling and transportation methods. All Equipment or components thereof shall be identified with Buyer's equipment number or tag number, if required by the technical specifications. All shipping shall be in accordance with Appendix B.

(b) The Equipment and all related parts shall be shipped FOB the Site, Freight Prepaid and Allowed, with Seller retaining risk, liability and responsibility, financial or otherwise, until Substantial Completion, and then only in accordance with this Agreement.

(c) Prior to the shipment of any Equipment, Seller shall become knowledgeable of transportation conditions, such as clearances and restrictions, height and width, bridge load limits and other limitations affecting such shipment. Notwithstanding any other provision of this Agreement, any limitations or the lack of transportation facilities shall not become the basis for Claims or damages, or for an extension of time for completion of Work under this Agreement.

Section 11.3 Transportation

Seller shall observe all Applicable Law in relation to and obtain all necessary consents and permissions for the transport of Plant, Equipment and Seller's Equipment over highways, bridges or culverts and shall indemnify Buyer against all claims for the repair of any such highways, bridges or culverts

arising out of the execution of the Work and in respect of all proceedings, damages, costs, charges and expenses arising out of or in connection with such transportation.

Section 11.4 Extraordinary Traffic

Seller shall use best efforts to prevent damage to any of the highways, bridges or culverts on the routes to the Site by any traffic of Seller or any of his subcontractors. Seller shall be responsible for the cost of protecting or strengthening any highway, bridge or culvert as necessary to facilitate the moving of the Equipment, Plant or Seller's Equipment and shall be liable for any damage or injury to highways, bridges or culverts arising out of the execution of the Work, and shall indemnify Buyer in respect of any claim, proceedings, damages, cost, charges and expenses in relation thereto which may be incurred as a result of Seller's default under this Section.

Section 11.5 Allocation

In the event of a partial failure of Seller's sources of supply, Seller will first meet all of Buyer's requirements hereunder prior to any allocation among other customers

ARTICLE 12

SELLER'S EQUIPMENT

Section 12.1 Seller's Equipment

Seller shall, within thirty (30) days after the Effective Date, provide to Buyer an indicative list of Seller's Equipment that Seller intends to use on the Site, which shall be updated from time to time during the carrying out of the Work and which shall be available for inspection by Buyer's Representative.

Section 12.2 Seller's Equipment on Site

All Seller Equipment shall, when brought on to the Site, be deemed to be exclusively intended for the execution of the Work. Seller shall not thereafter remove the same or any part thereof from the Site without the consent of Buyer, which shall not be unreasonably withheld in the case of Seller's Equipment not currently required for the execution of the Work on Site.

Section 12.3 Loss or Damage to Seller's Equipment

Seller shall be liable for loss or damage to any of Seller's Equipment which may occur otherwise than through the default of Buyer or those for whom Buyer is responsible.

Section 12.4 Maintenance of Seller's Equipment

Seller shall be responsible for maintaining Seller's Equipment on Site in safe working order.

ARTICLE 13
CHANGE ORDERS

Section 13.1 Changes

- (a) From time to time circumstances may arise which justify a Change.
- (b) No Change shall be effective unless authorized by Buyer by issuance of a Change Order pursuant to the provisions of this article 13.
- (c) Buyer shall, when reviewing each potential Change and determining the nature and extent of any Change Order which is to be granted in accordance with the subsequent paragraphs of this Article, consider in detail the following information:
 - (i) The nature, scope and extent of the Change, including but not limited to any additions or deletions from the Scope of Work;
 - (ii) The effect, if any, of the Change on the Project Schedule or on the Guaranteed Substantial Completion Date(s), as applicable;
 - (iii) The effect, if any, of the Change on the amount the Purchase Price; provided, however, that in no event shall the amount of the Purchase Price be subject to change for any Change that does not constitute a material change in the Scope of Work requested by Buyer; and
 - (iv) Such other information as may reasonably be necessary for the implementation of the Change Order, including but not limited to the effect on any other provisions hereof which may be impacted by the Change.

Buyer shall, in the case of an Buyer-Initiated Change or, if it elects to do so, in the case of Seller Initiated Changes, and in all events in the case of Required Changes, thereafter issue such Change Order having regard to all such circumstances as is just and equitable and in a form substantially similar to the Change Order Form attached hereto as Exhibit D-1 which shall address, to the extent required, all of the issues set out in this Section 13.1(c).

(d) In the case of any request for a Change Order which is permitted to be made in accordance with this Agreement, it shall take the form of a Change Order Request (each a “Change Order Request”) which shall be delivered to Buyer in writing as soon as possible and in any event within ten (10) days after Seller becomes aware of the circumstances which it believes (or through the exercise of Best Recognized Practice should believe) necessitates a Change. In no case shall Seller be entitled to recover costs as a Change Order in connection with conditions that give rise to such Change Order arising prior the date on which Seller requests the Change Order, except to the extent that such costs are incurred reasonably and properly in order to achieve the Substantial Completion Date. Any Change Order Request shall be in a form substantially similar to the Form of Change Order Request attached hereto as Exhibit D-2 and comprising the following information: (a) the factors necessitating or the basis for the Change; (b) the impact, if any, which the proposed Change is likely to have on the Purchase Price; (c) the impact, if any,

which the proposed Change is likely to have on the Project Schedule (including the Guaranteed Substantial Completion Date); (d) other impacted provisions hereof; and (e) such other information which Buyer may reasonably request in connection with such proposed Change.

(e) The issuance of a Change Order shall not result in invalidation of this Agreement.

(f) Except with respect to a Buyer Initiated Change, as to which the disregarded amount shall be \$25,000, no circumstances will constitute grounds for a Required Change Order or a Seller Initiated Change Order unless and to the extent that (i) the costs of such Change Order, in either case, is in excess of \$5,000, or (ii) the effect of such Change Order request impairs the achievement of an Buyer Critical Schedule Milestone or a Seller Critical Schedule Milestone, as applicable, by more than 3 days (except in circumstances where Seller has no means of recovering such schedule impairment in which case Seller shall be entitled to a Change Order if Seller would otherwise have been so entitled). Neither party shall game or otherwise manipulate the foregoing process, by aggregating or disaggregating cost and/or circumstances as the case may be (or otherwise), for the purpose of recovering or avoiding additional cost or time in accordance with the foregoing.

(g) Change Orders (in each case in excess of the applicable disregarded amount) shall address the change, if any, in the amount of the Purchase Price in one of the following manners:

(i) Buyer and Seller shall agree upon the amount by which the Change will impact the Purchase Price; or

(ii) Buyer and Seller shall agree as to the nature and extent of the Change, but in lieu of changing the Purchase Price, Seller shall perform the activities associated with the Change on a cost-reimbursement basis, in which event no change shall be made in the amount of the Purchase Price.

Section 13.2 Procedure for Changes

(a) Changes Initiated by Seller. Seller may, at any time and from time to time, make proposals to Buyer for improvements, efficiencies, cost savings and other similar Changes to the Work (each a “Seller-Initiated Change”), but no such proposal shall be carried out by Seller except as instructed in writing by Buyer in the form of a Change Order, which Buyer may in its discretion elect to issue as it sees fit. Such proposals of Seller shall be submitted in the form of a written Change Order Request in the manner substantially as set out in 13.1(d), and shall also contain and be supplemented with such information or additional information as Buyer may reasonably require in order to effect a reasoned decision as to the implementation, or rejection, (as the case may be) of the Change Order Request.

(b) Changes Initiated by Buyer. If Buyer desires to make a Change (each a “Buyer-Initiated Change”) not comprising rectification or recovery Work due to Seller’s negligence or breach of this Agreement, Buyer will submit a written Change Order Notice to Seller, substantially in the form of Exhibit D-3, comprising the nature and extent of the proposed change to the Scope of Work together with, to the extent available and/or applicable, Buyer’s opinion as to those matters required to be taken into account in accordance with Section 13.1 (“Changes”). Seller will promptly review the Change Order Notice and notify Buyer in writing within a

reasonable amount of time of the options for implementing the proposed Change (including, if possible, any option that does not involve an extension of time) and the estimated effect(s), if any, that each such option would have on the Purchase Price and Project Schedule, and any other affected provision herein, as applicable. Such response shall also contain all those matters required to be set out in a Change Order Request. Based upon such information, Buyer may, in its sole discretion, issue a Change Order making a Change.

(c) Required Change Orders. Seller shall be entitled to the issuance of Change Orders pursuant to this article 13 in connection with any circumstances which constitute a Change and which are attributable to the matters identified in subparagraphs (a) through (g) below (each a “Required Change”):

(i) Due to Change in Law Applicable Law/Permit. If and to the extent that a change in any Requirement of Law or Permit after the Effective Date results in an increase in the cost of the Work or extends the Project Schedule, and in each case only to the extent that such increase or extension is greater than the threshold amounts identified in Section 13.1(f) above.

(ii) Change Order Due to Suspension of Work by Buyer. In the event that Buyer suspends the Work (i) in the circumstances with respect to which Seller is entitled to a Change Order as set out in Section 13.1 (“Changes”), or (ii) in the circumstances set out in article 16 (“Suspension of Works, Delivery or Erection”).

(iii) Change Order Due to Non-Performance by Buyer. If Buyer fails to perform or is late in performing in any material way any material obligation of Buyer under this Agreement and the cost to Seller is in excess of \$25,000 or a delay of more than 3 days. Neither party shall game or otherwise manipulate the foregoing process, by aggregating or disaggregating cost and/or circumstances as the case may be (or otherwise), for the purpose of recovering or avoiding additional cost or time in accordance with the foregoing.

Seller shall in all cases use or have used commercially reasonable efforts to mitigate potential delays to the Project Schedule and/or potential increases to the Purchase Price (the cost of such mitigation efforts to be addressed in any applicable Change Order).

(d) Except in the circumstances as set out in this Section 13.2 and with respect to which an application is properly made in accordance with this article 13, Seller shall not be entitled to seek either a Change, Change Order or extension of the Guaranteed Substantial Completion Date, nor to receive additional remuneration or reimbursement with respect to the Work.

Section 13.3 Continued Performance Pending Resolution of Disputes

Notwithstanding and pending the resolution of any dispute with respect to a Change or Change Order, Seller must proceed with the Work and the performance of any Change ordered by Buyer or any Required Change, unless Buyer directs Seller not to so proceed, provided that Seller is being paid on a current basis for all undisputed Work and for all disputed Work which has been ordered to be paid through a Claim proceeding dispute resolution relating thereto in accordance with this Agreement.

Section 13.4 Preservation of Schedule and Purchase Price

Where any proposed Change or Change Order Request may give rise to an extension of any of the Project Schedule or an increase in the Purchase Price, then Buyer reserves, in its sole discretion and to the extent possible, the right to require Seller to vary, amend or effect such other Change to the Work in such a manner as will mitigate or avoid the requirement for such extension of time or increase in price.

ARTICLE 14

WORKMANSHIP AND MATERIALS

Section 14.1 Manner of Execution

The Work to be supplied, including all materials, manufactured components and labor and services to be performed, shall be designed and executed in the manner set out in this Agreement. Except where the manner of design, manufacture and execution is otherwise specifically set out in this Agreement, the Work shall be designed and executed in a proper and workmanlike manner, all in accordance with accepted industry standards and Prudent Industry Practice.

Section 14.2 Condition of Materials

The materials, Equipment (including any rented Equipment), fixtures, software, any related items of personal property and other tangible personal property of Seller, any Subcontractor or the Contractor constituting the Project shall be OEM Certified, and shall be suitable for their current use in the generation of energy and the transportation of natural gas in accordance with the Specifications. All Equipment shall be procured solely for use in connection with the Project. Seller shall not allow any Equipment to be placed into storage for more than one year prior to shipping to the Site, nor utilize any Equipment in the Project that has been so stored.

Section 14.3 Inspection

(a) In addition to the inspection rights of Buyer under Section 7.8 (“Authority for Access for Inspection”), within sixty (60) days after the Effective Date, Seller shall submit to Buyer a schedule (the “Witness Point Schedule”), including but not limited to those events identified in Appendix T of tests and inspections (the “Witness Point Events”) reasonably acceptable to Buyer which shall include locations where the Equipment shall be manufactured or tested and the location at which such tests and inspections can be viewed by Buyer. Seller shall provide no less than three (3) Business Days’ advance confirmation of the actual date of each Witness Point Event identified on the Witness Point Schedule. Buyer shall be entitled to attend and witness all Witness Point Events. To the extent that any Witness Point Events have been completed prior to the date on which the Witness Point Schedule is submitted to Buyer, at Buyer’s sole discretion, Seller shall (i) allow Buyer to observe the materials and workmanship of the Project and to review documentation which may be available in lieu of viewing or witnessing the Witness Point Event, or (ii) re-open the affected portion of the Project for inspection by Buyer and repair or correct (if necessary) and restore the affected portion of the Project at no additional cost to Buyer. All inspections shall take place on the Site, on a Contractor’s or a Subcontractor’s

premises or such other reasonable site as the Parties may agree, as appropriate, during normal working hours. No such inspection or examination or witnessing of tests shall release Seller from any obligation or liability under this Agreement. Inspections under this Section 14.3 are solely for the benefit of Buyer and any inspection or failure to inspect and any objection or failure to object by Buyer shall not (i) relieve Seller or any Contractor of any of their obligations under any Transaction Document or (ii) be used as evidence that Buyer agreed that either or both of Seller or any Contractor or Subcontractor had fulfilled any obligations under any Transaction Document or that Buyer had waived any of its rights under any Transaction Document.

(b) If, as a result of an inspection or examination referred to in paragraph (a) above, Buyer decides that any portion of the Work is nonconforming or otherwise not in accordance with this Agreement, Buyer shall promptly notify Seller thereof. Such notice shall state Buyer's objections and its reasons therefor in reasonable detail. Seller shall make good the nonconformity or ensure that any such portion of the Work complies with this Agreement at no additional cost to Buyer.

(c) For purposes hereof, "nonconforming" means defective or not in conformity with the Specification.

ARTICLE 15

DRAWINGS

Section 15.1 Drawings

(a) Following receipt and approval of the Project Schedule, Seller shall prepare a contract documentation and drawing list identifying those key data, calculations (as required for regulatory purposes and consents), drawings, technical specifications and concepts required for review for conformance with the Agreement.

(b) Seller shall, within the time detailed in the Project Schedule or elsewhere in this Agreement, submit to Buyer's Representative in hard copy and electronic form (the specific form of which shall be agreed to by the Parties) such key data, calculations, drawings, technical specifications and concepts.

(c) Seller shall timely submit to Buyer's Representative drawings of temporary and permanent buildings and structures and any other information required under the terms and conditions of consents, licenses and planning permissions obtained by Seller or Buyer.

(d) Buyer's Representative may, in its sole discretion, disapprove any drawing; provided, however, it shall notify Seller of any such disapproval within twenty (20) days of receipt, except for documents and information (including calculations) which are required by Buyer's Representative for consultation with Buyer's third party contractors for the purposes of the interconnections at terminal points, where the period shall be thirty (30) days. Seller shall supply additional copies of documents or information (including calculations) in the form and numbers stated in the Agreement. Without waiver of or prejudice to any rights of Buyer, Seller

shall bear all risk in relation to its performance of work arising from or in relation to all documents or information (including calculations).

Section 15.2 Consequences of Documents not in accordance with Agreement

Any documents or information (including calculations) which Buyer's Representative identifies as not being in accordance with the Agreement shall be modified and resubmitted without delay.

Section 15.3 Drawings Submitted

Seller shall not deviate from drawings accepted by Buyer or issued by Seller as approved for construction, except with the prior written consent of Buyer.

Section 15.4 Inspection of Drawings

Seller shall maintain and provide to Buyer's Representative from time to time or upon request a complete list of drawings identifying which is approved for construction. Buyer shall have the right at all reasonable times to inspect all drawings of any part of the Work.

Section 15.5 Operating and Maintenance Instructions

(a) Not less than six (6) months prior to the scheduled Guaranteed Substantial Completion Date, Seller shall deliver to Buyer's Representative one (1) set of preliminary operating and maintenance manuals sufficiently complete that the Plant and Equipment may be safely commissioned and Buyer's personnel properly trained pursuant to Section 7.11 ("Training"). Seller shall, at its sole cost and expense, continuously update such manuals so that, as of the Closing Date, such operating and maintenance manuals are substantively in their final form with any amendments made as necessary.

(b) Within three (3) months of the scheduled Closing Date, Seller shall supply to Buyer three (3) copies of final operation and maintenance manuals and drawings of the Work as-built plus five (5) CD-ROMs incorporating any changes made during testing and/or Commissioning of the Work.

(c) All operating and maintenance manuals and drawings of the Work as-built shall be in such detail as will enable Buyer to operate, maintain, dismantle, reassemble, adjust and repair all parts of the Work. Where the employment of Seller is terminated for default or in the case of Seller's Material Adverse Change prior to the Transfer of Possession and Control of Project to Buyer Date, Seller shall provide to Buyer such information including copy drawings and Draft Manuals as is reasonable and as is necessary for Buyer to complete, use and maintain the Work.

(d) The provision by Seller of the final operation and maintenance manuals and drawings of the Work as-built in accordance with the provisions of this Section shall be identified as a Milestone in Appendix C and the provisions of article 10 ("Project Schedule") shall apply.

Section 15.6 Buyer's Use of Drawings

(a) Drawings and information created by Seller for purposes of designing, developing, constructing, commissioning and operating the Project constitute "work made for hire," and Seller hereby transfers and assigns all rights in and to such drawings and information to Buyer.

(b) Drawings and information supplied by Seller that are not created by Seller specifically for or in connection with the Project, but that are necessary or useful for the operation and maintenance of the Project, the Work or any portion of them, may be used by Buyer for the purposes of completing, maintaining, operating, improving, adapting, renewing, enlarging, dismantling, re-assembly, adjusting and repairing the Work, and for any other legal purpose, pursuant to the license granted in paragraph 15.6(c).

(c) Seller grants to Buyer an irrevocable perpetual royalty free license to use all drawings and information for the foregoing purposes and Seller shall provide Buyer with copies of such drawings and information.

Section 15.7 Manufacturing Drawings

In the event of a Defect resulting in outage of the Plant in excess of two (2) days during the applicable Warranty Period, Seller shall immediately give Buyer full, unimpeded, and unqualified access to all information, documents, processes and operations, processes or operations so as to enable Buyer to satisfy itself that the Plant and Equipment shall in all respects be properly and timely repaired and/or replaced and so as to be in full compliance with the requirements of the Agreement.

Section 15.8 Errors in Drawings Supplied by Seller

(a) Seller shall be responsible for the accuracy, completeness and suitability of all drawings, samples, patterns, models, calculations or information submitted by Seller, Contractor any Subcontractor in connection with the Work. Notwithstanding Buyer's or Buyer's Representative's inspection or approval of drawings, samples, patterns, models, calculations or information submitted by Seller, Seller shall not be relieved of any responsibility or liability imposed on it by any provisions of the Agreement and shall be responsible for any errors, omissions or discrepancies therein.

(b) Seller shall bear any and all costs Seller or Buyer may incur as a result of delay in providing such drawings, samples, patterns, models, calculations or information or as a result of errors, omissions or discrepancies therein or for the correction thereof.

(c) Seller shall, at its sole cost and expense, carry out or cause to be carried out any alterations or remedial work necessitated by such errors, omissions or discrepancies for which it is responsible and modify the drawings, samples, patterns, models, calculations or information accordingly.

ARTICLE 16

SUSPENSION OF WORKS, DELIVERY OR ERECTION

Section 16.1 Order to Suspend

(a) Buyer may, at its sole option, upon not less than seven (7) days' prior written notice to Seller, suspend at any time (a) the performance of all or any portions of the Work, (b) delivery of a component of the Work, or (c) erection of any portion of the Work that has been delivered to the Site. Such notice shall specify the length of time that Buyer anticipates the Work shall be suspended.

(b) If the cumulative days of Work suspension totals One Hundred and Eighty (180) days, or if the Work is suspended four (4) or more separate times for a period of more than 45 days in any single instance or 180 days in aggregate, Seller may terminate this Agreement by thirty (30) days' written notice to Buyer unless the suspension is lifted within such 30-day period, and such termination shall be treated as a Buyer voluntary termination pursuant to Section 30.1(b) ("Voluntary Termination").

(c) Unless otherwise instructed by Buyer, Seller shall during any suspension affecting the progress of the Work on Site, maintain its staff, labor and equipment on or near the Site ready to proceed with the Work upon receipt of the further instructions of Buyer.

(d) If Buyer desires to extend the period of suspension for a longer time than that specified in the original notice given by Buyer, Buyer shall so notify Seller in writing and the same procedures described in article 10 ("Project Schedule") shall be followed to determine whether to actually extend the suspension and the amount of the costs and charges which shall be incurred as a result of any such extension.

Section 16.2 Protection of Work

(a) Seller shall, during such suspension, store, preserve, protect and otherwise secure each of the Work, Equipment and the Plant.

(b) If Buyer is unwilling or unable to receive any of the Equipment as a result of a suspension by Buyer under Section 16.1 ("Order to Suspend"), Seller shall, upon notice to Buyer and giving Buyer reasonable opportunity to designate a mutually acceptable destination, place such Equipment in storage. If any Equipment is placed into storage pursuant to this provision, delivery thereof shall not be deemed to occur until such Equipment is delivered to the Site or Buyer has notified Seller that it is prepared to accept delivery at some other location.

Section 16.3 Resumption of Work

(a) Following any suspension by Buyer under this article 16, after receipt of notice to resume progress of the Work, Seller shall examine the Work affected by the suspension. Seller shall, within twenty-one (21) calendar days after receipt of notice to resume the suspended Work, submit to Buyer a written report detailing any deterioration, nonconformities and losses to the Project or any portion thereof and a Change Order Proposal related to such damages, losses and

deterioration. Seller shall, pursuant to a Change Order, correct, repair or replace any deterioration to, nonconformity in or loss of the Work that occurred during the suspension; provided, however, that no Change Order shall be required or issued for any deterioration, nonconformity or loss resulting from Seller's negligence or wrongdoing during the period of suspension; and shall promptly resume performance on the suspended Work to the extent required in the notice.

(b) Any claims on the part of Seller for extensions of time in connection with a suspension shall be made in accordance with the appropriate provisions of this Agreement. Notwithstanding any other provision of this Agreement, no compensation or extension of time shall be granted to the extent that suspension results from Seller's non-compliance with the terms of the Agreement.

Section 16.4 Change Order in Event of Suspension

(a) Seller may, at any time prior to thirty (30) days after receipt of notice to resume progress of the Work under Section 16.3 ("Resumption of Work"), notify Buyer of its request for a Change Order as a result of suspension by Buyer under Section 16.1 ("Order to Suspend").

(b) Seller shall, within seven (7) Business Days following receipt of any notice from Buyer indicating Buyer's intention to suspend the performance of all or any portion of the Work pursuant to Section 16.1 ("Order to Suspend"), deliver to Buyer an itemized account of the estimated charges and costs which Seller believes will be incurred by Buyer pursuant to as a result of such suspension. Seller shall make a good faith estimate of such charges and cost that will be accurate within a range of plus or minus five percent (5%). Following receipt of such estimate, Buyer shall have the right by written notice to Seller at any time prior to the effective date of suspension specified in Buyer's suspension notice to either (i) revoke its decision to suspend performance, in which event Seller will not suspend performance of such Work, (ii) instruct Seller to suspend performance in accordance with the terms of Buyer's suspension notice and to confirm that the charges and costs quoted by Seller are acceptable, or (iii) instruct Seller to suspend performance in accordance with the terms of Buyer's suspension notice, with Buyer reserving the right to contest the charges and costs quoted by Seller.

(c) In the event of such suspension, Seller shall, unless the notice requires otherwise:

(i) Discontinue the Work on the date and to the extent specified in the notice;

(ii) Place no further orders or subcontracts for Equipment, Plant or services with respect to the suspended Work, other than to the extent required in the notice;

(iii) Promptly make every reasonable effort to obtain suspension, upon terms reasonably satisfactory to Buyer, of all orders, subcontracts and rental agreements to the extent they relate to performance of the Work suspended; and

(iv) Unless otherwise specifically stated in the notice, continue to protect and maintain the Work theretofore completed, including the Work suspended hereunder.

(d) As full compensation for any such suspension, Seller shall be reimbursed for the following costs, reasonably incurred, without duplication of any item, to the extent that such costs directly result from such suspension of Work, up to a maximum of one hundred and five percent (105%) of the estimate submitted by Seller pursuant to the Agreement hereof:

(i) If determined necessary by Buyer, a standby charge to Seller during the period of suspension of the Work, which standby charge shall be sufficient to compensate Seller for the reasonable costs of keeping, to the extent required in the notice, its personnel and equipment committed to the Work in a standby status;

(ii) Expenses reasonably and necessarily incurred by Seller in connection with storage of Equipment pursuant to Section 16.2 (“Protection of Work”), including preparation for and placement into storage, handling, transportation, storage, inspection, preservation, taxes and insurance and any necessary rehabilitation prior to installation; and

(iii) Reasonable costs associated with demobilization of Seller’s personnel and equipment to the extent such costs are not recovered by Seller in using such personnel and equipment on other projects during the standby period; and an equitable amount to reimburse Seller for the actual cost to Seller, if any, of maintaining and protecting that portion of the Work upon which activities have been suspended;

Buyer shall have the right, upon reasonable advance written notice to Seller, to inspect and audit Seller’ books and records in order to verify the accuracy of and/or to determine the amount of any cost-based reimbursement associated with any suspension of the Work.

(e) Seller shall not be entitled to be paid any additional amounts under this article 16 if and to the extent suspension is necessary by reason of default on the part of Seller or persons for whom Seller is responsible or for the proper execution or the safety of the Work, Equipment or Plant.

ARTICLE 17

PROJECT COMMENCEMENT AND COMPLETION

Section 17.1 Notice To Proceed

(a) Upon satisfaction or waiver by Buyer of each of the conditions in Section 17.1(b), Buyer shall issue to Seller the Notice to Proceed. Following issuance of the Notice to Proceed Seller shall proceed with developing the Project and performing the Work. Buyer shall provide at least three (3) Business Days’ prior notice of its intention to issue the Notice to Proceed. At Buyer’s option, Buyer may issue one or more limited notices to proceed prior to issuing the Notice to Proceed, pursuant to which Seller shall perform or cause to be performed certain development activities specified in any such limited notice to proceed.

(b) The obligation of Buyer to issue the Notice to Proceed to Seller is subject to the satisfaction or waiver by Buyer of all of the following conditions precedent:

(i) Governmental Approvals. Buyer's receipt of and satisfaction with the terms of all Governmental Approvals.

(ii) Network Resource Integration. PacifiCorp Transmission shall have demonstrated to Buyer that the Project can be integrated with PacifiCorp Transmission's System as a network resource on or prior to May 1, 2012, 2013, or 2014.

(iii) Accounting Treatment. Buyer shall be satisfied that the accounting treatment relating to PacifiCorp's obligations under any Transaction Document or in connection with the Project will not result in the addition of liabilities to the balance sheet of PacifiCorp.

(iv) Appendices, Exhibits and Schedules. Each Appendix, Exhibit and Schedule to this Agreement shall be in final form and substance satisfactory to Buyer and Buyer's Representative, each in its sole discretion.

(v) Transaction Documents. Buyer shall have received the Transaction Documents, the Security Documents (including any Guaranty), and the Consents, (together with all amendments, supplements, schedules, and exhibits thereto), each of which shall (A) have been duly authorized, executed and delivered by each party thereto, (B) be in the form of the applicable form attached hereto (if such a form is attached) and otherwise in form and substance satisfactory to Buyer, and (C) be in full force and effect.

(vi) Officers' Certificates. Buyer shall have received the certificate of an Authorized Officer of Seller certifying that (A) each of the conditions precedent to the issuance of the Notice to Proceed has been satisfied (other than to the extent that the satisfaction of a condition is dependent on the judgment of Buyer) (B) that each of the conditions in Sections 3.2(b), 3.2(c), 3.2(d), 3.2(e), 3.2(f), 3.2(h) and 3.2(i) has been and will be satisfied as of the date of the issuance of the Notice to Proceed; and (C) each of the representations of Seller set forth in article 4 ("Representations and Warranties of Seller") is true and correct. The form of such aforementioned certificate is attached hereto as Exhibit E.

(vii) Security Documents; Filings. The Security Documents and all financing statements or other instruments with respect thereto, as may be necessary, shall have been duly filed or recorded in such manner and in such places as are required by Applicable Law to establish and perfect first priority Liens, in favor of Buyer, as granted pursuant to the Security Documents. Buyer shall have received either copies of all such documents (including copies of all acknowledgment copies of filed financing statements and all other recordings made pursuant hereto) or other evidence satisfactory to Buyer of the filing of all such financing statements and other recordings. All taxes (including, but not limited to, mortgage recording taxes and recording fees), fees, and other charges payable in connection therewith shall have been paid in full by Seller.

(viii) Record Searches. A search, made no more than thirty (30) days prior to the date of issuance of the Notice to Proceed, of the Uniform Commercial Code filing offices or other registers in each jurisdiction in which Seller is organized, has an office, or in which assets of Seller are located, as certified by an Authorized Officer of Seller, shall have revealed no filings, recordings or equivalent standard with respect to any of the Collateral (except such filings and

recordings with respect to the Permitted Liens) in favor of any Person other than Buyer. A list of all of such filings and recordings or equivalent standard is set forth on Schedule 17.1(b)(xi). Buyer shall have received a copy of the search reports received as a result of such search.

(ix) Water Rights. Seller shall have provided a detailed attorneys' opinion addressed to Buyer evaluating and opining on the title of each of the Water Rights, together with all conveyance documents other supporting documentation related to the Water Rights, and Buyer shall be satisfied with the quality and marketability of title with respect thereto.

(x) Emission Reduction Credits. Buyer shall be satisfied with the form, substance and quantity of ERCs to provide for the lifetime operation of the Project.

(xi) Equipment. Buyer shall be satisfied with the Equipment and all anticipated storage plans with respect thereto.

(xii) Additional Matters. Buyer shall have received such other certificates, documents and instruments relating to the transactions contemplated hereby as may have been reasonably requested by Buyer, and all corporate or other organizational actions and other matters and all other documents (including all documents referred to herein and not appearing as exhibits hereto) and all legal matters in connection with such transactions shall be satisfactory in form and substance to Buyer.

Section 17.2 Time for Completion

Seller shall complete the Work and the Performance Tests in accordance with the Project Schedule and the terms of this Agreement. Without limiting the foregoing, Seller shall cause the Substantial Completion Date to occur no later than the Guaranteed Substantial Completion Date.

Section 17.3 Buyer's Request for Earlier Completion

Buyer may request completion of the Project earlier than the Guaranteed Substantial Completion Date and Seller shall make all commercially reasonable efforts to comply with such request.

Section 17.4 Delay in Completion

If Seller fails to meet the Substantial Completion Criteria by the Substantial Completion LD Commencement Date, Buyer shall be entitled to liquidated damages under article 24 ("Liquidated Damages").

ARTICLE 18

PERFORMANCE TESTING

Section 18.1 Performance Tests

Seller shall conduct or cause to be conducted the Performance Tests as soon as practicable in accordance with the Specifications, procedures and protocols of Appendix H and the other tests, procedures and protocols to be developed by the Parties. At least nine (9) months prior to the

Guaranteed Substantial Completion Date, Seller shall deliver to Buyer a supplement to Appendix H further outlining the tests and procedures to be followed in conducting the Performance Tests criteria. Such supplement shall include, at a minimum, provisions addressing (a) testing procedures for each item of Equipment, (b) functional performance tests for starting up the Plant under different specified operating conditions and (c) any other activities that, in accordance with Prudent Industry Practices, should be included. Thereafter, the Parties shall promptly agree on modifications to such supplement so that Appendix H, as supplemented, is satisfactory to Buyer. Seller shall provide Buyer with notice when the Plant is ready for Performance Testing.

Section 18.2 Emissions Guarantee

Seller shall conduct the Performance Tests in accordance with Appendix H and, as a condition of Substantial Completion, shall demonstrate that emissions from the Project meet the Guaranteed Emissions. If the Guaranteed Emissions are not met, either in whole or in part, Seller shall, at its sole cost and expense, to diligently make such changes, modifications and/or additions to the Plant or any part thereof as may be necessary to achieve the Guaranteed Emissions. Seller shall notify Buyer upon completion of the necessary changes, modifications or additions, and Seller shall repeat the Performance Tests as necessary until the Guaranteed Emissions have been met. Nothing contained in this Section 18.2 shall relieve Seller of Seller's obligation to pay liquidated damages under this Agreement.

Section 18.3 Cost and Direction

(a) The Performance Tests shall be conducted by and under the direction of Seller. Buyer will cooperate with Seller's reasonable requests in connection with the Performance Tests, but shall not be required to provide any materials, electricity, fuel, water or stores.

(b) Seller shall provide all materials, electricity, fuel, water and stores, and all personnel necessary to supervise startup and the conducting of the Performance Tests and shall provide all necessary technical assistance and advice in connection with the Performance Tests. Except as approved by Buyer in writing, Seller shall not use personnel in excess of the normal contingent of Plant operations staff to operate the Plant during the performance tests. During training and conducting the Performance Tests Buyer's operating personnel shall be working under the technical direction and instruction of Seller and Seller shall be responsible for the accuracy of its instructions/directions provided to Buyer's operating personnel.

Section 18.4 Buyer's Right to Validate

Buyer and Buyer's Representative, in connection with the performance of this Agreement by Seller, shall have the right and opportunity to be present and observe the Performance Tests and shall have the right and opportunity in advance or during the Performance Tests to inspect and validate all meters, meter readings and other pertinent data necessary to verify the results of the Performance Tests. Buyer shall provide reasonable notice to Seller of any such observation and inspection, including the specific information desired and method of obtaining such information. Seller and Buyer shall coordinate such observation, inspection and validation so as not to interfere with the Performance Tests yet provide for a verifiable result. Buyer shall have the same rights with respect to any other Performance Tests conducted by Seller as set forth above.

Section 18.5 Additional Tests; Test Energy

(a) After the Substantial Completion Date with respect to the Work, Seller may, unless Buyer reasonably objects, make any additional tests which Seller considers desirable at their own risk and cost; provided, however,

(i) if such tests require any change in Buyer's dispatch schedule for the Project, then Seller shall reimburse Buyer for all costs and Claims associated with such change in dispatch;

(ii) if such tests damage the Project in any way, then Seller shall bear all costs of making good such damage and of all Claims resulting from such damage; and

(iii) if such test may cause the Project to no longer meet the Performance Guarantees, then Seller shall, at its sole cost, re-conduct the Performance Tests and compensate Buyer for all costs and Claims associated with reconducting the Performance Tests.

(b) Buyer shall have the exclusive right to all electric energy generated by the Plant during any Performance Tests.

Section 18.6 Timing

Seller shall give Buyer at least ninety (90) days' prior notice of the date on which the first Performance Tests will begin and at least five (5) days' prior notice of a change in the Performance Test schedule. Buyer may request that Seller conduct the Performance Tests at another time more convenient to Buyer, which request shall set forth the reasons therefor.

Section 18.7 Test Reports

(a) Seller shall deliver to Buyer a preliminary test report, including the test data sheets and calculated results for each Performance Test or retest (the "Preliminary Performance Test Report"), promptly after completion of each Performance Test, together with a notice to Buyer certifying completion of the Performance Tests in accordance with this Agreement and results of such Performance Tests. Promptly after receipt of such Preliminary Performance Test Report, Buyer and Seller shall consult concerning the results of such tests, and within three (3) days thereafter, Buyer shall (i) state it concurs with the results of the Performance Tests or (ii) state it disputes the results of the Performance Tests and stating in detail the reasons therefor.

Within fifteen (15) Business Days following completion of the Performance Tests, Seller shall provide to Buyer a final test report, including test data sheets and calculated results of each Performance Test or retest (the "Final Performance Test Report") and a final notice to Buyer certifying completion of the Performance Tests. Within fifteen (15) days of receipt of such documentation from Seller, Buyer shall either (i) accept the Performance Test results or (ii) state it disputes the results of the Performance Tests and the reasons therefor. If Buyer disputes the accuracy of the Performance Tests results in the Final Performance Test Report, then Seller shall re-perform the applicable Performance Tests (or part thereof) in accordance with the procedures set forth in Appendix H. If the results of the re-test confirm the accuracy of the initial test, then Buyer shall pay the increased costs directly resulting from the re-test. If the results of the re-test do not confirm the accuracy of the initial test, then Seller shall pay for

the costs of the re-test and any subsequent tests necessary to confirm compliance with all Performance Guarantees.

Section 18.8 Failure on Tests or Inspection

If after inspection, examination or witnessing the testing of any of the Work, Buyer decides, in its sole discretion, that such Work or any part thereof is defective or not in accordance with the Agreement, it may reject the said Work or part thereof by giving to Seller, within ten (10) days, notice of such rejection, stating therein the grounds upon which the said decision is based. Following any such rejection, Seller shall replace or repair the Equipment, the Plant or part thereof rejected and re-submit the same for test or inspection in accordance with this Clause. All expenses reasonably incurred by Buyer in attending or in consequence of such re-testing or inspection and Buyer's or Buyer's Representative's attendance and that of entities providing finance in connection with the Project and their representatives' attendance shall be deducted from the Purchase Price.

Section 18.9 Duty to Advise of Defects, Errors and Omissions in Plant and Equipment

Seller shall advise promptly Buyer forthwith upon it becoming aware of any design, engineering, manufacturing or other Defect, error or omission that might effect the Work and its operability, operational life and maintenance and warrants and represents that, prior to the acceptance of any certificate by Buyer or Buyer's Representative and except in relation to such matters that have been notified to or by Buyer in Writing, there are no such Defects, errors and/or omissions to the best of its knowledge and belief.

ARTICLE 19

DEFECTS BEFORE TRANSFER OF POSSESSION AND CONTROL OF WORK

Section 19.1 Identification of Defects

(a) If, in respect of any part of the Work not already transferred and under control by Buyer, and in all cases prior to Closing, Buyer's Representative, at any time: (i) determines, in its sole discretion, that any Work done or Equipment or Plant supplied or materials used by Seller, Contractor or any Subcontractor is or are defective or otherwise not in accordance with the Agreement (each a "Defect"), or that any part thereof is defective or does not fulfill the requirements of the Agreement and (ii) as soon as reasonably practicable notifies Seller of the said decision, specifying particulars of the Defects alleged and of where the same are alleged to exist or to have occurred, then Seller shall with all speed, at its sole cost and expense, remedy the Defects so specified.

(b) If Seller fails to remedy such Defect, Buyer may take, at the sole cost and expense of Seller, such steps as may in all the circumstances be reasonably necessary or convenient to remedy such Defects. The cost of remedying such Defect may be deducted from any payment due under the Agreement and be recoverable as a debt.

Section 19.2 Replacement of Defects

All Equipment or Plant provided or Work done by Buyer to replace defective Equipment or Plant shall comply with the Agreement and shall be obtained at reasonable prices and where reasonably practicable under competitive conditions. Seller shall be entitled at its own expense to remove and retain all defective Equipment or Plant that Buyer may have replaced. Nothing contained in this Section shall affect any Claim by Buyer under article 32 (“Claims, Claim Notice and Dispute Resolution”).

ARTICLE 20 NOTICE OF SUBSTANTIAL COMPLETION, NOTICE OF FINAL ACCEPTANCE AND TRANSFER OF CARE, CUSTODY AND CONTROL

Section 20.1 Notice of Substantial Completion of Work

(a) When the Work meets the Substantial Completion Criteria set forth in Appendix H, Seller shall so notify Buyer and provide Buyer a certificate of an Authorized Officer of Seller certifying that the Substantial Completion Criteria have been met and the date thereof (such notice and affidavit, the “Request for Substantial Completion”).

(b) Within five (5) days after receipt of the Request for Substantial Completion, Buyer shall by notice (“Notice of Substantial Completion”) either: (i) reject such Request for Substantial Completion and refuse to issue the Notice of Substantial Completion and state what Substantial Completion Criteria Seller failed to achieve; or (ii) accept the Request for Substantial Completion as given or with punch list items, and issue the Notice of Substantial Completion with Substantial Completion deemed to occur on the date set forth in said Request for Substantial Completion.

(c) If Buyer rejects the Request for Substantial Completion, Seller shall promptly provide to Buyer a plan and schedule for remedying the deficiencies specified in Buyer’s rejection, shall carry out such plan at its own cost and expense, and, upon completion thereof, shall issue a new Request for Substantial Completion.

(d) The foregoing procedure shall apply again and successively thereafter until Substantial Completion Criteria have been achieved. Disputes as to whether Seller has achieved Substantial Completion shall be resolved pursuant to article 32 (“Claims, Claim Notice and Dispute Resolution”).

Section 20.2 Care, Custody and Control; Punch List Items

(a) Seller shall be responsible for care and custody, and control of the Work and shall make good at Seller’s own cost, or at Buyer’s cost if Seller does not remedy the same, any loss or damage that may occur to the Work or any part thereof from any cause whatsoever until the Substantial Completion Date. Seller shall also be responsible for loss or damage thereto caused by the Contractor or any Subcontractor in the course of any work carried out under or the Project Documents or in connection with the Project until Final Acceptance. Seller hereby waives any and all claims or causes of action it might have now or in the future against Buyer, whether by way of affirmative action, offset, cross claim or otherwise, resulting from any negligence of Buyer

for any loss or damage that may occur to the Work or any part thereof caused by Buyer in the course of any work to the extent carried out by Buyer at Seller's direction or with Seller's consent in connection with the Project. Seller shall be liable for any loss or damage to any Materials.

(b) Care, custody and control of the Work shall be transferred to Buyer as of the Substantial Completion Date. Buyer shall begin to compile a preliminary punch list as the Work progresses (with Seller and Buyer in good faith mutually determining the Dollar value of such list). Buyer shall submit to Seller the completed preliminary punch list at least ten (10) Business Days prior to the anticipated Substantial Completion Date. Within five (5) Business Days following the Substantial Completion Date, Buyer shall issue to Seller a final punch list (the "Final Punch List"). After receipt thereof, Seller and Buyer shall mutually agree on the punch list items, the value related thereto and on a schedule for completion of such items. Buyer shall withhold from its Progress Payment at the Closing an amount equal to 1.5 times the agreed upon value of the Final Punch List, but shall make periodic pro-rata payments as Seller demonstrate completion of the items on the Final Punch List to Buyer. All of the items on the Final Punch List shall be completed expeditiously after the Substantial Completion Date. Buyer shall provide to Seller for such purpose reasonable access to the Work.

Section 20.3 Dispatch Coordination

During the startup, testing and commissioning of the Plant, Seller shall coordinate with Buyer's Representative and Buyer's operating personnel the orderly startup and shut-down of the Plant. Ninety (90) days prior to the initial startup of the Plant, Seller shall provide to Buyer a schedule of dispatch for the Plant during the commissioning period, including expected net plant output, duration of the commissioning activity and expected fuel usage. Within thirty (30) days of the initial startup of the Plant, Seller shall provide to Buyer an update to this schedule and thereafter on a weekly basis until Substantial Completion is achieved. Seller shall also provide 72 hours' advance notice to Buyer of the planned Plant dispatch profile including net plant output, duration of the commissioning period and expected fuel usage.

Section 20.4 Use Before Acceptance Date

Buyer shall not operate or assume control of all or a portion of the Work prior to the Substantial Completion Date; provided, however, that in no event shall Buyer be limited in its operation of any joint facilities or facilities adjacent to the Work or the Project except as may expressly be provided in the Construction Coordination Agreement.

Section 20.5 Title and Risk of Loss

(a) Risk of loss with respect to the Project and the Work shall remain with Seller until the Closing Date, whereupon the same shall pass to Buyer.

(b) The Equipment and Plant to be supplied pursuant to the Agreement shall become the property of Buyer at whichever is the earlier of the following times:

(i) the Closing Date;

(ii) when Seller becomes entitled to have the contract value of the Equipment and Plant in question included in an Interim Certificate of Payment, or

(iii) when the Equipment and Plant is appropriated for the purpose of the Project.

Seller shall indemnify and keep indemnified Buyer against any claims, losses or damage arising from any defect in title or encumbrances or charge upon any of the Equipment and Plant supplied pursuant to the Agreement.

Section 20.6 Marking of Equipment and Plant

(a) Where, prior to delivery, the property in Equipment and Plant passes to Buyer, Seller shall, so far as is practicable, set the Equipment and Plant aside and mark it as Buyer's property in a manner reasonably required by Buyer.

(b) Until the Equipment and Plant has been so set aside and marked, Buyer shall be entitled to withhold any interim Progress Payment to which Seller might otherwise be entitled.

(c) Seller shall permit Buyer at any time upon reasonable notice to inspect any Equipment or Plant which has become the property of Buyer and shall grant Buyer or procure the grant of access to Seller's premises for such purposes or any other premises where such Equipment and Plant may be located. Such inspection shall not constitute acceptance of the Equipment and Plant.

(d) All such Equipment and Plant shall be in the care and possession of Seller solely for the purposes of the Agreement and shall not be within the ownership or disposition of Seller.

(e) No Progress Payment or interim Certificate of Payment issued by Buyer shall prejudice its right to reject Equipment or Plant which is not in accordance with the Agreement. Upon any such rejection the property in the rejected Equipment or Plant shall immediately revert to Seller.

(f) Seller shall transfer title to the Work to Buyer at the earliest to occur of (i) when the Equipment and/or Materials are brought on the Site; (ii) the specific Equipment and/or Materials are included in a request for a Progress Payment; and (iii) when the Equipment and/or Materials are appropriated for use in the Project. Seller shall cause the Contractor to transfer the Work supplied and performed by the Contractor to Buyer (x) prior to the Closing, free and clear of all Liens other than (A) mechanics liens relating to the Work supplied and performed by the Contractor's Subcontractors that have not yet been paid and (B) amounts payable to Contractor's Subcontractors that are being disputed in good faith provided that the Contractor has posted a bond against such Liens with a bonding company or other surety reasonably acceptable to Buyer, and (y) upon the Closing, free and clear of all Liens. Seller shall indemnify and keep indemnified the Buyer against any claims, losses or damage arising from any defect in title or encumbrances or charge upon any of the Equipment and Plant supplied pursuant to this Agreement.

(g) With respect to any Lien or Claim relating to the Project other than Permitted Liens (i) arising through the Contractor or any Subcontractor, Seller agrees to cause the Contractor or Subcontractor to promptly remove or cause, or cause to be removed, any such Lien or Claim and

(ii) Seller agrees promptly remove or cause, or caused to be removed, any such other Liens or Claims not covered by the immediately preceding clause (a).

(h) Ownership of the Non-Buyer Materials used in connection with the Work shall remain with Seller, the Contractor or the Subcontractors. Notwithstanding the transfer of title of the Work pursuant to Section 20.5 (“Title and Risk of Loss”) the responsibility for care, custody and control thereof, together with the risk of loss or damage thereto shall remain with Seller until the Substantial Completion Date.

Section 20.7 Removal of Equipment

Prior to Final Acceptance, Seller shall remove from the Site all equipment, materials, temporary structures constructed by or on behalf of Seller or other items of any nature required for execution or completion of the Work, but excluding equipment, materials, appliances or other items intended to form or forming part of the Work. Prior to disposition of such items, Seller shall make a written offer to sell items to Buyer which Seller or any Contractor desires to sell. Seller shall leave the Site in good order and in neat and presentable condition. Any surplus items will become property of Buyer if not removed by Seller or its Contractor within thirty (30) days after Final Acceptance (or such later date contemplated in any completion and demobilization procedure mutually agreed by Buyer and the Project Parties). All costs to dispose of any such items not removed by Seller within the thirty (30) days following Final Acceptance (or such later date contemplated in any completion and demobilization procedure mutually agreed by Buyer and the Project Parties) and which Buyer does not wish to keep shall be for the account of Seller. Prior to removing any equipment from the Site Seller shall provide to Buyer a detailed list of Seller Equipment to be removed. No equipment shall be Seller Equipment unless it is included in the then-current list approved pursuant to Section 12.1 (“Seller’s Equipment”).

Section 20.8 Notice of Final Acceptance of Work

Upon completion of all the criteria for Final Acceptance set forth in Appendix H, Seller shall give notice to Buyer by request for Final Acceptance, together with an affidavit that all requirements for Final Acceptance set forth in Appendix H have been met. Thereafter, the same procedures as specified in Section 13.1 (“Changes”) shall apply until Buyer issues notice to Seller accepting Seller’s request for Final Acceptance (“Notice of Final Acceptance”). Disputes as to whether Seller has achieved Final Acceptance shall be resolved pursuant to article 32 (“Claims, Claim Notice and Dispute Resolution”).

ARTICLE 21

CODES AND STANDARDS

Section 21.1 Comparable Quality

Appendix B sets forth all major systems/sub-systems/Equipment/components which will be supplied in performance of the Work. Notwithstanding the foregoing, the Parties recognize that Appendix B is not all inclusive and does not specify all Equipment/components required for Plant completion. Therefore, the Parties agree that for Equipment/components not specifically set forth in Appendix B, the quality

standards of such unspecified Equipment/components shall be consistent with the requirements of article 14 (“Workmanship and Materials”).

ARTICLE 22

ENVIRONMENTAL MATTERS

Section 22.1 General

Seller shall prepare and submit to Buyer appropriate materials management and emergency response procedures covering any Regulated Materials Seller expects to be used in the completion and testing of the Work, which procedures shall be satisfactory to Buyer. Seller shall comply, and shall cause Contractor and all Subcontractors to comply, at all times with such materials management and emergency response procedures, all Environmental Laws and all Governmental Approvals applicable to the Work and the Site. No Regulated Materials shall be improperly released, disposed of or buried on the Site.

Section 22.2 Release On-Site

Seller shall immediately notify Buyer and applicable Governmental Authorities of any Release by Seller or any Subcontractor of Regulated Materials at the Site which is reportable to Governmental Authorities under applicable Environmental Laws and take such emergency measures as are prudent and necessary to protect the environment consistent with the materials management and emergency response procedures referred to above and Applicable Law. Seller shall take all appropriate steps consistent with the materials management and emergency response procedures referred to above and Applicable Law for immediate containment of any such Release and Remediation of the affected area.

Section 22.3 Release Off-Site

In the event of a Release by Seller, the Contractor or any Subcontractor of a Regulated Material off the Site but related to the Work which is reportable to Governmental Authorities under applicable Environmental Laws, Seller shall be responsible for notifying all applicable federal, state and local regulatory agencies in accordance with Applicable Law or for causing such notification to occur by the party responsible for such action. To the extent required, Seller shall take all appropriate steps consistent with the materials management and emergency response procedures referred to above and Applicable Law for immediate containment of any such Release and Remediation of the affected area.

Section 22.4 Liability

To the extent any Release referred to in Section 22.2 (“Release On-Site”) and Section 22.3 (“Release Off-Site”) above is caused by an act or omission of Seller, the Contractor, or any Subcontractor, Seller shall be responsible for all Liabilities with respect to such Release and the indemnification provisions set forth in Section 26.1 (“Indemnification for Third Party Claims”) shall apply.

Section 22.5 Pre-existing Regulated Materials

(a) Seller shall develop a contingency plan to address contaminated soils or groundwater that Seller may encounter during construction of the Project. The purpose of the

contingency plan is to avoid any delays in construction of the Project by planning in advance how to respond to unexpected pre-existing environmental conditions that could impact the Schedule or the Guaranteed Substantial Completion Date. The contingency plan shall, at a minimum, provide for:

(i) a contaminated soils staging area so that construction of the Project can continue without delays. Such contaminated soils (that must be removed for construction purposes) can be placed in the staging area while testing and subsequent disposal decisions are made;

(ii) the handling of any contaminated groundwater that might be extracted, including the prospective procurement of a UPDES permit in the event the contingency plan calls for such extracted water being discharged into an area that is subject to Clean Water Act jurisdiction; and

(iii) the final disposal of all Regulated Materials and contaminated materials encountered on the Site.

(b) Seller shall be responsible for implementing any recommendations relating to pre-existing Regulated Materials contained in any environmental surveys or reports.

Section 22.6 Notice

Seller shall immediately notify Buyer of the occurrence of any event that would or could reasonably be expected to result in any violation or noncompliance or potential violation or noncompliance of any Environmental Law relating to the Work, the Plant, or the Site, or otherwise constitutes a Material Adverse Change under this Agreement.

ARTICLE 23

WARRANTIES OF WORK

Section 23.1 Warranties

(a) Seller warrants that, for the duration of the Warranty Period, the Work shall be (i) free from Defects in design, engineering, workmanship materials and operations, (ii) in accordance with the Agreement, and (iii) in compliance with Applicable Law. Seller further warrants that all Equipment and Plant shall be new and of standard quality, free of Defects and deficiencies in design, material, workmanship and title (the “Warranty”).

(b) The Warranty shall not extend to Defects or deficiencies to the extent resulting from (i) operation by Buyer’s personnel in a manner inconsistent with or contrary to instructions contained in the Operation and Maintenance Manuals, (ii) repairs or alterations by Buyer’s personnel in a manner inconsistent with or contrary to instructions provided by Seller or as contained in the Operation and Maintenance Manuals provided by Seller, or (iii) normal wear and tear.

Section 23.2 Warranty Period

Subject to the provisions in this article 23, the Warranty shall remain in full force and effect regarding all phases of the Work for a period beginning on the Closing Date and ending eighteen (18) months thereafter (such period, the “Warranty Period”). In no event shall any Warranty terminate less than eighteen (18) months following the Closing Date.

Section 23.3 Repair of Defects

If Buyer or Seller discovers that the Work, or any portion thereof, fails to meet the Warranty, the it shall notify the other Party of such failure promptly upon discovery, along with the reasonable basis therefor. Upon receipt of such notice, or upon Seller’s own discovery thereof, Seller shall promptly (i) cure such failure in accordance with the Warranty and (ii) perform such tests as Buyer may reasonably require to demonstrate the cure of such failure. Seller shall coordinate repairing, replacing or re-performing any of the Work with Buyer so as to minimize any adverse effects on the operation of the Project.

Section 23.4 Warranty Period Extension

(a) Extension for Corrected Work. Any Work re-performed and any part of the Site that is reworked, repaired or replaced in satisfaction of Seller’s obligations in connection with the Warranty will be re-warranted by Seller pursuant to the same Warranty set forth in this article 23 , and Seller will have the same obligations in relation thereto as set forth in this article 23 for a period equal to eighteen (18) months from the date such re-performance, rework, repair or replacement is completed.

(b) Extension for Total Shutdown. If, during the Warranty Period, the Site is shut down (other than for the purpose of scheduled or routine maintenance) and such shutdown is caused by a defect or failure covered by the Warranty, then the Warranty Period will be extended by a period equal to the duration of the shutdown required to repair such defect or failure.

Section 23.5 Contractor and Subcontractor Warranties

Seller will procure from the Contractor and each Subcontractor warranties with respect to services, Plant and Equipment provided by such entity for a period of no less than eighteen (18) months after the Closing Date and for a further eighteen (18) months after any warranty repair with respect to the subject of the repair. Seller shall obtain and maintain all such warranties in full force and effect.

Section 23.6 Delay in Remediating Defects

If any such Defect or damage is not remedied by Seller within a reasonable time or requires prompt remediation as a result of an emergency situation existing at the Site, Buyer may proceed to do the Work at Seller’s risk and expense provided that it does so in a reasonable manner and notifies Seller of Buyer’s intention so to do. All Costs incurred by Buyer shall be deducted from the Purchase Price or be paid by Seller to Buyer.

Section 23.7 Removal of Defective Work

Seller may, with the consent of Buyer, remove from the Site any part of the Work which is defective or damaged, if the nature of the Defect or damage is such that repairs cannot be expeditiously carried out on the Site.

Section 23.8 Further Tests

If repairs or replacements are of such a character as may affect the operation of the Work or any part thereof, Buyer may, within one (1) month after such repair or replacement, give to Seller notice requiring further testing to be conducted, in which case such tests shall be carried out at Seller's cost and as provided in article 18 ("Performance Testing").

Section 23.9 Seller to Diagnose

Seller shall, if required by Buyer's Representative in writing and under the direction of Buyer's Representative, diagnose the cause of any Defect. Unless such Defect or its cause shall be one which Seller would otherwise be responsible for repairing, the costs incurred by Seller in diagnosing such defect shall, subject to this article 23, be borne by Buyer and added to the Purchase Price.

Section 23.10 Latent Defects

(a) Latent Defects Liability Period. Seller's liability for latent defects shall remain in full force and effect during all phases of the Work for a period beginning on the Closing Date and ending five (5) years thereafter (the "Latent Defects Liability Period").

(b) If any Latent Defect (as defined in Section 23.10(d)) shall appear in any part of the Work during the Latent Defects Liability Period, such Latent Defect shall be Repaired by Seller at Seller's option, with all possible speed and at Seller's sole cost expense, provided that the Latent Defect existed and would not have been disclosed by a reasonable examination conducted in accordance with Prudent Industry Practice prior to the expiration of the Defects Liability Period.

(c) Seller agrees that any examination of the Work undertaken by Buyer at a relevant time shall, in respect of that part of the Work examined, constitute a reasonable examination conducted in accordance with Prudent Industry Practice within the meaning of this Article.

(d) During Latent Defects Liability Period, in the event Seller's OEM issues any notice, including Technical Information Letters, service bulletins or similar notices recommending replacement or repair of one or more parts of the Equipment and such repair or replacement is necessary for continued safe operation of the Equipment or is issued to address a defect in material, or workmanship (each a "Latent Defect"), Seller shall repair or replace the affected parts in accordance with and subject to all the terms of the Warranty provided that Purchaser shall make the affected Work reasonably available for performance of the repairs or modifications and Seller shall cooperate with Purchaser in scheduling such modifications or repairs in order to avoid disruption to Purchaser's operations.

Section 23.11 Significant Defects

(a) Seller warrants and guarantees to Buyer that there will be no Significant Defects.

(b) Consequences of Significant Defects. In the event that a Significant Defect occurs, Seller shall make good the Significant Defect.

ARTICLE 24

LIQUIDATED DAMAGES

Section 24.1 General

The Parties agree that it is difficult or impossible to determine with precision the amount of damages that would be incurred by Buyer as a result of Seller's failure to timely complete the Project or to meet the Guaranteed Substantial Completion Date or Performance Guarantees. Accordingly, the Parties expressly agree that if Seller fails to timely complete the Project or to meet the Guaranteed Substantial Completion Date or the Performance Guarantees, any sums which would be payable under this article 24 because of such failures are liquidated damages and not a penalty, and are fair and reasonable and any such sums represent a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such failures.

Section 24.2 Critical Milestone Guarantee Liquidated Damages

(a) The Project Schedule designates certain times as critical milestones (each a "Critical Milestone") by which Seller represents that each such Critical Milestone will occur by its respective Target Date. While timely completion of each step in the Project Schedule is important to the success of the project, the occurrence of each Critical Milestone by its respective Target Date is of critical importance to completion of the Project in a timely manner consistent with Buyer's vital business interests.

(b) The Parties agree that it will be very difficult to determine the cost to Buyer for late delivery of Critical Milestones; therefore, the Parties agree upon the amounts set forth below, as liquidated damages for such late delivery and not a penalty, as consideration for delay in delivery and the resulting loss of beneficial use of the Work associated with each Critical Milestone. Such amounts being Critical Milestones Liquidated Damages ("Critical Milestone LDs").

(c) For each day of delay after the relevant Target Date in achieving any Critical Milestone, the amounts otherwise payable to Seller pursuant to this Agreement shall be reduced by \$[] per day for each day of delay beyond the relevant Target Date in achieving any Critical Milestone ("Reduction Amount").

(d) The Reduction Amount (i) shall arise independently with respect to each such delay and (ii) shall arise independently with respect to Late Substantial Completion LDs as defined in Section 24.3 ("Liquidated Damages for Delay in Substantial Completion"). At Buyer's option and in its sole discretion, Buyer may either require Seller to pay to Buyer the Reduction Amount or may deduct the Reduction Amount from any monies subsequently payable to Seller.

Section 24.3 Liquidated Damages for Delay in Substantial Completion

If Seller fails to achieve Substantial Completion prior to the Substantial Completion LD Commencement Date, then commencing on the Substantial Completion LD Commencement Date, Seller shall pay Buyer liquidated damages, for each day until Seller achieves Substantial Completion, in an amount equal to (a) fifty thousand Dollars (\$50,000.00) per day if the Project is Dispatchable and (b) one hundred thousand Dollars (\$100,000.00) per day if the Project is not Dispatchable (collectively, "Late Substantial Completion LDs").

Section 24.4 Liquidated Damages for Net Capacity and Net Heat Rate

Seller shall pay liquidated damages in accordance with the terms and conditions set forth in Section 14 of Appendix H as a result of the failure of the Work to achieve the Guaranteed Net Capacity, the Guaranteed Incremental Net Capacity or the Guaranteed Net Heat Rate and the Guaranteed Incremental Net Heat Rate in accordance with the Performance Guarantees. Seller shall be granted the Cure Period to allow remedial actions to be taken to achieve the Guaranteed Net Capacity and the Guaranteed Incremental Net Capacity or the Guaranteed Net Heat Rate and the Guaranteed Incremental Net Heat Rate, prior to Seller's being liable for payment of the liquidated damages as provided in Section 14 of Appendix H.

Section 24.5 Liquidated Damages for Startup and Commissioning

If in connection with startup, commissioning and Performance Testing Seller exceeds ninety (90) Equivalent Starts and/or three hundred (300) Fired Hours per Combustion Turbine, then Seller shall pay to Buyer, in addition to any other Liquidated Damages, and amount equal to (a) Twelve Thousand Dollars (\$12,000) per Equivalent Start in excess of ninety (90) Equivalent Starts for either Combustion Turbine; plus (b) Three Hundred Dollars (\$300) per Fired Hour in excess of three hundred (300) Fired Hours for either Combustion Turbine.

Section 24.6 Calculations and Payments of Liquidated Damages

(a) Unless otherwise set forth in this article 24, all calculations with respect to amounts payable as liquidated damages under this article 24 shall be made by Seller and provided to Buyer within (i) in the case of Section 24.2 ("Critical Milestone Guarantee Liquidated Damages") and Section 24.3 ("Liquidated Damages for Delay in Substantial Completion"), ten (10) Business Days after the final day of each month during which amounts become payable thereunder; and (ii) in the case of Section 24.4 ("Liquidated Damages for Net Capacity") and Section 24.5 ("Liquidated Damages for Startup and Commissioning"), ten (10) Business Days after Buyer's receipt of the Final Performance Test Report, but no later than ten (10) Business Days after the end of any applicable cure period. Buyer shall have the right to audit such calculations. Seller shall itemize such calculations and such calculations shall include supporting documentation as Buyer shall reasonably request and shall be in sufficient detail to permit Buyer to verify each calculation. Buyer shall notify Seller as soon as reasonably possible of any portion of the calculations with which Buyer disagrees.

(b) Liquidated damages shall bear interest at the Late Payment Rate, compounded daily from the date such amount was due, but not to exceed the maximum rate of interest permitted by Applicable Law.

ARTICLE 25

LIMITATIONS OF LIABILITY

Section 25.1 Duty to Mitigate

In all cases, but subject to any right or remedy which the Party may have under or by virtue of this Agreement, the Party establishing or alleging a breach of Agreement or a right to recover pursuant to any Article under this Agreement or a right to be indemnified in accordance with this Agreement shall be under a duty to take all necessary measures to mitigate the loss which has occurred provided that the Party can do so without unreasonable inconvenience or cost.

Section 25.2 Limitation of Buyer's Liability

Subject to the obligation of Seller to pay or allow Liquidated Damages to Buyer under this Agreement, neither Seller nor Buyer shall be liable to the other by way of indemnity or by reason of any breach of this Agreement or of statutory duty or by reason of tort (including negligence but excluding any damages payable to a third party caused by a trespass or nuisance for which Seller is responsible pursuant to this Agreement) for any loss of profit or income, loss of use, loss of production, loss of contracts or for any indirect or consequential, multiple, punitive or exemplary damages that may be suffered by the other.

Section 25.3 Enforceability of Liquidated Damages

(a) Enforceability of Liquidated Damages. If the provisions for the payment of Liquidated Damages in this Agreement are held to be unenforceable, Seller agrees to pay to Buyer all actual damages suffered by Buyer due to the circumstances giving rise to the liability to pay Liquidated Damages (had they been enforceable) including loss of profit or income, loss of use, loss of production, loss of contracts and indirect and consequential damages but subject to the maximum amounts which would have been payable if the Liquidated Damages provisions had been enforceable.

(b) If, however, the provisions for the payment of Liquidated Damages in this Agreement are held to be unenforceable as a result of a claim, objection, defense, dispute or proceedings raised or brought by Seller as part of or during the hearing of which Seller argues that the said provisions are unenforceable on the grounds that such liquidated damages should be construed at law as and/or amount to a penalty as opposed to an argument or suggestion that Seller is not liable to pay Liquidated Damages pursuant to this Agreement, Seller expressly agrees to pay to Buyer all costs, losses and damages whatsoever (including loss of profit, loss of use and loss of production, loss of contracts and indirect and consequential damages) incurred or payable by Buyer arising from or in connection with the circumstances giving rise to the claim for the payment of Liquidated Damages which has been made by Buyer, WHICH PAYMENTS SHALL NOT BE SUBJECT TO ANY CAPS ON LIABILITY.

Section 25.4 Limitations on Liquidated Damages

(a) The aggregate amount of liquidated damages payable by Seller as Reduction Amounts under Section 24.2 (“Critical Milestone Guarantee Liquidated Damages”) shall not exceed, in the aggregate, an amount equal to 5% of the Purchase Price.

(b) The amount of liquidated damages payable by Seller for delays in achieving Substantial Completion under Section 24.3 (“Liquidated Damages for Delay in Substantial Completion”) shall not exceed, in the aggregate, an amount equal to 30% of the Purchase Price.

(c) The amount of liquidated damages payable by Seller attributable to failure to meet the Guaranteed Net Capacity pursuant to Section 24.4 (“Liquidated Damages for Net Capacity”) shall not exceed, in the aggregate, an amount equal to 15% of the Purchase Price.

(d) The amount of liquidated damages payable by Seller attributable to failure to meet the Guaranteed Net Heat Rate pursuant to Section 24.4 (“Liquidated Damages for Net Capacity”) shall not exceed, in the aggregate, an amount equal to 20% of the Purchase Price.

(e) The amount of liquidated damages payable by Seller attributable to failure to meet the startup and commissioning requirements pursuant to Section 24.5 (“Liquidated Damages for Startup and Commissioning”) shall not exceed, in the aggregate, an amount equal to 15% of the Purchase Price.

(f) The amount of liquidated damages under paragraphs (a) through (e) shall not exceed, in the aggregate, an amount equal to 50% of the Purchase Price.

(g) Without prejudice to or limitation of Seller’s liabilities and obligations set forth under paragraphs (a) through (e), all of which shall be in excess of and not subject to the limitation contained in this paragraph (e), the aggregate liability of Seller to Buyer shall not exceed one hundred percent (100%) of the amount of Purchase Price. In calculating the unexpended amounts of Seller’s limitations of liability under this Section, no account shall be taken of any insurance proceeds payable to Seller (whether payable directly to Seller or payable to Seller through Buyer) under insurance coverage obtained by Buyer operate to reduce such unexpended limits of liability unless and to the extent that such proceeds are not paid due to circumstances beyond the control of Seller within a reasonable time following final determination in accordance with the relevant policy of insurance that they are payable. The limitations of liability set out in this Article shall not apply in relation to any failure by Seller to fulfill its obligations due to its gross negligence or willful misconduct under this Agreement.

ARTICLE 26

INDEMNIFICATION

Section 26.1 Indemnification for Third Party Claims

(a) Seller shall defend, indemnify and hold harmless Buyer, its shareholders and Affiliates, and their respective directors, officers, employees and agents, from and against all third party Claims and Liabilities for injury, including death, and property damage caused by, arising

out of, or in connection with the performance by any Project Party of the Transaction Documents to the extent any of such Claims or Liabilities were caused by the negligence, gross negligence or willful misconduct of Seller, the Contractor, any Subcontractor, and its respective employees or agents.

(b) Buyer shall defend, indemnify and hold harmless Seller and its managers, officers, employees and agents, from and against all third party Claims and Liabilities for injury, including death, and property damage caused by, arising out of, or in connection with the performance of the Transaction Documents to the extent any of such Claims or Liabilities were caused by the negligence, gross negligence or willful misconduct of Buyer, its employees or agents.

(c) Either Party seeking indemnification under this Agreement (the “Indemnified Party”) shall give notice to the Party required to provide indemnification hereunder (the “Indemnifying Party”) promptly after the Indemnified Party has actual knowledge of any Claim as to which indemnity may be sought hereunder, and the Indemnified Party shall permit the Indemnifying Party (at the expense of the Indemnifying Party) to assume the defense of any Claim or litigation resulting therefrom; provided that:

(i) counsel for the Indemnifying Party who shall conduct the defense of such Claim or litigation shall be reasonably satisfactory to the Indemnified Party;

(ii) the Indemnified Party may participate in such defense at its own expense, except the Indemnifying Party shall reimburse the Indemnified Party for its participation in such defense to the extent that the Indemnifying Party requests the Indemnified Party to participate in its own defense; and

(iii) the omission by the Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its indemnification obligations hereunder except to the extent that such omission results in a failure of actual notice to the Indemnifying Party and Indemnifying Party is damaged as a result of such failure to give notice.

Notwithstanding the foregoing, the Indemnifying Party may not settle any Claim related to the indemnity being provided hereunder without the consent of the Indemnified Party, such consent not to be unreasonably withheld.

(d) With regard to any Claim or Liability which is the result of the joint or concurrent fault or negligence of Seller and Buyer, the Parties agree to jointly defend any Claim with respect thereto that is based on such joint or concurrent fault or negligence of Buyer and Seller. Any Claim of contribution or indemnification between Buyer and Seller relating to such Claims shall be resolved on the basis of the percentage of fault or negligence and the Parties agree to reserve the determination of such percentage until after resolution of such Claim. Such pro rata share shall be based upon a final judicial determination of the Parties’ comparative fault or negligence or, in the absence of such determination, by mutual agreement.

(e) Nothing in this Section 26.1 is intended to allow any Indemnified Party to be indemnified from and against any third party Claims and Liabilities caused by, arising out of, or in connection with the performance of this Agreement to the extent any of such Claims or Liabilities

were caused by, arose out of, or were in any way incidental to or in connection with its own negligence or intentional misconduct.

Section 26.2 Title Indemnity and Liens

(a) Seller shall promptly pay when due all obligations for labor and material in connection with the Work. Seller shall discharge at once, or bond with a bonding company or surety acceptable to Buyer or otherwise secure against all Liens and attachments which are filed in connection with the Work.

(b) Seller shall keep the Work free and clear of and shall promptly release or cause the release of all Liens, recorded notices, Claims for nonpayment and *lis pendens* filed of record by the Contractor or any Subcontractor.

(c) Seller shall (i) indemnify, defend, and hold harmless Buyer from all laborers', material men's and mechanics' Liens, or Claims made or filed upon the Work, or the property on which the Work is located on account of any labor performed or labor, services, equipment, and materials furnished by Seller's Subcontractors of any tier and all laborers, materialmen, mechanics, and other persons in connection with the work, and (ii) keep the work and said property free and clear of all liens or claims arising from the performance of any Work covered by this Agreement by Seller, its Subcontractors of any tier, and all laborers, materialmen, mechanics and other such persons.

(d) If any Lien arising out of this Agreement is filed before or after Work is completed, Seller, within ten (10) calendar days after receiving from Buyer written notice of such lien, shall obtain release or provide financial assurance satisfactory to Buyer to protect Buyer from or otherwise satisfy such lien. If Seller fails to do so, Buyer may take such steps and make such expenditures as in its discretion it deems advisable to obtain release of or otherwise satisfy any such lien or liens, and Seller shall upon demand reimburse Buyer for all costs incurred and expenditures made by Buyer in obtaining such release or satisfaction.

(e) Seller's obligation to indemnify, defend and hold harmless Buyer from liens shall not in any way be rendered unenforceable, or altered, amended, eliminated or otherwise conditioned by any laws and regulations related to processing such liens. Buyer shall have no obligation to deliver a copy of any notice of claim or right to a lien to Seller or any other person or entity.

(f) If Seller shall default in discharging any Liens, Claims or encumbrances filed or asserted against the Work, Buyer shall promptly provide notice to Seller, and Seller shall then satisfy or defend any such Liens, Claims or encumbrances. If Seller either does not promptly satisfy such Liens, Claims or encumbrances or does not give Buyer reasons satisfactory to Buyer for not paying such Liens, Claims or encumbrances, within fifteen (15) days of Seller's receipt of such notice, Buyer shall have the right, at its option, after providing notice to Seller, to pay or settle such Liens, Claims or encumbrances by agreement, and Seller shall, within fifteen (15) days of request by Buyer, reimburse Buyer for all costs incurred by Buyer to discharge such Liens, Claims or encumbrances, including administrative costs, attorneys' fees and other expenses or Buyer shall have the right to deduct the amount of such costs from the amount payable to Seller.

Seller shall have the right to contest any such Lien, Claim or encumbrance, provided that Seller first provide to Buyer financial assurances in amount, form and substance satisfactory to Buyer and otherwise complies with Applicable Law with respect to removal of Liens.

(g) Seller shall at its own expense defend any suit or proceeding based on any Claim for which Seller is responsible under this Section. Buyer shall give Seller such assistance as Seller may reasonably require in the defense of such suit, and Buyer shall have the right to be represented herein by counsel of its own choosing at its own expense. If Seller fails to defend diligently any such suit or proceeding, Buyer may, in its reasonable discretion, either defend the suit or proceeding or settle the Claim which is the basis thereof without the consent of Seller and without relieving Seller of the obligation to indemnify as provided herein. In such a case Seller's obligation to defend shall include reimbursement of Buyer's reasonable legal fees and related costs incurred in defending or settling the suit.

Section 26.3 Indemnity Period

Seller's obligation to indemnify Buyer consistent with the provisions of this article 26 shall continue after the closing in accordance with the following (collectively, the "Indemnity Period"):

(a) With respect to Claims and Liabilities brought by third parties, Seller's obligation to indemnify Buyer shall continue for a period of two years following the Closing Date.

(b) With respect to Claims and Liabilities relating to the title of the Site, Project, or the Work, Seller's obligation to indemnify Buyer shall continue indefinitely.

(c) With respect to all other Claims and Liabilities, Seller's obligation to indemnify Buyer shall continue for a period of eighteen months following the Closing Date.

ARTICLE 27

INSURANCE

Section 27.1 Contractor's and Subcontractors' Insurance Coverage

Seller shall maintain and shall require and cause the Contractor and all Subcontractors, while performing work on the Site, to provide, pay for and continuously maintain in full force and effect with insurers having an A.M. Best Insurance Reports rating of A-:VII or better the following insurance coverages:

(a) Employers' Liability insurance with a minimum limit of \$1,000,000.

(b) Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 with \$3,000,000 annual aggregate to protect against and from all loss by reason of injury to persons or damage to property based upon and arising out of the work performed under this Agreement.

(c) Umbrella or Excess Liability insurance with minimum limits of \$10,000,000 per occurrence and \$10,000,000 annual aggregate to cover claims in excess of the underlying limits for Employer's Liability, General Liability, and Automobile Liability.

(d) Business Automobile Liability insurance with a minimum single limit of \$1,000,000 for bodily injury and property damage with respect to Seller's vehicles whether owned, hired or non-owned, assigned to or used by Seller in the performance of the work.

(e) Professional Liability insurance (Errors and Omissions) with a minimum single limit of \$1,000,000 to cover claims arising out of Consultant's professional services hereunder. This policy shall be maintained until one year after Buyer's acceptance of Consultant's work..

(f) Transit and Installation insurance with a minimum single limit of \$500,000 to cover damage to property and other claims arising out of the loading, unloading, transportation, lifting, lowering, or other handling of such property.

(g) For Commercial General Liability insurance, the policy shall include:

(i) Provisions or endorsements naming Buyer, its Board of Directors, officers and employees as additional insured;

(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.

(h) All policies, except professional liability and transit and installation, shall include provisions that such insurance is primary insurance with respect to the interests of Buyer and that any other insurance maintained by Buyer 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:

(i) Ten (10) days' prior written notice to Buyer if canceled for nonpayment of premium

(ii) Thirty (30) days' prior written notice to Buyer if canceled for any other reason.

(iii) A certificate in a form satisfactory to Buyer certifying to the issuance of such insurance shall be furnished to Buyer and included at Exhibit H.

(i) Commercial general liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate.

(j) If requested by Buyer, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to Buyer.

(k) 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 any award and for such other length of time necessary to cover liabilities arising out of the work.

(l) 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 Work.

(m) Seller shall ensure that the Contractor and each and every Subcontractor maintains in full force and effect the insurance coverage and limits required under this Section 27.1 (“Contractor’s Insurance”) at all times on and after the commencement of the Work and continuing until the Closing Date, unless otherwise indicated herein. The coverage under Contractor’s Insurance shall be primary to the extent of the Contractor’s obligations to indemnify Seller and Buyer without regard to other insurance available to Buyer. Within thirty (30) days prior to the commencement of the Work at the Site, Seller shall provide Buyer applicable insurance certificates of such coverage completed by duly authorized representatives of the insurer certifying that (a) the coverages required hereunder are in effect, and (b) the coverages will not be canceled, nonrenewed or materially changed by endorsement or through issuance of other policies of insurance without thirty (30) days’ prior notice to Seller and Buyer. The acceptance by Buyer of Seller’s delivery of any certificate of insurance evidencing the insurance coverages and limits required hereunder shall not be deemed to constitute approval or agreement that (i) the insured party has satisfied the insurance requirements set forth herein or (ii) the insurance policies described in such certificates of insurance comply with such requirements.

(n) If Seller fails to require the Contractor and the Subcontractors to maintain the insurance required hereunder, Buyer shall have the right, but not the obligation, to purchase such insurance at Seller’s expense.

(o) The Contractor’s insurance carrier and the Subcontractors or Subcontractors’ insurance carriers shall use commercially reasonable efforts to provide Seller and Seller will provide Buyer written notice of cancellation, termination or material alteration.

(p) Anything in this Agreement to the contrary notwithstanding, the occurrence of any of the following shall in no way relieve Seller from any of its obligations under this Agreement; (a) failure by the Contractor or any Subcontractor to procure the insurance required by this Agreement; (b) failure by the Contractor or any Subcontractor to comply fully with any of the insurance provisions of this Agreement; (c) failure by the Contractor or any Subcontractor to secure such endorsements on the policies as may be necessary to carry out the terms and provisions of this Agreement; (d) the insolvency, bankruptcy or failure of any insurance company providing insurance to the Contractor or any Subcontractor; or (e) failure of any insurance company to pay any claim accruing under its policy.

(q) In the event that liability for any loss or damage is denied by the underwriter or underwriters in whole or in part due to the breach of said insurance by the Contractor or any Subcontractors, or for any other reason attributable to the Contractor or any Subcontractor, or if the Contractor or any Subcontractor fails to maintain any of the insurance herein required, then Seller shall defend, indemnify and hold Buyer harmless against all losses which would otherwise have been covered by said insurance.

Section 27.2 Buyer's Insurance

(a) Owner shall procure at its own expense and maintain in full force and effect during the life of this Contract, with responsible insurance companies authorized to do business in the State of Utah, the types and limits of insurance as set forth below. Such companies shall have an A.M. Best Insurance Reports rating of A-:VII or better. Buyer, at its own cost, may purchase any additional insurance it believes necessary to protect its interests.

(b) Builder's All-Risk Insurance. Effective the earlier of 1) the point of groundbreaking at the Site or 2) the date of the first shipment of any Material, Equipment, supplies or other elements of the Work, Buyer shall obtain and thereafter at all times during performance of the Work, maintain Builder's All-Risk Insurance. Coverage shall remain in effect until replaced by permanent property insurance which will be placed by Buyer upon Final Completion. Such Builder's All-Risk Insurance shall insure as an insured, Seller, Contractor, their respective affiliates and Subcontractors of any tier, Buyer and its affiliates, and shall cover all property in the course of construction, including the Work, Materials and Equipment, miscellaneous equipment and furnishings (other than equipment covered under Seller's or Contractor's equipment floater), from physical loss or damage caused by perils covered by a Builder's All-Risk form or equivalent coverage. Such insurance shall include mechanical and electrical breakdown coverage during start-up and testing, and other operations of the Project prior to Final Completion. The limit of liability shall be the full replacement cost of the Work including primary cost of equipment plus freight. The required deductible for all such insurance shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000), except as noted below, and except during the Performance Testing, when the applicable deductibles shall be \$500,000 per occurrence, or in the case of turbine/generator units \$1,000,000 per occurrence. The Builder's All-Risk coverage shall not contain an exclusion for resultant damage caused by faulty workmanship, design or materials. Buyer and Seller agree, and Seller shall require Contractor and all Subcontractors to agree, to waive all rights of recovery against each other for damages caused by fire and/or other perils to the extent covered by the "All Risk" policy.

(c) The following additional coverages shall be provided:

(i) Flood coverage with a sublimit of \$25,000,000 per occurrence and in the aggregate, with a deductible of 5% of the values at risk at the time of loss, subject to a deductible of \$1,000,000;

(ii) Expediting expense with a sublimit of \$10,000,000 except \$5,000,000 for air-freight per loss;

(iii) Earthquake coverage with a sublimit of \$25,000,000 per occurrence and in the aggregate, with a deductible of 5% of the values at risk at the time of loss, subject to a deductible of \$1,000,000;

(iv) Coverage for Equipment and Material at laydown areas or temporary storage off of the actual construction site (including freight expense) with a sub-limit of \$25,000,000 per location. Should the values at risk at any location exceed this sublimit, Seller shall secure such additional coverage as may be required to insure the full values then at risk at its own cost;

(v) Removal of debris with a sublimit of 10% of Project value, subject to \$25,000,000 maximum per loss; and

(vi) Transit coverage with a \$15,000,000 limit for turbines and generators only and a \$5,000,000 limit for all other property including ocean and air transit if any Equipment is to be moved by vessel or aircraft, with sublimits sufficient to insure the full replacement value. Coverage shall protect the interest of Seller and of Buyer, and their directors, officers, employees and agents.

(d) Endorsements. Buyer's insurance policies shall be endorsed to provide that Seller, Contractor and its Subcontractors, and their respective officers, directors and employees shall be named as additional insured with a waiver of insurer's right of subrogation. In addition, Seller, Contractor and its Subcontractors shall be extended the benefit of any operating property insurance, including being named additional insured and a waiver of insurer's right of subrogation through Final Completion.

Section 27.3 Waiver of Rights

In regards to any property insurance maintained by any Party, each such Party shall waive all rights of recovery and subrogation against the other Party.

Section 27.4 Seller's Cooperation with Buyer

(a) Seller agrees to cooperate with and assist Buyer, as reasonably requested by Buyer, in Buyer's procurement of any insurance required by this Agreement or otherwise to be procured in connection with the Project.

(b) Seller agrees to provide such assistance and documentation as Buyer may request in connection with Claims Buyer may make under its insurance policies purchased in connection with the Project for damage or events that occur after the Effective Date and prior to the expiration of the applicable warranty period.

ARTICLE 28

FORCE MAJEURE

Section 28.1 Effect of Force Majeure

Neither Party shall be considered to be in default or in breach of its obligations under this Agreement to the extent that performance of such obligations is prevented by any event of Force Majeure arising after the date of this Agreement.

Section 28.2 Notice of Occurrence

If either Party considers that any event of Force Majeure has occurred which may affect performance of its obligations under this Agreement, it shall promptly notify the other Party thereof stating the full particulars and anticipated duration of the event and the performance obligations that will be affected by the event.

Section 28.3 Performance to Continue

Upon the occurrence of any event of Force Majeure, Seller shall use commercially reasonable efforts to continue to perform its obligations under this Agreement. Seller shall notify Buyer of the steps Seller proposes to take, including any reasonable alternative means for performance, which is not prevented by Force Majeure. Seller shall not take any such alternative steps unless directed so to do by Buyer pursuant to a Change Order. In any such case, Seller shall use reasonable efforts to mitigate all such costs and impacts on the schedule for performance and on the Guaranteed Substantial Completion Date.

Section 28.4 Termination in Consequence of Force Majeure

If circumstances of Force Majeure have occurred that have materially affected the Work and have continued for a period of forty-five (45) days in the aggregate, and there is a corresponding delay in the schedule for performance and the Guaranteed Substantial Completion Date of forty-five (45) days in the aggregate caused by the Force Majeure, then, notwithstanding that Seller may by reason thereof have been granted an extension of the schedule for performance and the Guaranteed Substantial Completion Date, by Change Order, Buyer shall be entitled to provide notice of its intent to terminate this Agreement upon thirty (30) days notice to Seller. If at the expiration of such thirty (30)-day period such Force Majeure shall still continue, Buyer may elect to terminate this Agreement.

Section 28.5 Risk of Loss

Prior to termination of this Agreement, nothing in this article 28 shall change the allocation to Seller of the risk of loss or damage prior to the Closing Date, and any Change Order or payment to Seller resulting from a Force Majeure shall take into account such allocation of the risk of loss or damage.

ARTICLE 29

DEFAULT

Section 29.1 Seller's Default

Seller shall be in default ("Seller Default") hereunder if:

- (a) A Project Party fails in any material respect to comply with its obligations under the Transaction Documents; provided, however, that if all material adverse consequences of a breach of an obligation can be cured or remedied by Seller within a period of thirty (30) days after such breach, such breach shall not become a Seller Default until thirty (30) days after such breach;
- (b) A Project Party assigns the Transaction Documents to which it is a party other than as permitted both hereunder and thereunder;
- (c) A Project Party shall commence a voluntary case under the Bankruptcy Code; file a petition seeking to take advantage of any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts; consent to or fail to contest in a timely and appropriate manner any petition filed against it in an insolvency case under such bankruptcy laws or other laws; apply for, or consent to or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian,

trustee, liquidator or the like of itself or of a substantial part of its assets; admit in writing its inability to pay, or generally not be paying, its debts (other than those that are the subject of bona fide disputes) as they become due; make a general assignment for the benefit of creditors; take any action for the purpose of effecting any of the foregoing; or a case or other proceeding shall be commenced by a third party against a Project Party seeking (i) relief under the Bankruptcy Code or under any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts or (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of such Project Party of all or any substantial part of its assets, and such case or proceeding shall continue undismissed or unstayed for a period of sixty (60) days;

(d) any representation or warranty made by Seller for which an express remedy is not provided shall prove to have been false in any material respect as of the date made;

(e) any Judgment shall be entered against any Project Party (i) decreeing such Person's involuntary dissolution or split up or (ii) any (x) such Judgment shall award non monetary relief which results in a Material Adverse Change or (y) such Judgment shall award monetary damages in an amount of (I) \$_____ with respect to Seller or (II) with respect to Project Parties other than Seller, such Judgment shall award monetary damages in an amount that would cause a Material Adverse Change;

(f) as a result of an act or omission of any Project Party, any of the Security Documents shall for any reason cease to be in full force and effect, or shall cease to give Buyer the Liens, rights, powers and privileges purported to be created thereby in any material respect. At any time, as a result of an act or omission of any Project Party, Buyer shall fail to have a first priority perfected security interest in all the Collateral;

(g) a Material Adverse Change shall have occurred and be continuing, unless such Material Adverse Change is a result of an act or omission of Buyer; or

(h) Seller fails to pay liquidated damages to Buyer or to the Substantial Completion LD Delay Account when due, except to the extent such payments are being disputed in good faith.

Section 29.2 Buyer's Default

Buyer shall be in default ("Buyer's Default") hereunder if:

(a) Buyer fails to pay Seller any undisputed amount due Seller under article 2 ("Sale of Assets") or article 3 ("Terms for Progress Payments"), and fails to cure such default within ten (10) Business Days after receiving notice of default from Seller;

(b) Buyer has failed in any material respect to comply with its other material obligations under this Agreement; provided, however, that if all material adverse consequences of a breach of an obligation can be cured or remedied by Buyer within a period of thirty (30) Business Days after such breach, such breach shall not become a Buyer's Default until thirty (30) Business Days after such breach;

(c) Buyer shall commence a voluntary case under the Bankruptcy Code; file a petition seeking to take advantage of any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts; consent to or fail to

contest in a timely and appropriate manner any petition filed against it in an insolvency case under such bankruptcy laws or other laws; apply for, or consent to or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or the like of itself or of a substantial part of its assets; admit in writing its inability to pay, or generally not be paying, its debts (other than those that are the subject of bona fide disputes) as they become due; make a general assignment for the benefit of creditors; take any action for the purpose of effecting any of the foregoing; or a case or other proceeding shall be commenced by a third party against Buyer seeking (i) relief under the Federal bankruptcy laws (as now or hereafter in effect) or under any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts or (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of Buyer of all or any substantial part of its assets, and such case or proceeding shall continue undismissed or unstayed for a period of sixty (60) days;

(d) any representation or warranty made by Buyer in this Agreement for which an express remedy is not provided shall have been false in any material respect as of the date made;

(e) any suspension of the Work requested by Buyer continues for more than thirty (30) days, and Buyer and Seller are unable to agree on a Change Order, unless such dispute is being resolved under article 32 (“Claims, Claim Notice and Dispute Resolution”).

Section 29.3 Removal of Seller’s Equipment

Upon termination due to Buyer’s default, Seller shall be entitled to remove during normal working hours all the Seller Equipment which are on the Site. Prior to removing any Seller Equipment from the Site Seller shall provide to Buyer a detailed list of Seller Equipment to be removed. No equipment shall be Seller Equipment unless it is included in the then-current list approved pursuant to Section 12.1 (“Seller’s Equipment”).

Section 29.4 Remedies on Default

(a) Step-In Rights. During the occurrence and continuance of any Seller Default or occurrence of any event described in Section 30.1(b) (“Termination by Buyer”), and in addition to any other rights Buyer may have hereunder or at law or in equity, Buyer shall have the right, but not the obligation, take all actions necessary to perform any and all work and labor it deems necessary to complete, operate or maintain the Project in accordance with the terms of this Agreement, including causing Seller to vacate the Project and surrender possession of the Project and all proprietary information, Equipment, spare parts and other supplies located at the Project to Buyer. If Buyer at any time exercises its rights under this Section 29.4(a), Buyer shall be relieved of its obligations of payment during such time as it is exercising its right under this Section, and shall be entitled to recover all costs incurred by Buyer, plus 20% for general and administrative costs in connection with work performed during that time. Notwithstanding the foregoing, nothing set forth in this Section shall excuse Seller of its obligations to remedy its default and perform its obligations hereunder.

(b) Cure Rights. During the occurrence and continuance of any Seller Default or occurrence of any event described in Section 30.1(b) (“Termination by Buyer”) and upon receipt

of any notice that Seller is in default of any of its obligations under any of the Project Documents, and in addition to any other rights Buyer may have hereunder or at law or in equity, Buyer shall have the right, but not the obligation, to cure any default of Seller under any Transaction Document. If Buyer at any time exercises its right under this Section 29.4(b), Buyer shall be relieved of its obligations of payment during such time as it is exercising its right under this Section. Notwithstanding the foregoing, nothing set forth in this Section shall excuse Seller of its obligations to remedy its default and perform its obligations hereunder.

(c) Buyer Rights Following Termination due to a Seller Default. Upon termination of this Agreement pursuant to Section 30.1(b) (“Termination by Buyer”), Buyer may, but shall not be obligated to:

(i) remove Seller from the Site with risk of loss of the Work transferring to Buyer. In addition, Buyer may, but shall not be obligated to, require Seller, at no additional cost to Buyer, to take all steps necessary or requested by Buyer to assign Seller’s rights and obligations under the Transaction Documents and Governmental Approvals identified by Buyer to Buyer and to transfer to Buyer all other property, whether tangible or intangible, in which Seller has rights which is necessary or desirable for the development, construction ownership or operation of the Project at Seller’s actual cost;

(ii) in addition to the foregoing, upon the occurrence and during the continuance of any Seller Default, Buyer may exercise all of its rights as a secured party, under the Security Documents or under applicable Law or otherwise (and all remedial provisions in the Security Documents are hereby incorporated by reference); and

(iii) pursue any and all remedies available at law or in equity.

ARTICLE 30

TERMINATION

Section 30.1 Termination by Buyer

(a) Default Termination Rights. Upon the occurrence or continuation of a Seller Default, Buyer may elect to terminate this Agreement as follows:

(i) with respect to a Seller Default described in subsection 29.1(c), immediately terminate this Agreement and remove Seller from the Site with risk of loss of the Work transferring to Buyer as provided in Section 29.4(c) hereof; and

(ii) with respect to a Seller Default described in any subsection other than subsection (c) of Section 29.1 (“Seller’s Default”), after having given notice to Seller of such Seller Default and Seller’s having failed to cure such Seller Default within the cure period specified in such subsection, or, if no cure period is specified, then fourteen (14) days after such notice, terminate this Agreement.

(b) Voluntary Termination. Following the achievement by Seller of the Notice to Proceed Milestone, Buyer may elect to terminate this Agreement at any time without cause upon not less than thirty (30) days' notice to Seller.

Section 30.2 Termination by Seller

(a) Default Termination Rights. Upon the occurrence or continuance of a Buyer Default, Seller may elect to terminate this Agreement as provided in this Section 30.2.

(i) with respect to a Buyer's Default described in Section 29.2(c), immediately terminate this Agreement; and

(ii) with respect to a Buyer's Default described in any subsection other than Section 29.2(c), after having given notice to Buyer of such default and Buyer having failed to cure such Buyer's Default within the cure period specified in such subsection, or, if no cure period is specified, then fourteen (14) Business Days after such notice, terminate this Agreement.

(b) Suspension Termination Rights. Seller may elect to terminate this Agreement due to Suspension of the Work as provided in Section 16.1(b) ("Order to Suspend").

Section 30.3 Procedures Following Termination by Seller or due to Force Majeure

(a) Upon any termination of this Agreement pursuant to Section 28.4 ("Termination in Consequence of Force Majeure"), Section 30.1(b) ("Voluntary Termination") or Section 30.2(a) ("Default Termination Rights"), the following provisions shall apply: (i) Buyer shall pay to Seller the amount, if any, by which the applicable termination amount set forth in Appendix I corresponding to the effective date of the termination (partial month to be appropriately pro-rated) exceeds the cumulative payments made by Buyer prior to such date; (ii) at Buyer's option, title (to the extent not already transferred) and risk of loss to some or all of the Site and the Materials shall transfer to Buyer; and (iii) Buyer shall be responsible for, as applicable, any transportation, storage and insurance of and for the Materials for which Buyer has elected to take title.

(b) In addition to the foregoing, upon any such termination of this Agreement pursuant to Section 28.4 ("Termination in Consequence of Force Majeure"), Section 30.1(b) ("Voluntary Termination") or Section 30.2(a) ("Default Termination Rights") the following provisions shall apply: Buyer may, but shall not be obligated to, at no additional cost to Buyer (i) require that Seller take all steps necessary or requested by Buyer to assign its rights and obligations under the Transaction Documents and Governmental Approvals identified by Buyer to Buyer and to transfer to Buyer all other property, whether tangible or intangible, in which Seller has rights which is necessary or desirable for the development, construction ownership or operation of the Project and (ii) exercise all of Seller's rights including the right to request performance under and to enforce any and all rights to, the Collateral, as provided in the Security Documents (and all remedial provisions in the Security Documents are hereby incorporated by reference); and (iv) enter onto the Site and to remove all Materials for which it has elected to take title.

Section 30.4 Exclusivity

THE RIGHTS AND REMEDIES OF SELLER SET FORTH HEREIN FOR DEFAULT AND TERMINATION ARE EXCLUSIVE AND NO OTHER REMEDIES OF ANY KIND WHATSOEVER SHALL APPLY IN THE EVENT OF SUCH DEFAULT AND TERMINATION.

ARTICLE 31

TAXES

Section 31.1 Buyer's Obligation

In addition to the Purchase Price, Buyer shall be obligated to pay the amount of any property, privilege, license, sales, use, excise, gross receipts, value added, privilege or similar taxes or assessments applicable to the sale of the Work or to the use of the Work. Seller shall use all reasonable efforts to minimize the amount of such taxes and assessments payable by Buyer. All real or personal property taxes related to the Project shall be paid by Buyer and shall not be apportioned at the Closing.

Section 31.2 Seller's Obligation

Seller have included in the Purchase Price the amount of any customs duties, and related customs broker fees and charges or similar charges, for delivery of any components to the United States from countries outside of the United States and transportation to the Site. Seller shall be liable for all payroll and other employee related taxes and costs, for all property taxes related to the Site prior to Closing and for all taxes based on its income. Contractor shall cooperate with Buyer's reasonable requests with respect to any challenge that Buyer elects to make with respect to any taxes imposed in connection with the Project.

ARTICLE 32

CLAIMS, CLAIM NOTICE AND DISPUTE RESOLUTION

Section 32.1 Claims

(a) Submission of Claims

(i) In the event Seller has a claim or request for a time extension, additional compensation, any other adjustment of the Agreement terms and conditions, or any dispute arising out of the Work (each a "Claim"), Seller shall notify Buyer in writing within five (5) Business Days following the occurrence of the event giving rise to the Claim. Seller's failure to give notice as required will constitute a waiver of all of Seller's rights with respect to the Claim.

(ii) As soon as practicable after Claim notification, Seller shall submit the Claim to Buyer with all supporting information and documentation. Seller shall also respond promptly to all Buyer inquiries about the Claim and its basis.

(iii) Any Claim which is not disposed of by mutual agreement between the Parties shall be decided by Buyer, which shall provide a written decision to Seller. Such decision shall be final unless Seller, within thirty (30) days after such receipt of Buyer's decision, provides to Buyer a written protest, stating clearly and in detail the basis thereof, and such protest shall be resolved in accordance with Section 32.2 ("Dispute Resolution"). It is agreed that Seller's failure to protest Buyer's decision shall constitute a waiver by Seller of its Claim.

(iv) Seller shall continue its performance of this Agreement notwithstanding the submission of any Claim.

(b) Notification Prior to Incurring Costs. In any circumstances which might give rise to a claim pursuant to this Article, Seller shall, before incurring any cost or expense, first give Buyer every opportunity to determine whether the cost or expense should be incurred or whether any act or forbearance shall or might mitigate the cost of any such claim.

(c) Buyer's Liability to Pay Claims. Buyer shall not be liable to make payment in respect of any claim for an additional payment unless Seller has complied with each and all of the requirements of this article 32, whether as to the time within which claims must be made and/or information provided or otherwise, it being acknowledged and agreed that the absence of complete compliance herewith will involve significant prejudice to Buyer.

Section 32.2 Dispute Resolution

All disputes in connection with this Agreement between Buyer and Seller or between Buyer and any Transaction Party shall be settled, if possible, by negotiation of Buyer Representative and Seller Representative. If the matter is not resolved by such negotiations, either party may, by giving written notice to the other party, cause the matter to be referred to a meeting of a Buyer Senior Procurement Representative and Seller's Management Representative. Such meeting shall be held within fifteen (15) days following the giving of the written notice. If the matter is not resolved by such negotiations, either party may, by giving written notice to the other party, cause the matter to be referred to a meeting of appropriate higher management representatives of the parties. Such meeting shall be held within thirty (30) days following the giving of the written notice. If the matter is not resolved within thirty (30) days after the date of the notice referring the matter to the appropriate high management or such later date as may be mutually agreed upon, the parties may then, subject to the terms of this Agreement, commence legal action in court of competent jurisdiction in order to resolve the dispute.

ARTICLE 33

ASSIGNMENT

Section 33.1 Assignment of Seller's Interests

Seller shall not assign any of its rights and obligations hereunder, except with Buyer's prior written consent.

ARTICLE 34

CONFIDENTIALITY

Section 34.1 Confidentiality

(a) It is understood that certain information may be exchanged among Buyer and Seller that the disclosing Party considers proprietary and confidential. Each Party agrees that it shall (and shall cause its Affiliates and its and their officers, directors, consultants, employees, legal counsel, agents and representatives (together with the Affiliates, the “Confidentiality Affiliates”) to): (i) hold confidential and not disclose other than to its Confidentiality Affiliates having a reasonable need to know in connection with the permitted purposes hereunder, without the prior consent of the other Party, all confidential or proprietary written information which is marked confidential or proprietary or oral information or data which is reduced to writing within five (5) days of such disclosure and marked as confidential or proprietary (including sources of equity and/or other financing, development strategy, competitor information, cost and pricing data, warranties, technical information, research, developmental, engineering, manufacturing, marketing, sales, financial, operating, performance, business and process information or data, know how and computer programming and other software techniques) provided or developed by the other Party or its Confidentiality Affiliates in connection herewith or the Work (“Confidential Information”); and (ii) use such Confidential Information only for the purposes of performing its obligations hereunder or where reasonably necessary to enjoy the benefits of this Agreement. In no event shall any Confidential Information be disclosed to any competitor of Seller or Buyer.

(b) The obligations contained in the preceding paragraph shall not apply, or shall cease to apply, to Confidential Information if or when, and to the extent that, such Confidential Information (i) was known to the receiving Party or its Confidentiality Affiliates prior to receipt from the disclosing Party or its Confidentiality Affiliates; (ii) was, or becomes through no breach of the receiving Party’s obligations hereunder, known to the public; (iii) becomes known to the receiving Party or its Confidentiality Affiliates from other sources under circumstances not involving any breach of any confidentiality obligation between such source and the disclosing Party’s or discloser’s Confidentiality Affiliates or a third party; (iv) is independently developed by the receiving Party or its Confidentiality Affiliates; or (v) is required to be disclosed by law, governmental regulation or applicable legal process. Seller acknowledges that Buyer is subject to regulation as a public utility, and as such may be required to disclose all or substantially all information provided by Seller pursuant to this Agreement by order of state and federal regulators, and that such disclosure shall in no event be deemed a violation of this Section 34.1. As to Confidential Information that is not a trade secret under Applicable Law, the foregoing obligations shall expire three (3) years after the Closing Date.

(c) When required by the appropriate Governmental Authority, a Party may disclose the Confidential Information of the other Party to such Governmental Authority provided, however, that prior to making any such disclosure, such Party shall: (i) provide the owning Party with timely advance notice of the Confidential Information requested by such Governmental Authority and the intent of such Party to so disclose; (ii) minimize the amount of Confidential Information to be provided consonant with the interest of the owning Party, Seller, the Contractor, and each and every Subcontractor and the requirements of the Governmental Authority involved;

and (iii) make every reasonable effort (which shall include participation by the owning Party, Seller, Contractor or any Subcontractor, as applicable in discussions with the Governmental Authority involved) to secure confidential treatment and minimization of the Confidential Information to be provided. In the event that efforts to secure confidential treatment are unsuccessful, the owning Party shall have the prior right to revise such information to minimize the disclosure of such Confidential Information in a manner consonant with its interest and the requirements of the Governmental Authority involved.

(d) Buyer's disclosure of Seller Drawings and Manuals to third parties in accordance with its obligations hereunder shall not be a breach of this article 34.

ARTICLE 35

MISCELLANEOUS PROVISIONS

Section 35.1 Notices, Consents and Approvals

Contact information for notices, requests, demands and other communications required or permitted hereunder is as follows:

(a) if to Seller, to:

with copies to:

or to such other person or address as Seller shall furnish to Buyer;

(b) if to Buyer, to:

PacifiCorp
825 NE Multnomah, Suite 600
Portland, Oregon 97232-2315
Attn: _____

Tel: _____

Fax: _____

with copies, in connection with default notices, to:

or to such other person(s) or address(es) as Buyer furnishes to Seller from time to time.

(c) All notices, including, acceptances, consents, approvals, agreements, deliveries of information, designations, requests, demands and other communications required or permitted hereunder shall be in writing, properly addressed as provided in paragraph (a) above, and given by (i) hand delivery, (ii) a national overnight courier service, (iii) confirmed facsimile transmission, followed by a hard copy, or (iv) certified or registered mail, return receipt requested, and postage prepaid. Any such notice or other communication shall be deemed to have been duly given as of the date delivered if by hand delivery, national overnight courier service or confirmed facsimile transmission (provided a hard copy promptly follows by other means provided herein), or five (5) calendar days after mailing if by certified or registered mail.

Section 35.2 Entire Agreement

This Agreement, together with the appendices and exhibits delivered in connection with it, contains the entire agreement and understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral, of the Parties relating to the subject matter hereof. Any oral or written representation, warranty, course of dealing or trade usage not contained or referenced herein shall not be binding on either Party.

Section 35.3 Amendment; Waiver

No amendment or other modification of any provision of this Agreement shall be valid or binding unless it is signed by each of the Parties. No waiver of any provision of this Agreement shall be valid or binding unless it signed by the Party waiving compliance with such provision. No delay on the part of either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver or any partial exercise of any such right, power or privilege preclude any further exercise thereof or the exercise of any other such right, power or privilege. No waiver of any breach, term or condition of this Agreement by any Party shall constitute a subsequent waiver of the same or any other breach, term or condition.

Section 35.4 Successors and Assigns

Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the Parties hereto and, to the extent permitted by this Agreement, their respective successors and assigns.

Section 35.5 Third Party Beneficiaries

The provisions of this Agreement shall only be for the benefit of, and enforceable by, the Parties hereto and shall not inure to the benefit of or be enforceable by any third party.

Section 35.6 Severability

In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

Section 35.7 Further Assurances

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

Section 35.8 Publicity

Except as required by law, Seller agrees that Seller will not issue or release for external publication any press release, Article, advertising or other publicity matter in any form (including print, electronic, or interview) relating to the Project, or to this Agreement without first consulting with and obtaining the prior consent of Buyer, which consent shall not be unreasonably withheld or delayed.

Section 35.9 Independent Contractor

Seller is an independent contractor with respect to the Work, and each part thereof, and in respect of all work to be performed hereunder. Neither Seller, the Contractor, nor any Subcontractor, the employees of any of such entities, employed in connection with the Work shall be deemed to be agents, representatives, joint ventures, employees or servants of Buyer by reason of their performance hereunder or in any manner dealt with herein. Neither Party shall perform any act or make any representation to any Person to the effect that Seller, or any of its agents, representatives, the Contractor or Subcontractors, is the agent of Buyer.

Section 35.10 Survival

The provisions of Articles 4 (“Representations and Warranties of Seller”), 12 (“Seller’s Equipment”), 23 (“Warranties”), 24 (“Liquidated Damages”), 25 (“Limitations of Liability”), 26 (“Indemnification”), 27 (“Insurance”), 32 (“Claims, Claim Notice and Dispute Resolution”), and 34 (“Confidentiality”), and Sections 6.2 (“Security”), 7.10 (“Contractor Drawings and Manuals”), 7.13 (“Intellectual Property Rights and Computer Program Licenses”), Section 7.22 (“Maintenance of Buyer’s Lien”), Section 7.25 (“Other Liens”), 7.29 (“Environmental Matters”), 7.30 (“Records and Accounts”), 7.33 (“Construction Coordination Agreement”), 9.1 (“Site Regulations”), 9.2 (“Site Security”), 9.9 (“Cleanup”), 15.6 (“Buyer’s Use of Drawings”), 15.7 (“Manufacturing Drawings”), 22.4 (“Liability”), 29.3 (“Removal of Seller’s Equipment”), and 35.11 (“Governing Law; Waiver of Jury Trial”) of this Agreement shall survive the expiration or earlier termination of this Agreement indefinitely, provided that the foregoing enumeration shall not be interpreted to bar survival of any other provision hereof which would otherwise be deemed to survive by operation of law.

Section 35.11 Governing Law; Waiver of Jury Trial

(a) THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH (WITHOUT GIVING EFFECT TO THE PRINCIPLES THEREOF RELATING TO CONFLICTS OF LAW).

(b) EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER TRANSACTION

DOCUMENT OR ANY MATTER ARISING HEREUNDER OR THEREUNDER. 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 TRANSACTION DOCUMENT OR ANY MATTER ARISING HEREUNDER OR THEREUNDER IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

Section 35.12 Counterparts

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

Section 35.13 Captions

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

Section 35.14 Consent Agreements

Seller agrees to cooperate with Buyer's efforts to obtain on a timely basis such direct agreements, consents, opinions and related documents from Project Parties or any of Seller's counterparties to any Additional Project Document as may be reasonably requested by Buyer, its financing parties, or any entity that is Controlled by or is under common Control with Buyer.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Agreement as of the first date set forth above:

PACIFICORP,
as Buyer

By: _____

Print Name: _____

Title: _____

Attest:

By: _____

Print Name: _____

Title: _____

[_____, LLC],
as Seller

By: _____

Print Name: _____

Title: _____

Attest:

By: _____

Print Name: _____

Title: _____

TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS AND INTERPRETATION.....	2
Section 1.1 Defined Terms	2
Section 1.2 Interpretation.....	2
ARTICLE 2 SALE OF ASSETS.....	2
Section 2.1 Sale and Transfer of Project by Seller	2
Section 2.2 Purchase Price.....	4
Section 2.3 Closing.....	5
Section 2.4 Assumption of Liabilities	6
Section 2.5 Further Assurances	6
Section 2.6 Conditions to Buyer’s Obligation to Close.....	6
Section 2.7 Conditions to Seller’s Obligations to Close.....	7
ARTICLE 3 TERMS FOR PROGRESS PAYMENTS.....	7
Section 3.1 Terms	7
Section 3.2 Conditions Precedent	8
Section 3.3 Notice of Request for Progress Payment	9
ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF SELLER.....	12
Section 4.1 Organization, Standing and Power	12
Section 4.2 Capital Structure	12
Section 4.3 Authority; Execution and Delivery: Enforceability.....	12
Section 4.4 Validity of Agreement; No Conflict.....	13
Section 4.5 Governmental Approvals and Consents	13
Section 4.6 No Proceedings.....	14
Section 4.7 Compliance	14
Section 4.8 Taxes.....	14
Section 4.9 Environmental Matters	15
Section 4.10 Title to Properties	16
Section 4.11 Real Estate	16
Section 4.12 Transaction Documents; Representations and Warranties in Transaction Documents	16
Section 4.13 Sufficiency of Assets	17
Section 4.14 Water Rights	17
Section 4.15 Emission Reduction Credits	18
Section 4.16 Discharge Permit	18
Section 4.17 Security Interests and Liens.....	18
Section 4.18 No Defaults.....	18
Section 4.19 Expertise	18
ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BUYER.....	19
Section 5.1 Corporate Organization; Etc.	19

Section 5.2	Validity of Contract; No Conflict	19
Section 5.3	Consents, Approvals and Authorizations	20
Section 5.4	Resources	20
Section 5.5	No Proceedings	20
ARTICLE 6 CREDIT REQUIREMENTS		20
Section 6.1	Credit Requirements	20
Section 6.2	Security	20
ARTICLE 7 GENERAL OBLIGATIONS OF SELLER		21
Section 7.1	Seller's General Obligations	21
Section 7.2	Physical Obstructions And Conditions (PacifiCorp Sites Only)	22
Section 7.3	The Contractor and Subcontractors	22
Section 7.4	Compliance With Applicable Law	23
Section 7.5	Governmental Approvals	23
Section 7.6	Opportunities for Other Contractors; Labor Relations	23
Section 7.7	Labor and Employment	24
Section 7.8	Authority for Access for Inspection	25
Section 7.9	Seller's Use of Buyer's Drawings	25
Section 7.10	Contractor Drawings and Manuals	26
Section 7.11	Training	27
Section 7.12	Safety	27
Section 7.13	Intellectual Property Rights and Computer Program Licenses	27
Section 7.14	Seller's Representatives	28
Section 7.15	Seller's Personnel/Drugs, Alcohol and Firearms	29
Section 7.16	Use of Premises and Trespassing	29
Section 7.17	Electricity, Water and Pipeline Natural Gas	30
Section 7.18	Temporary Facilities	30
Section 7.19	Decisions and Instruction of Buyer's Representative	30
Section 7.20	Cooperation Between the Parties	31
Section 7.21	Spare Parts Inventory	31
Section 7.22	Maintenance of Buyer Lien	32
Section 7.23	Further Assurances	32
Section 7.24	Indebtedness	32
Section 7.25	Other Liens	32
Section 7.26	Restriction on Fundamental Changes	33
Section 7.27	Contingent Obligations	33
Section 7.28	Amendment of Project Documents; Additional Project Documents	33
Section 7.29	Environmental Matters	34
Section 7.30	Records and Accounts	34
Section 7.31	Condemnation, Eminent Domain, Casualty Events	34
Section 7.32	Seller's Organizational Documents	35
Section 7.33	Construction Coordination Agreement [PacifiCorp Sites Only]	35
Section 7.34	Import Permits, Licenses and Duties	35
Section 7.35	Compliance with Planning Permissions, Consents	35
Section 7.36	Permits	35
Section 7.37	Lay Out	35

ARTICLE 8 GENERAL OBLIGATIONS OF BUYER	36
Section 8.1 Buyer’s General Obligations	36
Section 8.2 Planning Permissions, Consents (PacifiCorp Sites Only)	36
Section 8.3 Operations and Maintenance Staff.....	37
Section 8.4 Certificate of Convenience and Necessity	37
Section 8.5 Buyer’s Representative	37
Section 8.6 Standard of Conduct	38
ARTICLE 9 WORKING ARRANGEMENTS	38
Section 9.1 Site Regulations	38
Section 9.2 Site Security.....	38
Section 9.3 Preservation of Public and Private Access	39
Section 9.4 Night, Weekend or Holiday Work.....	39
Section 9.5 Avoidance of Noise and Disturbance	39
Section 9.6 Opening Up of Work	39
Section 9.7 Fencing, Protection, Lighting	40
Section 9.8 Site Services.....	40
Section 9.9 Cleanup	40
Section 9.10 Contamination.....	40
Section 9.11 Material Safety Data	41
Section 9.12 Historical Artifacts (PacifiCorp Sites Only).....	41
ARTICLE 10 PROJECT SCHEDULE.....	41
Section 10.1 Project Schedule	41
Section 10.2 Form of Project Schedule	42
Section 10.3 Rejection of the Project Schedule.....	42
Section 10.4 Alterations to Project Schedule	42
Section 10.5 Revision of Project Schedule.....	42
Section 10.6 Seller’s Responsibility to Comply with Milestone Completion Dates	42
Section 10.7 Rate of Progress	43
Section 10.8 Progress Reports	43
Section 10.9 Progress Meetings.....	44
ARTICLE 11 DELIVERY, SHIPPING, AND HANDLING OF PLANT AND EQUIPMENT	44
Section 11.1 Delivery Responsibility.	44
Section 11.2 Packing	44
Section 11.3 Transportation.....	44
Section 11.4 Extraordinary Traffic	45
Section 11.5 Allocation	45
ARTICLE 12 SELLER’S EQUIPMENT	45
Section 12.1 Seller’s Equipment.....	45
Section 12.2 Seller’s Equipment on Site	45
Section 12.3 Loss or Damage to Seller’s Equipment	45
Section 12.4 Maintenance of Seller’s Equipment.....	45

ARTICLE 13 CHANGE ORDERS	46
Section 13.1 Changes.....	46
Section 13.2 Procedure for Changes.....	47
Section 13.3 Continued Performance Pending Resolution of Disputes	48
Section 13.4 Preservation of Schedule and Purchase Price.....	49
ARTICLE 14 WORKMANSHIP AND MATERIALS.....	49
Section 14.1 Manner of Execution	49
Section 14.2 Condition of Materials.....	49
Section 14.3 Inspection.....	49
ARTICLE 15 DRAWINGS.....	50
Section 15.1 Drawings.....	50
Section 15.2 Consequences of Documents not in accordance with Agreement.....	51
Section 15.3 Drawings Submitted	51
Section 15.4 Inspection of Drawings.....	51
Section 15.5 Operating and Maintenance Instructions	51
Section 15.6 Buyer’s Use of Drawings.....	52
Section 15.7 Manufacturing Drawings	52
Section 15.8 Errors in Drawings Supplied by Seller	52
ARTICLE 16 SUSPENSION OF WORKS, DELIVERY OR ERECTION	53
Section 16.1 Order to Suspend	53
Section 16.2 Protection of Work	53
Section 16.3 Resumption of Work.....	53
Section 16.4 Change Order in Event of Suspension.....	54
ARTICLE 17 PROJECT COMMENCEMENT AND COMPLETION.....	55
Section 17.1 Notice To Proceed	55
Section 17.2 Time for Completion	57
Section 17.3 Buyer’s Request for Earlier Completion	57
Section 17.4 Delay in Completion.....	57
ARTICLE 18 PERFORMANCE TESTING	57
Section 18.1 Performance Tests	57
Section 18.2 Emissions Guarantee	58
Section 18.3 Cost and Direction	58
Section 18.4 Buyer’s Right to Validate	58
Section 18.5 Additional Tests; Test Energy	59
Section 18.6 Timing.....	59
Section 18.7 Test Reports	59
Section 18.8 Failure on Tests or Inspection.....	60
Section 18.9 Duty to Advise of Defects, Errors and Omissions in Plant and Equipment.....	60
ARTICLE 19 DEFECTS BEFORE TRANSFER OF POSSESSION AND CONTROL OF WORK.....	60
Section 19.1 Identification of Defects	60

Section 19.2	Replacement of Defects.....	61
ARTICLE 20	NOTICE OF SUBSTANTIAL COMPLETION, NOTICE OF FINAL ACCEPTANCE AND TRANSFER OF CARE, CUSTODY AND CONTROL.....	61
Section 20.1	Notice of Substantial Completion of Work.....	61
Section 20.2	Care, Custody and Control; Punch List Items.....	61
Section 20.3	Dispatch Coordination.....	62
Section 20.4	Use Before Acceptance Date.....	62
Section 20.5	Title and Risk of Loss.....	62
Section 20.6	Marking of Equipment and Plant.....	63
Section 20.7	Removal of Equipment.....	64
Section 20.8	Notice of Final Acceptance of Work.....	64
ARTICLE 21	CODES AND STANDARDS.....	64
Section 21.1	Comparable Quality.....	64
ARTICLE 22	ENVIRONMENTAL MATTERS.....	65
Section 22.1	General.....	65
Section 22.2	Release On-Site.....	65
Section 22.3	Release Off-Site.....	65
Section 22.4	Liability.....	65
Section 22.5	Pre-existing Regulated Materials.....	65
Section 22.6	Notice.....	66
ARTICLE 23	WARRANTIES OF WORK.....	66
Section 23.1	Warranties.....	66
Section 23.2	Warranty Period.....	67
Section 23.3	Repair of Defects.....	67
Section 23.4	Warranty Period Extension.....	67
Section 23.5	Contractor and Subcontractor Warranties.....	67
Section 23.6	Delay in Remediating Defects.....	67
Section 23.7	Removal of Defective Work.....	68
Section 23.8	Further Tests.....	68
Section 23.9	Seller to Diagnose.....	68
Section 23.10	Latent Defects.....	68
Section 23.11	Significant Defects.....	69
ARTICLE 24	LIQUIDATED DAMAGES.....	69
Section 24.1	General.....	69
Section 24.2	Critical Milestone Guarantee Liquidated Damages.....	69
Section 24.3	Liquidated Damages for Delay in Substantial Completion.....	70
Section 24.4	Liquidated Damages for Net Capacity and Net Heat Rate.....	70
Section 24.5	Liquidated Damages for Startup and Commissioning.....	70
Section 24.6	Calculations and Payments of Liquidated Damages.....	70
ARTICLE 25	LIMITATIONS OF LIABILITY.....	71
Section 25.1	Duty to Mitigate.....	71

Section 25.2	Limitation of Buyer’s Liability	71
Section 25.3	Enforceability of Liquidated Damages	71
Section 25.4	Limitations on Liquidated Damages	72
ARTICLE 26 INDEMNIFICATION		72
Section 26.1	Indemnification for Third Party Claims	72
Section 26.2	Title Indemnity and Liens	74
Section 26.3	Indemnity Period	75
ARTICLE 27 INSURANCE		75
Section 27.1	Contractor’s and Subcontractors’ Insurance Coverage	75
Section 27.2	Buyer’s Insurance	78
Section 27.3	Waiver of Rights	79
Section 27.4	Seller’s Cooperation with Buyer	79
ARTICLE 28 FORCE MAJEURE		79
Section 28.1	Effect of Force Majeure	79
Section 28.2	Notice of Occurrence	79
Section 28.3	Performance to Continue	80
Section 28.4	Termination in Consequence of Force Majeure	80
Section 28.5	Risk of Loss	80
ARTICLE 29 DEFAULT		80
Section 29.1	Seller’s Default	80
Section 29.2	Buyer’s Default	81
Section 29.3	Removal of Seller’s Equipment	82
Section 29.4	Remedies on Default	82
ARTICLE 30 TERMINATION		83
Section 30.1	Termination by Buyer	83
Section 30.2	Termination by Seller	84
Section 30.3	Procedures Following Termination by Seller or due to Force Majeure	84
Section 30.4	Exclusivity	85
ARTICLE 31 TAXES		85
Section 31.1	Buyer’s Obligation	85
Section 31.2	Seller’s Obligation	85
ARTICLE 32 CLAIMS, CLAIM NOTICE AND DISPUTE RESOLUTION		85
Section 32.1	Claims	85
Section 32.2	Dispute Resolution	86
ARTICLE 33 ASSIGNMENT		86
Section 33.1	Assignment of Seller’s Interests	86
ARTICLE 34 CONFIDENTIALITY		87
Section 34.1	Confidentiality	87

ARTICLE 35 MISCELLANEOUS PROVISIONS..... 88

Section 35.1 Notices, Consents and Approvals 88

Section 35.2 Entire Agreement..... 89

Section 35.3 Amendment; Waiver..... 89

Section 35.4 Successors and Assigns 89

Section 35.5 Third Party Beneficiaries 89

Section 35.6 Severability 89

Section 35.7 Further Assurances 90

Section 35.8 Publicity..... 90

Section 35.9 Independent Contractor 90

Section 35.10 Survival..... 90

Section 35.11 Governing Law; Waiver of Jury Trial 90

Section 35.12 Counterparts..... 91

Section 35.13 Captions 91

Section 35.14 Consent Agreements..... 91

List of Appendices

Appendix A:	Site References; Legal Description
Appendix B:	Scope of Supply and Technical Specifications
Appendix C:	Project Schedule
Appendix D:	Seller's Submittals
Appendix E:	Governmental Approvals
Appendix F:	Glossary of Terms
Appendix G:	[RESERVED]
Appendix H:	Substantial Completion, Final Acceptance, Performance Guarantees and Performance Tests,
Appendix I:	Progress Payment and Cancellation Schedule
Appendix J:	Change Order Costing
Appendix K:	[RESERVED]
Appendix L:	Seller and Contractor Final Waiver and Release of Lien
Appendix M:	Emissions Reductions Credits
Appendix N:	Pre-Existing Regulated Materials
Appendix O:	[RESERVED]
Appendix P:	[RESERVED]
Appendix Q:	Approved/Preferred Supplier List
Appendix R:	Price Options
Appendix S:	Construction Coordination Agreement
Appendix T:	Witness Point Schedule

List of Exhibits

Exhibit A	Form Of Notice Of Request For Progress Payment
Exhibit B	Form of Notice to Proceed
Exhibit C	Credit Matrix
Exhibit D	Change Order Forms:
D-1	Form of Change Order
D-2	Form of Change Order Request
D-3	Form of Change Order Notice
Exhibit E	Form of Officers' Certificates for Notice to Proceed
Exhibit F	Form of Letter of Credit
Exhibit G	Planning Consents
Exhibit H	Insurance Certificates
Exhibit I	Form of Seller Lien Release
Exhibit J	Form of Contractor Lien Release
Exhibit K	Form of Subcontractor Lien Release
Exhibit L	Form of Supplier Lien Release

List of Schedules

Schedule 2.6	Authorization Parties
Schedule 4.2	Seller Membership Interests

Schedule 4.2 (a)	Seller Membership Interested Controlled
Schedule 4.2 (b)	Seller Membership Interests or other voting securities
Schedule 4.5 (b)	Approval Persons for Transfer of Project
Schedule 4.6	Seller or Project Proceedings
Schedule 4.11	Pending Appropriation or Condemnation Claims
Schedule 4.12 (a)	Seller Documents that may affect the Transaction
Schedule 4.12 (d)	Material Defaults under Transaction (Project) Documents
Schedule 7.3	Seller Assignable Contracts and Sub-Contracts
Schedule 7.25 (c)	Liens
Schedule 11.1 (b) (xiii)	Record Searches

THIS WORKING DRAFT DOES NOT CONSTITUTE A BINDING OFFER, SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE, AND IS CONDITIONED UPON SELECTION OF THE BIDDER, EXECUTION, AND EACH PARTY'S RECEIPT OF ALL REQUIRED MANAGEMENT AND BOARD APPROVALS IN THEIR SOLE DISCRETION (INCLUDING FINAL CREDIT AND LEGAL APPROVALS). ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS WORKING DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS RELATING TO THIS WORKING DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL THE TOLLING AGREEMENT IS NEGOTIATED, APPROVED BY ALL APPROPRIATE PARTIES AND EXECUTED BY EACH PARTY'S AUTHORIZED SIGNATORY, NO PARTY SHALL HAVE ANY LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS WORKING DRAFT OR IN THE COURSE OF NEGOTIATIONS. ANY ASSERTION TO THE CONTRARY IN ANY PROCEEDING OR ACTION REGARDING THIS WORKING DRAFT SHALL RENDER THIS WORKING DRAFT NULL AND VOID IN ITS ENTIRETY. DURING DISCUSSIONS AND NEGOTIATIONS ANY PARTY MAY CHANGE ITS POSITION ON ANY MATTER, WHETHER OR NOT SET FORTH IN OR BASED UPON THIS WORKING DRAFT, ANY OTHER DOCUMENT OR ANY COURSE OF DEALING, AT ANY TIME OR FOR ANY REASON.

ASSET PURCHASE AND SALE AGREEMENT

THIS ASSET PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered into as of _____ (the "Effective Date"), by and between PacifiCorp, an Oregon corporation ("Buyer"), and [SELLER FULL NAME], a Delaware limited liability company ("Seller"), each referred to individually as "Party" and collectively, as "Parties."

WITNESSETH:

WHEREAS, Seller responded to a Request for Proposals – PacifiCorp RFP-2012 (the "RFP") which was issued by Buyer on [RFP DATE]. Buyer's objective in issuing the RFP was to fulfill a portion of its resource requirements as contemplated in Buyer's integrated resource plan published in January, 2005;

WHEREAS, Buyer's selection of Seller's bid was based upon a competitive bid and was, in part, based upon Seller's representations and warranties and Seller's guaranteed performance of the Plant. Such matters were a material inducement for the selection of Seller, and Seller's failure to perform in accordance with the terms and conditions hereof shall cause material damage to Buyer;

WHEREAS, following negotiations with Seller Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, the Project (defined below), upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual representations and warranties and covenants made herein, Buyer and Seller, each intending to be legally bound, hereby agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

Section 1.1 Defined Terms

Unless the context requires otherwise, capitalized terms used in this Agreement shall have the meanings assigned to them in the Glossary of Defined Terms attached hereto as Appendix F.

Section 1.2 Interpretation

Unless the context requires otherwise, in this Agreement: (a) words singular or plural in number shall be deemed to include the other and pronouns having a masculine or feminine gender shall be deemed to include the other; (b) any reference in this Agreement to any person shall include its permitted successors and assigns and, in the case of any governmental instrumentality, any person succeeding to its functions and capacities; (c) any reference in this Agreement to any Article, sub-Article, Section, sub-Section, Appendix, Exhibit, Schedule or Attachment to any of these shall mean and refer to the Article, sub-Article, Section, sub-Section, Appendix, Exhibit, Schedule or Attachment contained in or the Article, sub-Article, Section, sub-Section, Appendix, Exhibit, Schedule or Attachment attached to this Agreement, as the same may be amended or modified from time to time; and (d) the words “include” and “including” shall mean to include, without limitation.

ARTICLE 2

SALE OF ASSETS

Section 2.1 Sale and Transfer of Project by Seller

(a) Subject to the terms and conditions of this Agreement, and in reliance upon the representations, warranties and agreements herein, Seller shall sell, convey, transfer, deliver and assign to Buyer, and Buyer shall purchase, receive and accept, the Project and its component parts, free and clear of all Liens and other Liabilities not otherwise permitted hereunder. Title to various of the constituent components of the Project will be transferred over time as provided in this Agreement, with overall title to the Project and certain of its components to be transferred at Closing as further defined or described in this Agreement and in the Appendices and Exhibits attached hereto.

(b) At Closing, Seller shall deliver or cause to be delivered to Buyer such documents, deeds, bills of sale, assignments and other instruments of transfer or assignment, together with such releases of Liens, as Buyer shall deem necessary or Buyer may reasonably request to effect the conveyances contemplated by this Agreement at Closing, each in form and substance reasonably satisfactory to Buyer. Such documents, deeds, bills of sale, assignments and other instruments shall include:

(c) For owned Real Property and interests in owned Real Property,

- (i) special warranty deeds in recordable form, properly executed and acknowledged, conforming to and conveying Real Property interests held by or on behalf of Seller;
 - (ii) a Title Policy covering the Real Property interests held by or on behalf of Seller;
 - (iii) a bring-down endorsement issued by the Title Company, procured by Seller and at Seller's expense, in the face amount of the Title Policy and otherwise in such form and with such exceptions as are satisfactory to Buyer, in its sole and absolute discretion;
 - (iv) an endorsement from the Title Company to insure that the foundations of the Plant have been constructed within the boundaries of the Site and in accordance with all applicable easements, covenants and restrictions;
 - (v) a complete and accurate as-built survey of the Project, in form and substance reasonably acceptable to Buyer, in accordance with minimum ALTA/ACSM standards then in effect and sufficient in form and substance to permit issuance of the endorsement described in Section 2.1(c)(iii) hereof, prepared and certified as correct by a licensed land surveyor or registered engineer reasonably satisfactory to Buyer. Such survey shall show the location of the Site and all improvements thereon, including the Plant, and the location of all easements and rights-of-way, whether above or underground, and shall show no encroachments of the Plant or other improvements onto such easements or rights-of-way (except as expressly permitted under the documents governing such easements and rights-of-way) or onto property outside the boundaries of the Site as shown on the survey; and
 - (vi) an affidavit of the Secretary or Assistant Secretary of Seller including Seller's name, address, and taxpayer identification number, certifying that Seller is not a "foreign person" within the meaning of the Foreign Investment Real Property Tax Act of 1980.
- (d) Assignment with assumption and novation of each Project Document, each Contractor Guaranty, and all warranties associated with the Work, with consent of the parties thereto, as may be required or reasonably requested by Buyer;
- (e) Assignment and assumptions for the Plant, Equipment or machinery, labor and other warranties, accompanied by all consents as may be required or reasonably requested by Buyer;
- (f) Deeds, bills of sale and other instruments of transfer or assignment of any other assets of Seller to be transferred hereunder, in a form acceptable to Buyer in its sole discretion;
- (g) Assignment and/or executed requests for Governmental Authority transfer, as appropriate, of all Governmental Approvals identified by Buyer, accompanied by all consents as required or as may be reasonably requested by Buyer;
- (h) Assignment of the right to use all Intellectual Property required in connection with the Project;

(i) At the Closing, the final waiver and release(s) of Lien in the form set forth in Appendix L or posting of a bond or other security satisfactory to Buyer that all Liens will be released ; and

(j) At the Closing, the following certificates of Seller:

(i) a certificate of the Secretary or an Assistant Secretary of Seller certifying: (A) a true copy of the [Certificate of Formation] of Seller and all amendments thereto as in effect at Closing, (B) a true copy of the [Operating Agreement] of Seller as in effect at Closing, (C) copies of resolutions duly adopted by Seller’s board of directors (or similar body), authorizing the sale of the Project to Buyer and the execution, delivery and performance of this Agreement and the transactions contemplated hereby and attesting that such resolutions are in full force and effect without amendment or modification at Closing, and (D) the incumbency of the officers of Seller who execute this Agreement or any document or instrument to be delivered pursuant hereto;

(ii) a certificate signed by an Authorized Officer of Seller to the effect that the conditions specified in Section 2.6(a) and Section 2.6(b) have been satisfied; and

(iii) a certificate signed by an Authorized Officer of Seller certifying as to the true and complete nature of attached originals (or copies where originals do not exist) of the Transaction Documents.

Section 2.2 Purchase Price

(a) The aggregate consideration payable by Buyer to Seller for the Project, comprising the sum of Progress Payments (if any) made pursuant to article 3 (“Terms for Progress Payments”), plus the residual amount payable at Closing (but counting as Progress Payments and amounts payable at closing any amounts retained by Buyer as retainage pursuant to Section 3.3 (“Notice of Request for Progress Payment”)) is the “Purchase Price.”

(b) Basis of Purchase Price

(i) Seller Duty to Inform Itself. Seller shall be deemed to have satisfied itself, through its own due diligence efforts and not based on any representation of Buyer or employees or agents thereof (except as set forth in this Section), as to the nature and location of the Work, the general, local, physical and other conditions of the Work, and all other matters which could in any way affect the Work or the cost thereof under this Agreement. Without limiting the foregoing, Seller shall be deemed to have inspected the Site and to have satisfied itself as to the state and condition (including but not limited to ground, geological, climatic and hydrological condition) of all circumstances affecting the Site (including but not limited to any reasonable safety regulations of Buyer or otherwise applicable to the Work and the project) and to have examined any documentation and information supplied or made available to Seller by Buyer or available for inspection in the public domain, the conditions and/or the Specification (with such drawings, exhibits, plans and information as may be annexed thereto or referred to therein) and to have satisfied itself as to the feasibility of executing the Work at the Site. Seller shall be responsible for its own interpretation of such documentation and information. The failure of Seller to adequately investigate and acquaint itself with any applicable conditions and

other matters shall not relieve Seller from the responsibility for properly estimating the difficulties and costs of successfully performing the Work and completing this Agreement, and shall not be grounds for adjusting either the Purchase Price or the schedule agreed in this Agreement.

(ii) Underground Obstructions. Without prejudicing or limiting the provisions of the preceding paragraph (b)(i) or of Section 10.1 (“Project Schedule”), Seller shall be responsible for ascertaining the location of and avoiding damage to all underground installations including without limitation cable, gas, water pipes, telephone lines, and other underground installations, whether the location of the excavation, digging, or trenching required for performance of the Work is fixed by Buyer or by Seller. Seller shall be responsible for all delays, costs, loss and/or expense arising, whether directly or indirectly, from any ground conditions or artificial obstructions or hazards (excluding hazardous materials encountered by Seller during the execution of the Work) including any Work underground or involving excavation that Seller should have been made reasonably aware of based on information available and Seller shall not be entitled to any additional Cost, any extension to the Time for Completion or any increase in the Purchase Price as a result thereof.

(iii) Surveying. Seller is responsible for performing, and shall include in its pricing, all construction layout surveying required for execution of the Work. Seller shall be held responsible for preserving all established project control monuments unless their removal is requested by Seller and authorized in writing by Buyer. Any costs incurred by Buyer to reestablish control monuments destroyed by Seller shall be borne by Seller.

(iv) Responsibility for Information. Seller shall be responsible for any misunderstanding or incorrect information in connection with the Site (excluding information provided by Buyer or its representative prior to the date of commencement of the Work unless such information could reasonably be verified by Seller).

(v) Existing Foundations, Structures and Work. Seller shall be solely responsible for the consequences of incorporating into the Work any existing foundations, structures, Work, equipment or materials including, without limitation, any existing piling, floor slabs and culverts. To the extent that the same are incorporated into the Work, such pre—existing items shall be subject to the applicable conditions as if they were supplied by Seller hereunder. Without prejudice to the foregoing, Seller shall notify Buyer’s Representative of its intention to incorporate any existing foundations, structures, Work, equipment or materials into the Work other than those specifically identified in the Agreement as soon as is practicable and seek the prior written consent of Buyer’s Representative to the use or utilization thereof, which consent may be withheld in the sole discretion of Buyer’s Representative.

Section 2.3 Closing

(a) Closing Date, Place and Time. The closing (the “Closing”) of the sale and purchase of the Project shall take place at _____, local time, on the first Business Day after Notice of Final Acceptance has been issued pursuant to Section 20.8 (“Notice of Final Acceptance of Work”), at Buyer’s offices in Salt Lake City, Utah, or at such other time and date as the Parties shall designate in writing (such time and date, the “Closing Date”).

(b) Purchase Price Calculation. At least thirty (30) days prior to the Closing Date, Seller shall submit to Buyer a detailed calculation setting forth the Purchase Price, as the same may have been adjusted pursuant to Change Orders, if any, together with supporting documents used by Seller in calculating the Purchase Price, including an allocation of the Purchase Price not yet paid and such other documents reasonably requested by Buyer to support the calculation. At least fifteen (15) days prior to Closing Buyer shall notify Seller of any disputed amounts included in Seller's calculation of the Purchase Price. Within five (5) days prior to Closing Seller shall (a) notify Buyer of any disputes Seller may have regarding Buyer's challenges to amounts, and (b) provide a revised calculation with supporting documents showing agreed changes to the initial calculation statement. Any disputes remaining after such exchange shall be submitted for dispute resolution as set forth in article 32 ("Claims, Claim Notice and Dispute Resolution").

(c) Payment of Purchase Price. At the Closing, Buyer shall pay the Purchase Price, calculated in accordance with Section 2.3(b) ("Purchase Price Calculation"), less two times the amount (if any) then in dispute, in immediately available funds, via wire transfer to an account designated by Seller on or prior to the Closing Date.

Section 2.4 Assumption of Liabilities

Except as otherwise expressly provided herein, Buyer is not assuming, and will not assume, any present or future debt, liability or obligation of Seller, whether known or unknown, fixed or contingent. Seller agrees to indemnify and hold Buyer harmless against all present and future debts, claims, liabilities and obligations of Seller, its Contractor and Subcontractors.

Section 2.5 Further Assurances

From time to time after the Closing Date, Seller shall, at the request of Buyer but without further consideration, promptly execute and deliver to Buyer such other agreements, certificates and further instruments of sale, assignment, transfer and conveyance and take such other and further actions as Buyer may reasonably request in order to vest in Buyer or its assigns and put Buyer or its assigns in possession of the Project and to carry out and implement the transactions contemplated herein, including any financing arrangements of Buyer.

Section 2.6 Conditions to Buyer's Obligation to Close

The obligations of Buyer to effect the transactions contemplated in this Agreement are subject to the satisfaction or waiver by Buyer on or prior to the Closing Date of each of the following conditions:

(a) Accuracy of Representations and Warranties. The representations and warranties of Seller made in this Agreement shall be true and correct in all material respects, as of the date hereof and as of the Closing Date.

(b) Performance. Seller shall have performed or complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied by them on or prior to the Closing Date (including, without limitation, the deliveries required by Section 2.1("Sale and Transfer of Project by Seller")).

(c) Authorizations. The parties shall have or shall have caused to be delivered, made or obtained all notices to, declarations, designations, registrations, filings or submissions with, and authorizations, approvals, orders, consents or waivers from Governmental Authorities and other parties listed on Schedule 2.6, and the same shall not have been withdrawn, suspended or modified.

(d) Absence of Orders. No preliminary or permanent injunction or other order of any Governmental Authority to prevent the consummation of the transactions contemplated in this Agreement shall be in effect or pending and no statute, rule or regulation shall have been enacted by any Governmental Authority that makes consummation of such transactions illegal.

(e) Material Adverse Change. No Material Adverse Change shall have occurred.

Section 2.7 Conditions to Seller's Obligations to Close

The obligation of Seller to effect the transactions contemplated in this Agreement is subject to the satisfaction or waiver by Seller on or prior to the Closing Date of each of the following conditions:

(a) Accuracy of Representations and Warranties. The representations and warranties of Buyer made in this Agreement shall be true and correct in all material respects as of the date hereof and as of the Closing Date.

(b) Performance. Buyer shall each have performed or complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(c) Absence of Orders. No preliminary or permanent injunction or other order of any Governmental Authority to prevent the consummation of the transactions contemplated in this Agreement shall be in effect or pending and no statute, rule or regulation shall have been enacted by any Governmental Authority that makes consummation of such transactions illegal.

ARTICLE 3

TERMS FOR PROGRESS PAYMENTS

Section 3.1 Terms

(a) Procedures. A Progress Payment (if any) shall, subject to Buyer's review as set forth herein, be paid by Buyer in accordance with Appendix I and this article 3 within 30 days after submission of a Notice of Request for Progress Payment that meets the requirements of this Article and satisfaction of the conditions precedent set forth in Section 3.2 ("Conditions Precedent"). Buyer shall pay any Progress Payments (i) to Seller or (ii) either (A) to any Contractor performing or furnishing the Work or (B) jointly to Seller and such other Contractor. In addition to the foregoing, Buyer may require that to the extent Progress Payments to any direct payee (other than Seller) are made via check, that such check contain Lien release provisions and be endorsed personally by payee or payees. To the extent that a Progress Payment Date is other

than a Business Day, no interest shall accrue on such Progress Payment until the next Business Day.

(b) Payment in Dollars. All payments to Seller hereunder shall be paid in Dollars via wire transfer to a bank account of Seller as specified by Seller. All payments to Buyer hereunder shall be paid in Dollars via wire transfer to the bank account as specified by Buyer.

Section 3.2 Conditions Precedent

The obligation of Buyer to pay Progress Payments (including payment of the Purchase Price at the Closing), is subject to the satisfaction on each Progress Payment Date of each the following conditions precedent:

(a) Payments on Business Days. The Progress Payment Date shall be a Business Day. If any Progress Payment becomes payable on a day that is not a Business Day, the Progress Payment shall be paid on the next succeeding Business Day. Seller shall bear the cost of any and all banking charges imposed by Seller's bank with respect to any Progress Payment.

(b) Milestones. Seller shall have achieved the Milestones associated with the Work for which the payment is requested prior to Seller submitting its commercial invoice with respect thereto, and shall have completed all Milestones to have been achieved prior to the date of such Progress Payment.

(c) Representations and Warranties. (i) The representations and warranties made by Seller in each Transaction Document to which it is a party shall be true and correct in all material respects on such Progress Payment Date both before and after giving effect to the making of such Progress Payment, and (ii) the representations and warranties made by each Project Party other than Seller in the Transaction Documents shall be true and correct in all material respects on such Progress Payment Date both before and after giving effect to the making of such Progress Payment. In each case such representations and warranties shall be deemed renewed and re-stated as of the date of such Progress Payment.

(d) No Default. (i) No circumstance, event or condition shall exist which either immediately or with the passage of time or the giving of notice, or both, would permit Seller to withhold payment under any Primary Construction Contract; (ii) no breach, violation or default shall have occurred and be continuing under (A) this Agreement (B) any Contractor Guaranty; (C) any Consent or (D) the Security Documents and (iii) to the extent not already set forth in this Section 3.2(d), no circumstance, event or condition shall exist which either immediately or with the passage of time or the giving of notice, or both, would permit Seller's counterparty to terminate any Transaction Document.

(e) No Proceeding or Litigation. No action, suit, proceeding or investigation by or before any Governmental Authority or any arbitrator shall be pending or to Seller's knowledge threatened against or affecting a Project Party or the Project which would result in a Material Adverse Change, unless such action, suit, proceeding or investigation has been initiated or threatened by Buyer.

(f) Material Adverse Change. Since the date hereof, no Material Adverse Change shall have occurred, except and to the extent that such Material Adverse Change is a result of an act or omission of Buyer.

(g) Notice of Request for Progress Payment. Buyer shall have received a Notice of Request for Progress Payment in compliance with Section 3.3 (“Notice of Request for Progress Payment”), together with all supporting documents.

(h) Governmental Approvals. Except with respect to the Deferred Governmental Approvals, all Necessary Governmental Approvals required to be obtained by such time shall have been obtained and shall be in full force and effect.

(i) Notice to Proceed. Buyer shall have issued the Notice to Proceed.

(j) Right to Withhold Payment. Buyer shall have determined that it is not necessary to withhold payment to protect Buyer from loss relating to any of the following causes:

(i) Work not in accordance with the requirements of the Project Documents;

(ii) Claims filed against Buyer, the Plant, or the Site from Seller’s actions or inactions in connection with the performance of the Work (and not otherwise covered by insurance), unless Seller is disputing such Claims in good faith and if reasonably requested by Buyer, has bonded the Claim with a bonding company or other surety reasonably acceptable to Buyer, and if any Lien is imposed with respect to such Claims, Seller has discharged such Lien; or

(iii) failure of Seller to make payments in respect of material or labor or other obligations incurred as a result of activities covered by this Agreement, unless Seller has, in good faith, disputed such payments and, if any Lien is filed with respect thereto, Seller has posted a bond against such Lien with a bonding company or other surety reasonably acceptable to Buyer.

Section 3.3 Notice of Request for Progress Payment

(a) Notice Required. Prior to being entitled to any Progress Payment Seller shall submit a Notice of Request for Progress Payment in the form attached hereto as Exhibit A and in substance satisfactory to Buyer, that meets all of the requirements of this Section 3.3.

(b) Documents to be attached to Notice for Progress Payment. Each Notice of Request for Progress Payment shall be accompanied by the following documents:

(i) an invoice of Seller substantiating the amounts payable by Buyer in connection with such Progress Payment and the Work covered thereunder. Seller’s invoice shall provide separate invoices or line-items for the following items:

(A) Taxable Items. Tax paid by contractor on Materials and Parts shall be listed as a separate line item and identified as ‘Tax on Parts to be reimbursed.’

(B) Non Taxable Items Listed Separately. The following items shall be listed separately and not taxed on the invoice: (1) Labor to Recondition Materials and Parts (non-taxable) and (2) Freight (non-taxable).

(C) Non Taxable Items able to be Invoiced Together. The following items may be invoiced together but shall be listed separately on the same invoice and shall not be taxed on the invoice: (1) Scheduled and Unscheduled Work including inspection and on-site Turbine Services work (non-taxable) and (2) ‘Scheduled and Unscheduled Work’ and ‘Management Services, Consulting, Administrational, Engineering or Professional Services’ (non-taxable);

(ii) a report (the “Progress Report”) in a form consistent with the progress report included in Appendix D that indicates the percentage completion achieved compared to the planned percentage completion for each activity relating to the Work and where any activity is behind the Schedule giving comments and likely consequences and stating the corrective action being taken. The Progress Report also shall present any other information reasonably requested by Buyer relating to progress of the Work;

(iii) an officer’s certificate signed by an Authorized Officer of Seller certifying that each of the conditions in Sections 3.2(b), 3.2(c) 3.2(d), 3.2(e), 3.2(f), 3.2(h), and 3.2(i) has been and will be satisfied as of the date of such Progress Payment Date and such other items as may be required by this Agreement or as Buyer may reasonably request; and

(iv) A bill of sale transferring title to the Work relating to the Request for Progress Payment.

(c) Address. All Notices of Request for Progress Payment shall be addressed as follows:

PacifiCorp
Attn: _____
201 South Main Street, Suite 2200
Salt Lake City, UT 84111

With a copy provided to: _____
Attn: _____

(d) Review of Notice.

(i) Buyer shall, within fifteen (15) days after receipt of any Notice of Request for Progress Payment, determine whether (A) the Work evidenced by the Notice of Request for Progress Payment has been completed in conformance with the requirements of this Agreement; (B) the Notice of Request for Progress Payment and any required backup information have been properly submitted and (C) the Notice of Request for Progress Payment amount reflects the payment due under Appendix I and shall inform Seller as to whether it disputes any portion of the Notice of Request for Progress Payment. Buyer may also inform

Seller as to whether Buyer disputes any portion of the Notice of Request for Progress Payment due to the failure of Seller (or the Contractor or any Subcontractor) to complete the Work covered by such Notice of Request for Progress Payment, and Buyer may withhold such portion of due under Seller's invoice in the amount reasonably necessary to complete such portion of the Work in accordance with Seller's Notice of Request for Progress Payment and this Agreement.

(ii) Upon receipt of a notice from Buyer that the Notice of Request for Progress Payment is deficient, Seller shall promptly take any and all reasonable steps available to remedy any condition identified by Buyer leading to such claim of deficiency. Subject to a mutually agreed upon resolution of such claim of deficiency or a final determination of a court, payment of the disputed portion of Seller's invoice shall be made by Buyer within ten (10) Business Days following the date of such agreement or determination. In the event that Buyer is entitled to withhold payment to Seller because a condition precedent set forth in this article 3 has not been satisfied, Buyer may elect to pay the amounts due to Contractor under the Primary Contracts directly to such Contractor and such payments shall be credited against the Purchase Price. Provided Buyer has paid such amounts to a Contractor, no action properly taken by Buyer in compliance with this Article 3 shall affect the Guaranteed Substantial Completion Date for the Plant.

(iii) Subject to (A) such determination by Buyer and (B) the satisfaction of the conditions set forth in Section 3.2 ("Conditions Precedent"), and except for disputed portions of any Notice for Progress Payment, Buyer shall pay Seller on the applicable Progress Payment Date the stated amount, less any disputed portion of such Request of Request for Notice for Progress Payment and any withholding permitted under this Agreement. Late payments not excused under the provisions of this Section 3.3(d)(iii) shall accrue interest at the Late Payment Rate at that time from the date due until paid. Excused late payments shall not accrue interest until the event giving rise to the dispute has been remedied; provided, however, that if it is later determined that an excuse or withholding was improper, interest shall accrue at the Late Payment Rate on the amount which should have been paid from the date such funds should have been paid until actual payment is received by Seller. In the alternative, in the event of a disputed amount, Buyer may pay to Seller the entire amount stated in the Notice of Request for Progress Payment, and if it is subsequently determined that Buyer was entitled to withhold all or part of the amount shown on the Notice of Request for Progress Payment, Seller shall pay to Buyer upon demand interest at the Late Payment Rate on the amount that Buyer was entitled to withhold from the date of payment by Buyer until the earlier of the date of repayment to Buyer and the date on which Buyer was no longer entitled to withhold such amount. The determinations made by Buyer pursuant to this Section 3.3(d) and Section 3.2(j) are solely for the purpose of determining whether to pay a Progress Payment, and such determinations shall not prevent Buyer from subsequently asserting that Seller, a Contractor, or any Subcontractor failed to perform its obligations under a Transaction Document, nor shall such determinations be used as evidence that Seller, the Contractor, or any Subcontractor performed such obligations.

(e) A NOTICE OF REQUEST FOR PROGRESS PAYMENT THAT DOES NOT MEET THE REQUIREMENTS OF THIS SECTION MAY RESULT IN A PAYMENT DELAY.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF SELLER

As used in this Article 4, “to Seller’s knowledge” refers to matters within the actual knowledge of Seller. Seller represents and warrants to Buyer on the Effective Date (except as otherwise stated), and on each date the following representations and warranties are made or are deemed made, as follows:

Section 4.1 Organization, Standing and Power

Seller is a [ENTITY TYPE AND DESCRIPTION], duly formed, validly existing and in good standing under the laws of the State of _____ and has the full [corporate/limited liability company] power and authority and possess all material governmental franchises, licenses, permits, authorizations and approvals necessary to enable them to own, lease or otherwise hold its properties and assets (including the Project) and to carry on its business in the places and in the manner currently conducted. Seller is duly qualified to do business in each jurisdiction where the nature of its business or the ownership or leasing of its properties makes such qualification necessary, including without limitation the State of Utah.

Section 4.2 Capital Structure

(a) [ASSUMES LLC STRUCTURE; CORRESPONDING REPRESENTATIONS WILL BE EXPECTED TO REFLECT CORPORATE STRUCTURE IF APPLICABLE] All of the membership interests of Seller (the “Membership Interests”) are issued and outstanding, and no Membership Interests are held by Seller in its treasury. The names of each member of Seller and the amount of Membership Interests Controlled by each such Person are set forth on Schedule 4.2(a).

(b) Except as set forth on Schedule 4.2(b), no Membership Interests or other voting securities of Seller are issued, reserved for issuance or outstanding. There are not any bonds, debentures, notes or other securities or Indebtedness of Seller having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which Membership of Seller may vote.

Section 4.3 Authority; Execution and Delivery: Enforceability

(a) Seller has all requisite power and authority to execute each of the Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of each Transaction Document to which it is a party and the consummation by Seller of the transactions contemplated hereby and thereby has been duly authorized by all necessary [limited liability company/corporate] action on the part of Seller. Seller has duly executed and delivered each Transaction Document to which it is a party, and each Transaction Document to which it is a party constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws from time to time in effect that affect creditors’ rights generally and by legal and equitable limitations on the availability of specific remedies.

(b) The Managing Member(s) of Seller, acting by written consent in lieu of meeting and executed as of _____ unanimously adopted resolutions approving this Agreement, the other Transaction Documents and in accordance with Seller's organizational documents and the [APPLICABLE STATE ORGANIZATIONAL LAWS].

(c) Other than approvals or votes that are required pursuant to [STATE ORGANIZATIONAL LAW] that are required to effect and consummate the Initial Closing and the Closing in accordance with Seller's Organizational Documents and the [STATE ORGANIZATIONAL LAW], no other vote of the Membership with respect to any of the Membership Interests is required under applicable Law or otherwise in connection with Seller's execution and delivery of this Agreement, the other Transaction Documents or the consummation of the transactions contemplated hereby and thereby.

Section 4.4 Validity of Agreement; No Conflict

The execution, delivery and performance by Seller of this Agreement and each other Transaction Document to which Seller is a party, the consummation of the transactions contemplated hereby and thereby, and the compliance with the provisions hereof or thereof, by Seller shall not, with or without the passage of time or the giving of notice or both:

(a) conflict with, constitute or result in a breach, default or violation of any provision of, or give rise to any right of termination, cancellation or acceleration under, or loss of any right and/or benefit under, any contract, lease, license, Governmental Approval, instrument or other agreement to which Seller is a party or by which it, the Project or its assets is bound;

(b) conflict with or violate Seller's Organizational Documents;

(c) result in the creation or imposition of any Lien of any nature on the Project, other than Permitted Liens; or

(d) violate any Applicable Law applicable to Seller.

Section 4.5 Governmental Approvals and Consents

(a) Appendix E sets forth all Governmental Approvals. Such Governmental Approvals that are the responsibility of Buyer to obtain prior to Substantial Completion are separately identified on Appendix E (the "Buyer Governmental Approvals"). All Necessary Governmental Approvals have been obtained, are in full force and effect, and are final and all appeal periods with respect thereto have expired or terminated. Each Deferred Governmental Approval shall be obtained in a final and non-appealable form in the ordinary course prior to the time it is required to be obtained hereunder or under the other Transaction Documents. There is no action, suit, investigation or proceeding pending, or, to Seller's knowledge, threatened, that could result in the modification, rescission, termination, or suspension of any Necessary Governmental Approval obtained prior to the date this representation is made or deemed made. Subject to Section 8.2 ("Planning Permissions, Consents"), except for the Governmental Approvals listed in Appendix E, Seller is not required, and under existing Applicable Law will not in the future be required, to obtain any Governmental Approval in connection with the execution and delivery by Seller of this Agreement or the performance of Seller's obligations hereunder.

(b) Except as set forth on Schedule 4.5(b), no consent or approval of any Person is required to be obtained or made by or with respect to Seller transferring the Project to Buyer or in connection with the execution, delivery and performance of this Agreement, the Transaction Documents or the consummation of the transactions contemplated hereby other than those that may be required solely as result of the specific regulatory status of Buyer.

Section 4.6 No Proceedings

Except as set forth on Schedule 4.6, (a) there are no actions, suits, investigations or proceedings by or before any Governmental Authority or arbitrator pending against Seller or against the Project, or, to Seller's knowledge, threatened against or affecting Seller or the Project, which would result in a Material Adverse Change and (b) there are no actions, suits, investigations or proceedings by or before any Governmental Authority or arbitrator pending or, to Seller's knowledge, threatened, against or affecting any Contractor or Guarantor which would result in a Material Adverse Change.

Section 4.7 Compliance

(a) The Project is being owned, developed, constructed, and permitted in compliance with all Applicable Law in existence as of the Effective Date and in compliance with the requirements of all Governmental Approvals and Prudent Industry Practice. As constructed, based on Applicable Law currently in effect, the Project shall conform to and comply with all zoning, environmental, land use and other Applicable Law and the requirements of all Governmental Approvals.

(b) Seller and the operation of its businesses are, and at all times have been, in compliance in with all Applicable Laws, including those relating to occupational health and safety.

Section 4.8 Taxes

(a) For purposes of this Agreement, (i) "Tax" or "Taxes" shall mean all federal, state, local and foreign taxes and similar assessments, including all interest, penalties and additions imposed with respect to such amounts; (ii) "Pre-Closing Tax Period" shall mean all taxable periods ending on or before the Closing Date and the portion ending on the Closing Date of any taxable period that includes the Closing Date and (iii) "Returns" shall mean returns, reports or forms, including information returns, in respect of Taxes.

(b) Seller has filed or caused to be filed in a timely manner (within any applicable extension periods), all Returns required by applicable Tax laws to be filed by Seller prior to or as of the date hereof, and each such Return is true, complete and correct in all material respects.

(c) Seller has timely paid or caused to be paid all Taxes due and payable, whether or not shown as due and payable, on any Return. The accruals for Taxes not yet due and payable are adequate to cover such Taxes.

(d) All Taxes that Seller is required by Applicable Law to withhold or collect have been duly withheld or collected, and have been timely paid over to the appropriate Governmental Authority to the extent due and payable.

(e) No deficiencies for any Taxes have been proposed, asserted or assessed against Seller, and no requests for waivers of the time to assess any Taxes are pending. No Tax Liens have been filed and no claims are being asserted with respect to any Taxes.

(f) There are no outstanding agreements or waivers extending the statutory period of limitations applicable to any Returns required to be filed by or on behalf of Seller and Seller has not requested any extension of time within which to file any Return, which Return has not yet been filed within the applicable extension period.

(g) Seller does not hold a permit to engage in sales of tangible personal property issued by the State of Utah, and Seller has not within the past twelve (12) months made, and has no current intention of making in the next twelve (12) months, any retail sales of tangible personal property within the State of Utah.

Section 4.9 Environmental Matters

(a) Seller has provided Buyer or its representatives with all environmental reports, assessments and audits, including reports, assessments and audits relating to wetlands, air and emissions or discharges, and studies relating to threatened or endangered species, prepared by or on behalf of Seller in connection with the Project or otherwise in Seller's possession or control with respect to the Site or the Project.

(b) (i) Seller has maintained a due diligence program designed to identify all Necessary Governmental Approvals; (ii) except for Buyer Governmental Approvals, Seller holds and is in compliance with, all Necessary Governmental Approvals; (iii) Buyer appears properly as the permittee, co-permittee or authorized party with respect to all Necessary Government Approvals other than as set forth on Appendix E, (iv) the Project has been constructed and can be operated, and the Work has been performed, in compliance with all Environmental Laws, (v) Seller has not received any notice of a pending or threatened Claim, or inquiry by any Governmental Authority or other Person relating to any actual or alleged violations of Environmental Laws or any actual or potential obligation on the part of Seller to investigate or take any other action relative to any Regulated Material (as defined herein) or threatened Release of any Regulated Material and is and has been in compliance with all Environmental Laws; (vi) Seller has not entered into or agreed to any decree or order with any Governmental Authority and Seller is not subject to any Judgment relating to compliance with any Environmental Law or to the investigation or cleanup of Regulated Materials; (vii) neither Seller nor any other Person has generated, transported, treated, stored, disposed of, arranged to be disposed of, Released or threatened to Release any Regulated Materials at, on, from or under the Site in violation of, or so as would reasonably be expected to result in liability under, any Environmental Laws; (viii) Seller has not assumed any liabilities or obligations arising under any Environmental Law in connection with currently or formerly owned, leased or operated properties or facilities or in connection with any former divisions, subsidiaries or companies owned directly or indirectly by Seller; (ix) Seller has not utilized any underground storage tanks ("USTs"), Equipment using PCBs or asbestos in the conduct of its operations, on or under any property currently owned or operated by Seller.

(c) No Environmental Law imposes any obligation upon Seller or Buyer arising out of or as a condition to any transaction contemplated by this Agreement or any other Transaction

Document (other than those first arising after Closing governing actions by Buyer as owner and operator of the Project), including (i) any requirement to modify or to transfer any Governmental Approval or license, (ii) any requirement to file any notice or other submission with any Governmental Authority, (iii) the placement of any notice, acknowledgment or covenant in any land records, or (iii) the modification of or provision of notice under any agreement, consent order or consent decree. No Lien has been placed upon any of Seller's currently-owned properties related to the Project under any Environmental Law

Section 4.10 Title to Properties

Other than with respect to the Permitted Liens, Seller has good and valid title to all of the tangible and intangible personal property to be transferred to Buyer hereunder, free and clear of all Liens and Claims.

Section 4.11 Real Estate

(a) Seller has heretofore delivered to Buyer true, correct and complete copies of all agreements, contracts or other instruments providing for the sale, lease, transfer or other disposition of the Site (including any options).

(b) Seller represents and warrants to Buyer that:

(i) except as set forth on Schedule 4.11, there is no pending appropriation or condemnation Claim of which Seller has been notified, and, there is no contemplated or threatened appropriation or condemnation Claim affecting the Site or any part thereof or any sale or other disposition of the Site or any part thereof in lieu of condemnation;

(ii) to Seller's knowledge, except for assessments occurring on a regular basis in accordance with Applicable Law or as a result of the sale of the Project contemplated by this Agreement, there is no pending or contemplated reassessment of any parcel included in the Site that is reasonably expected to increase the real estate tax assessment for such properties; and

(iii) There is no violation of any applicable zoning law, regulation or other Applicable Law, relating to or affecting the Site.

Section 4.12 Transaction Documents; Representations and Warranties in Transaction Documents

(a) Set forth on Schedule 4.12(a) is a list of all contracts, agreements, letters of intent, understandings, and instruments to which Seller is a party or by which it or its property is bound (including all amendments, supplements, waivers, letter agreements, interpretations and other documents amending, supplementing or otherwise modifying or clarifying such agreements and instruments) that may affect the Project or any transaction contemplated hereunder, (i) the termination or cancellation of which would result in a Material Adverse Change, or (ii) have a value of twenty-five thousand Dollars (\$25,000) or more;

(b) (i) All representations and warranties made by Seller in each Transaction Document are true and correct in all material respects as of the date made or deemed made, and

(ii) to Seller's knowledge, all representations, warranties and other factual statements made by each Project Party other than Seller in the Transaction Documents are true and correct in all material respects as of the date made or deemed made.

(c) All Transaction Documents are in full force and effect.

(d) Except as set forth on Schedule 4.12(d), no event has occurred that constitutes or, with the giving of notice or passage of time, or both, would constitute, a material Seller Default under any Transaction Document or, to the knowledge of Seller, any third party under any such Transaction Document. To Seller's knowledge, no claim, action, proceeding or investigation, is pending or threatened, that challenges the enforceability of any of the Transaction Documents.

Section 4.13 Sufficiency of Assets

The assets constituting the Project to be sold, transferred, conveyed, assigned and delivered to Buyer pursuant to this Agreement or any other Transaction Document, include all of the assets used, held by or necessary or convenient for the ownership of the Project and to provide an operational Project at the Site in accordance with Prudent Industry Practice and no other Person other than Seller and Buyer owns or has any rights in or to the Project.

Section 4.14 Water Rights

(a) The Project Water Rights will provide sufficient water to operate the Project.

(b) Seller has good and marketable title to the Water Rights.

(c) All of the water available for diversion under the Water Rights has been beneficially used and is not subject to forfeiture or abandonment.

(d) As and when drilled, constructed or installed, the wells, pumps, pipelines, conveyance and discharge systems and other associated equipment necessary to deliver water and discharge water are in good working order and are sufficient for the purposes of operating the Project.

(e) To the extent not already drilled, upon the drilling thereof, the wells used to produce water for the operation of the Project have been drilled and outfitted at the points of diversion approved to deliver the Project Water Rights.

(f) The water to be produced from wells (if any) required for the Project is consistent with the Specifications.

(g) Copies establishing control of a sufficient quantity of Water Rights to operate the Project at a one hundred percent (100%) capacity factor, including summer peaking operations, are attached as Appendix M. These Water Rights shall be acquired no less than six months prior to Substantial Completion.

Section 4.15 Emission Reduction Credits

(a) The Emission Reduction Credits to be transferred to Buyer hereunder are valid and properly registered in the State Emissions Registry established by UDAQ pursuant to R-307-403-8 of the Utah Administrative Code. Upon transfer of the Emission Reduction Credits hereunder, the Emission Reduction Credits will be usable under the Utah Air Quality Rules as emission offsets for the Project, and a sufficient quantity of Emission Reduction Credits will sufficient to satisfy fully any emission offset requirements necessary to obtain the Emissions Approvals.

(b) Documents establishing control of a sufficient quantity of ERCs to operate the Project at a one hundred percent (100%) capacity factor, including summer peaking operations, are attached as Appendix M. These Credits shall be acquired no less than six months prior to Substantial Completion.

Section 4.16 Discharge Permit

The Project is capable of being operated in compliance with UPDES requirements applicable to all discharges from the Plant, including stormwater and process water.

Section 4.17 Security Interests and Liens

The Security Documents create, as security for the Secured Obligations, valid and enforceable perfected first priority Liens on all of the Collateral, in favor of Buyer, subject to no Liens other than the Permitted Liens. All Necessary Governmental Approvals relating to such Liens in favor of Buyer have been duly effected or taken.

Section 4.18 No Defaults

(i) Seller is not in breach of, or in default under, any Transaction Document, or any other agreement or instrument to which it is a party or by which it or its properties or assets may be bound and (ii) no Project Party is in breach of, or in default under, any other agreement or instrument to which it is a party or by which it or its properties or assets may be bound except where such breach or default would not, singly or in the aggregate, result in a Material Adverse Change.

Section 4.19 Expertise

(a) Seller has no reason to believe that (i) the Project will not achieve Substantial Completion by May 1, 2012, 2013 or 2014 or (ii) that the cost to complete the Project will exceed the Purchase Price.

(b) The construction and operation of the Project in accordance with the Transaction Documents and in compliance with Governmental Approvals, Applicable Law and pursuant to this Agreement is technically feasible.

(c) Seller represents it has substantial experience and expertise in the development and management of turnkey construction of combined cycle power plants such as the Plant and the capability to carry out the Work and acknowledge that Buyer is relying on such experience, expertise and capability in executing this Agreement.

Seller has not relied on any information supplied by Buyer regarding the environmental condition or Regulated Materials at, on, or under the Site in order to make any representation or warranty in this Agreement accurate or not misleading

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF BUYER

As used in this Article 5, “to Buyer’s knowledge” refers to matters within the actual knowledge of Buyer. Buyer represents and warrants to Seller on the Effective Date (except as otherwise stated) and on each date the following representations and warranties are made or are deemed made as follows:

Section 5.1 Corporate Organization; Etc.

Buyer is a corporation duly organized and validly existing under the laws of the State of Oregon. Buyer has full corporate power and authority to carry on its business as it is now being conducted and to own the properties and assets it now owns.

Section 5.2 Validity of Contract; No Conflict

(a) This Agreement has been duly authorized, executed and delivered by Buyer and is a legal, binding and valid obligation of Buyer enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws from time to time in effect that affect creditors’ rights generally and by legal and equitable limitations on the availability of specific remedies.

(b) The execution, delivery and performance by Buyer of this Agreement, the consummation of the transactions contemplated hereby, and the compliance with the provisions hereof by Buyer shall not, with or without the passage of time or the giving of notice or both:

(i) as to execution, delivery and performance, require any consent or approval of Buyer’s board of directors or any of Buyer’s shareholders which has not been obtained and each such consent and approval that has been obtained is in full force and effect,

(ii) conflict with, constitute a breach or violation of any provision of, or give rise to any right of termination, cancellation or acceleration under, or loss of any right and/or benefit under, any material contract or agreement to which Buyer is a party or to which it or its assets are subject or to any Governmental Approval held by or on behalf of Buyer, the loss of which would reasonably be expected to result in a Material Adverse Change on Buyer’s performance under this Agreement;

(iii) conflict with or violate the certificate of incorporation or bylaws of Buyer;

(iv) violate any Applicable Law applicable to Buyer.

Section 5.3 Consents, Approvals and Authorizations

Appendix E sets forth all Buyer Governmental Approvals. Except for Buyer Governmental Approvals listed in Appendix E, to Buyer's knowledge, Buyer is not required, and under existing Applicable Law, will not in the future be required, to obtain any Governmental Approval in connection with the execution and delivery by Buyer of this Agreement or the performance of its obligations hereunder, the failure to obtain which would materially impair Buyer's performance of its obligations hereunder.

Section 5.4 Resources

Buyer has the financial resources, assets, operating capital, credit and other resources and means necessary to fulfill its obligations under this Agreement on a timely basis.

Section 5.5 No Proceedings

Except as otherwise disclosed by Buyer to Seller prior to the Effective Date, there are no actions, suits, investigations or proceedings by or before any Governmental Authority or arbitrator pending or, to its knowledge, threatened against or affecting Buyer which, to Buyer's knowledge, would result in a Material Adverse Change.

ARTICLE 6

CREDIT REQUIREMENTS

Section 6.1 Credit Requirements

(a) Seller is to utilize the Credit Matrix in the attached Exhibit C to determine the amount of any credit assurances to be provided. The amount of credit assurances will be based upon the Credit Rating of Seller or the entity providing credit assurances on behalf of Seller, and the size of the Project.

(b) The Credit Rating will be the lower of: (x) the most recently published senior, unsecured long term debt rating (or corporate rating if a debt rating is not available) from Standard & Poor's (S&P), or (y) the most recently published senior, unsecured long term debt rating (or corporate rating if a debt rating is not available) from Moody's Investor Services. If Option (x) or (y) is not available, the Credit Rating will be determined by Buyer's Credit Dept. through an internal process review and utilizing a proprietary credit scoring model developed in conjunction with S&P.

(c) If requested by Buyer, Seller shall, within thirty (30) days, provide Buyer with copies of its most recent annual and quarterly financial statements prepared in accordance with GAAP.

Section 6.2 Security

(a) Security for the credit assurances required in the Credit Matrix shall include, but not be limited to, a guaranty in a form acceptable to Buyer, a Letter of Credit or Cash Escrow.

(b) If this Contract is terminated as a result of Seller's default, Seller shall pay Buyer (i) the positive difference, if any, obtained by subtracting the Contract Price from Buyer's cost to replace or otherwise have performed, as determined and calculated by Buyer in its discretion, any Work that Seller was otherwise obligated to provide during the remaining term of this Contract plus (ii) compensation for additional managerial and administrative services and (iii) such other costs and damages as Buyer may suffer as a result of Seller's breach ("Net Replacement Cost"). Amounts owed by Seller pursuant to this paragraph shall be due within five (5) Business Days after any invoice from Buyer for the same.

If required by Buyer, Seller shall, within five (5) Business Days after the Effective Date, submit to Buyer a Letter of Credit in the amount set forth in the Credit Matrix. The terms of the Letter of Credit shall meet the requirements of the attached Exhibit F as well as the requirements of this Contract and be issued by a bank satisfactory to Buyer. The Letter of Credit shall provide for payment to Buyer of the Letter of Credit face value if Seller defaults under the terms of this Contract. Buyer shall have the right to call the entire amount of the Letter of Credit if Seller has not renewed the Letter of Credit by thirty (30) days prior to its expiration date. Seller's expenses of complying with this Letter of Credit requirement shall be paid by Seller.

ARTICLE 7

GENERAL OBLIGATIONS OF SELLER

Section 7.1 Seller's General Obligations

(a) Seller's general obligation hereunder is to provide Buyer with the Project for the Purchase Price, completed in accordance with the terms of this Agreement.

(b) The finished Work shall be complete in all respects. The intent of this Agreement, the Appendices, Exhibits and the Scope of Work is for Seller to provide to Buyer an engineered solution of first class workmanship in each and every respect. All hardware shall be manufactured, fabricated, assembled, finished and documented with workmanship of the highest quality throughout, and all of its components shall be new and suitable for the purposes specified. In addition, the solution shall be engineered, implemented, tested and documented in accordance with the Prudent Industry Practice and shall be suitable for the purpose specified.

(c) The Work shall be manufactured and executed in the manner set forth in the Specification or, where not so set forth, to the reasonable satisfaction of Buyer and Buyer's Representative and all Work on the Site shall be carried out in accordance with Prudent Industry Practice and such reasonable directions as Buyer or Buyer's Representative may give.

(d) Seller shall, in accordance with the terms and conditions of this Agreement, employ the Contractor and the Subcontractors who in turn shall provide all labor, services, management, supervision, Materials, tools, facilities, utilities, Governmental Approvals, licenses and other aspects of the Work necessary for the design, engineering, construction, startup, testing, commissioning and completion of the Plant including those items specifically required in Appendix B.

(e) Seller shall: (i) cause the Contractor and Subcontractors to carry out and complete the Work in accordance with the requirements, duties and obligations imposed on the Contractor and Subcontractors pursuant to Prudent Industry Practice and all applicable Site conditions; (ii) ensure that the Contractor and each and every Subcontractor designs and performs the Work such as to achieve the objective of a Project which complies with the Applicable Law and the other requirements of this Agreement and their respective contracts; (iii) have the resources, experience, qualifications and capabilities as are required to fully perform its obligations under this Agreement; (iv) keep Buyer informed as to the status of deliveries, and if any such materials or Equipment are not being properly manufactured or fabricated in accordance with the requirements of contracts and the requirements pursuant to which they were purchased, or do not otherwise conform with such requirements, promptly making Buyer aware thereof and taking necessary corrective action; (v) acquire the Site, the Water Rights, all Governmental Approvals necessary for the development, construction and operation of the Plant, and the Emission Reduction Credits in accordance with the Milestones; (vi) cause each of the conditions precedent to the issuance of the Notice to Proceed set forth in Section 17.1 (“Notice To Proceed”) to occur; and (vii) maintain at least one office in the State of Utah.

Section 7.2 Physical Obstructions And Conditions (PacifiCorp Sites Only)

If, during the performance of the Work on the Site, Seller encounters unusual or unforeseen (a) threatened or endangered plant and animal species which are regulated or require special handling under Environmental Laws, (b) underground conditions or (c) items of archeological or historical significance, Seller shall notify Buyer as soon as practicable and shall perform its obligations hereunder, including those obligations affected by such discoveries, in compliance with Applicable Law.

Section 7.3 The Contractor and Subcontractors

(a) In connection with its performance of this Agreement, Seller shall either (i) cause the Contractor and each Subcontractor to purchase Equipment from the Approved/Preferred Suppliers set forth in Appendix Q, or (ii) elect to use vendors others than those set forth in Appendix Q, in which event, Seller shall provide a price adjustment to the Purchase Price. Such adjustment shall be set forth in Appendix R, and shall be accepted by Buyer in its sole discretion.

(b) Seller shall be fully liable to the Buyer hereunder for all acts and omissions of the Contractor and each Subcontractor to the same extent as though any such act or omission had been performed or omitted to be performed by Seller directly. In no case shall Seller’s engagement of the Contractor or any Subcontractor relieve Seller of any of its obligations or Liabilities hereunder and, notwithstanding the use of the Contractor or any Subcontractors hereunder, Seller shall remain fully and primarily liable to the Buyer for the full and complete performance of Seller’s obligations hereunder.

(c) Buyer shall have no contractual obligation to, and shall not be deemed to be in privity with, the Contractor or any Subcontractor; provided, however, that in the event Seller’s obligations hereunder terminate for any reason, Seller shall, at Buyer’s request, take such actions and execute such documents as may be necessary or desirable to assign any or all of the contracts set forth on Schedule 4.12 selected by Buyer to Buyer at Seller’s sole cost and expense. Seller

shall include in all contracts with the Contractor, any Subcontractors and all other vendors, a consent by such Contractor, Subcontractor(s) and other vendor(s) in advance to such future assignment(s).

Section 7.4 Compliance With Applicable Law

(a) Seller shall comply with all Applicable Law, and shall cause the Contractor and each Subcontractor to comply with all Applicable Laws applicable to its respective scope of work on the Project, the noncompliance with which could adversely affect the Work, the Plant, the Site or Seller's obligations under this Agreement. Seller shall be responsible for ascertaining the nature and extent of any Applicable Law, which may affect Seller, the Work, the Plant or the Site as a result of the performance by Seller of its obligations under this Agreement or, prior to Substantial Completion, the operation of the Plant. Seller shall ensure that the Work complies with Applicable Law, Prudent Industry Practice and Governmental Approvals, except to the extent any non-compliance therewith is by Buyer resulting from Buyer's gross negligence, willful misconduct or operation of the Work not in compliance with [*insert applicable Equipment manufacturer*] product manual, a copy of which is included in Appendix D.

(b) Subject to the preceding paragraph, Seller shall be responsible for fines and penalties which may arise (including those that Buyer pays or becomes liable to pay) as a direct result of Seller's non-compliance with Applicable Law, or as a result of Buyer's inability to operate the Project in compliance with Applicable Law due to the inaccuracy of Seller's representations and warranties or the breach by Seller of any of its covenants, other than any fines and penalties arising from any act or omission of Buyer, or the agents, employees, contractors (other than the Contractor and each and every Subcontractor), and representatives of Buyer.

Section 7.5 Governmental Approvals

(a) Seller shall obtain all Governmental Approvals designated as Seller's responsibility in Appendix E and all other Governmental Approvals that are not specifically designated as Buyer Governmental Approvals in Appendix E and shall cause the Contractor and the Subcontractors to reasonably support the efforts of Buyer in obtaining all Buyer Governmental Approvals, including providing such engineering and environmental data and statistical information as may be reasonably requested by Buyer. Buyer shall be properly included as the permittee, co-permittee or authorized party with respect to all Governmental Approvals.

Section 7.6 Opportunities for Other Contractors; Labor Relations

(a) Seller shall, in accordance with Buyer's reasonable instructions, afford to other contractors identified by Buyer all reasonable opportunities for carrying out their work at the Site, provided that the same shall not materially obstruct or disturb the progress of the Work. Seller shall also afford access to Buyer's employees, including employees who will operate and maintain the Plant, to perform their work at the Site.

(b) Seller shall be responsible for coordinating Buyer's contractors and employees as it relates to mobilization and laydown space requirements, interconnection with Site construction power and temporary storage facilities, water, emergency evacuation requirements, trash/waste disposal, Site access, temporary office space, safety and security and other Site regulations and

requirements. Each of Buyer's contractors shall be responsible for any costs with respect to that contractor's work, including mobilization and laydown space requirements, interconnection with Site construction power and temporary storage facilities, water, emergency evacuation requirements, trash/waste disposal, Site access, safety and security and other Site regulations and requirements.

(c) Seller agrees that claims resulting from the concurrent Buyer contractor activities shall be brought to Buyer's attention within ten (10) Business Days of their occurrence. Buyer and Seller agree to informally resolve claims as they occur and otherwise in accordance with article 32 ("Claims, Claim Notice and Dispute Resolution").

Section 7.7 Labor and Employment

(a) Seller shall, and shall cause the Contractor to, ensure that all construction contracts and subcontracts of any tier for the Project be awarded (i) in compliance with Utah State and Federal and all other Applicable Law and (ii) on a Merit Shop basis. Seller shall, and shall award construction contracts and subcontracts of any tier for the Work (x) in compliance with the requirements of U.S. Federal and Utah state laws and regulations and (y) on a Merit Shop basis or (z) through a project labor agreement. Each Contractor shall, subject always to the requirements of law or regulation or applicable collective bargaining agreement, and to the fullest extent commercially reasonable, perform the Work using Utah labor.. Any contract or subcontract shall be awarded on the basis of the best value to the Project including an evaluation of the Subcontractors' ability to work in harmony with others working on the Project including the Contractor, the existing labor force, Governmental Authorities, and without regard to whether or not the successful bidder is signatory or non-signatory to agreements with labor organizations. Seller shall, and shall cause the Contractor and each Subcontractor to, refrain from any discrimination against any employee on the basis of such employee's membership in any labor organization, or his or her lack of such membership. All employees working on the Project shall be permitted to exercise their right to engage in protected concerted activity, as defined in Section 7 of the National Labor Relations Act, as amended, or to refrain from doing so, without any discrimination or other adverse consequence. Seller shall, and shall cause the Contractor and each Subcontractor to, comply with Applicable Law regarding labor relations and employment matters. Any administrative or civil proceedings filed against a Project Party or any Subcontractor shall be promptly reported to Buyer. Nothing in this provision shall affect any obligation of a Project Party or Subcontractor under a lawful collective bargaining agreement applicable to some or all of such Person's operations on the Project.

(b) Seller shall be aware of, and familiar with, all collective bargaining agreements, which do or may pertain to or affect the work under this Agreement or other work at the Site. Seller shall plan and conduct its operations so that its employees and subcontractors of any tier will work harmoniously with Buyer employees and other workers employed on the same or related projects to assure that there will be no delays, work stoppages, excessive labor costs, or other labor difficulties. Seller shall ensure that Contractor and each and every Subcontractor comply with all Applicable Law pertaining to such labor.

(c) Scarcity and Quality of Labor. Seller shall have no claim for an extension of the Time for Completion or a claim for loss, damage or additional Costs of any kind in respect of any alleged or proved unsuitability, scarcity, inefficiency of the labor it may engage or wish to engage.

(d) Equal Employment Opportunity and Other Non-Discrimination Clauses.

(i) Seller shall, at all times, comply with all Applicable Law applicable to employees, including without limitation those governing wages, hours, desegregation, employment discrimination, employment of minors, health and safety. Seller shall comply with equal opportunity laws and regulations to the extent that they are applicable.

(ii) Seller shall indemnify, defend and hold harmless Buyer, its Board of Directors, officers, employees and agents from all losses, costs and damages by reason of any violation thereof and from any liability, including without limitation fines, penalties and other costs arising out of Vendor's failure to so comply.

(iii) Seller shall execute and deliver to Buyer a completed Certificate of Compliance using Buyer's form of Certificate before starting to perform Work under this Agreement.

(e) Workers Compensation. Seller shall comply with all applicable Applicable Law regarding workers' compensation and shall, prior to commencing Work, furnish proof thereof satisfactory to Buyer.

Section 7.8 Authority for Access for Inspection

Inspection of the Work at the Site and attendance at meetings (whether conducted in-person, telephonically or through similar medium) relating to the Project which are attended by Seller and Contractor or Subcontractor and related to status, progress, quality, scope, schedule and safety coordination shall at all times be afforded by Seller to Buyer, Buyer's Representative and such other Persons as shall be designated by Buyer or Buyer's Representative. Buyer, in its inspection, shall give due consideration to the needs of Seller to carry out Seller's obligations and strive not to hinder or unduly impede Seller while carrying out such inspection. Buyer, in its inspection, may observe the progress and quality of the Work to determine, in general, if the Work is proceeding in accordance with the Transaction Documents. Inspections under this Section 7.8 are solely for the benefit of Buyer and any inspection or failure to inspect and any objection or failure to object by Buyer shall not (i) relieve Seller, the Contractor, or any Subcontractor of its respective obligations under any Transaction Document or (ii) be used as evidence that Buyer agreed that Seller, Contractor, or any Subcontractor had fulfilled any obligations under any Transaction Document or that Buyer had waived any of its rights under any Transaction Document.

Section 7.9 Seller's Use of Buyer's Drawings

Seller may use Buyer's Drawings only for fulfilling its obligations under this Agreement. Buyer's Drawings, specifications and other information submitted by Buyer to Seller shall remain the property of Buyer. Such materials shall not, without the written consent of Buyer, which consent may be withheld in Buyer's sole discretion, be used, copied or communicated to a third party, other than the Contractor, by Seller unless necessary to fulfill the purposes of this Agreement, and then pursuant to a

full reservation of rights in Buyer. Buyer makes no representations or warranties as to the accuracy, completeness or suitability of Buyer's Drawings and Seller shall not rely on such Buyer's Drawings.

Section 7.10 Contractor Drawings and Manuals

(a) Seller shall at all times keep a copy of the most recent version of the Contractor Drawings and Manuals at Seller's office on the Site to be made available for Buyer's review. In addition, Seller shall provide and make available to Buyer electronic versions of the Contractor Drawings and Manuals accessible by Buyer through a file transfer protocol site to be maintained by Seller.

(b) Seller shall cause to be set forth in the Contractor Drawings and Manuals provided to Buyer such information as is required to operate and maintain the Work, including to the extent applicable, recommended operating and maintenance procedures, system descriptions, product catalogs, drawings, design sheets, specifications, logic diagrams, maintenance and instruction sections, spare parts lists, any vendor-supplied training documents, and current heat balances. The Contractor Drawings and Manuals shall be (i) prepared in accordance with the Specification and when completed, shall be in sufficient detail to accurately represent the Project as constructed. The Contractor Drawings and Manual shall be maintained and be available, with up-to-date drawings, specifications and design sheets, for the training as set forth in Section 7.11 ("Training").

(c) Seller shall prepare initial system descriptions, design basis documents, and operational guidelines for the Project and deliver such to Buyer for its review at least one (1) year prior to the Guaranteed Substantial Completion Date.

(d) At least sixty (60) days prior to the Guaranteed Substantial Completion Date, Seller shall provide Buyer with initial drafts of the final Contractor Drawings and Manuals for review (the "Draft Manuals"). The Draft Manuals shall contain such information described in Section 7.10(b), other than the drawings which, in accordance with this Section 7.10, are being maintained so as to be up-to-date. Two (2) complete sets of the Draft Manuals shall be provided to Buyer at least sixty (60) days prior to Substantial Completion and shall be a condition of Substantial Completion.

(e) Seller shall provide to Buyer both hard and electronic final copies of the Contractor Drawings and Manuals. Seller shall provide to Buyer five (5) final hard copies of the Contractor Drawings and Manuals within sixty (60) days after achievement of Substantial Completion. Buyer shall not be required to deliver the Notice of Final Acceptance until all such Contractor Drawings and Manuals have been so delivered.

(f) Any modifications to the Contractor Drawings and Manuals made necessary as a consequence of any Final Punch List items or modifications to the Work shall be issued as addenda to the Contractor Drawings and Manuals within sixty (60) days following completion thereof.

Section 7.11 Training

(a) Training of Buyer's personnel (or other employees or agents of Buyer) shall be given by Seller or the Contractor prior to the Closing Date as required by the Specification, in accordance with the timetable to be agreed upon with Buyer prior to the Closing Date and shall include training (including on-site and classroom) in connection with the operation and maintenance of the Project. Such training shall be provided directly to Buyer's personnel as specified by Buyer in Section 10 to Appendix B and shall be conducted by a trainer experienced in the operation and maintenance of the Project.

(b) As more fully described in Section 10 of Appendix B, starting at least sixty (60) days prior to the first operation of one of the combustion turbines at the Site of the Project and continuing until Final Acceptance, Seller shall oversee the development of and provide qualified and experienced support for Buyer's execution of a practical and participatory training program at the Site for an adequate number of employees designated by Buyer, which personnel shall be experienced in electric generating facility operation appropriate to their respective job descriptions.

Section 7.12 Safety

(a) Seller shall be solely responsible for being aware of and initiating, maintaining and supervising compliance with all safety laws, regulations, precautions, and programs in connection with the performance of this Agreement, including without limitation the provisions of Section 9.2 ("Site Security"), Section 9.7 ("Fencing, Protection, Lighting"), and Section 9.11 ("Material Safety Data") of this Agreement. Prior to the start and throughout the performance of the Work, Seller shall assure that each of its employees, together with all employees of its Contractor and each Subcontractor, are fully informed concerning all safety, health, and security regulations pertaining to the Work. Seller shall conduct all operations under this Agreement in such a manner as to avoid the risk of bodily harm to persons or risk of damage to any property.

(b) In the event Seller fails to promptly correct any violation of safety or health regulations, Buyer may suspend all or any part of the Work. Seller shall not be entitled to any extension of time or reimbursement for costs caused by any such suspension order. Failure of Buyer to order discontinuance of any or all of Seller's operations shall not relieve Seller of its responsibility for the safety of personnel and property. Seller shall maintain an accurate record of and shall promptly report to Buyer all cases of property damage in excess of \$100 and of death, occupational diseases, or injury to employees or any other third parties and incident to performance of Work under this Agreement. Seller shall promptly notify Buyer and provide a copy of any safety citation issued by any governmental entity. Seller shall perform all Work under this Agreement in strict accordance with its Buyer-approved Health and Safety Plan.

Section 7.13 Intellectual Property Rights and Computer Program Licenses

(a) Seller represents and warrants that it has and upon the Closing will have, (i) all rights necessary with respect to the Work (and each part thereof) and the ownership or operation of the Project after it is constructed and to perform Seller's obligations under this Agreement and

(ii) that the Work (and each part thereof) does not violate or infringe any patent or copyright. Seller shall not take any action that would violate or infringe any patent or copyright.

(b) Seller shall, at its sole expense, settle or defend and pay any costs (including attorney's fees) and damages awarded in connection with, and shall defend, indemnify and hold harmless each of Buyer and Buyer's Representative, and any of its respective officers, directors, employees, contractors, agents or representatives, from and against, any and all Claims, suits or proceedings based on a Claim that the Work (or any part thereof) or the ownership or operation of the Project, infringes or violates any patent or copyright. Buyer shall give Seller notice of any such Claim promptly after Buyer has actual knowledge thereof, provided that the omission of Buyer to give such notice shall not relieve Seller of their obligations hereunder except to the extent that such omission results in a failure of actual notice to Seller and Seller are damaged as a result of such failure. The provisions of article 26 ("Indemnification") and article 32 ("Claims, Claim Notice and Dispute Resolution") shall also apply to any Claim under this Section 7.13(b).

(c) In case the Work (or any part thereof) or the ownership or operation of the Project is held to infringe or violate any patent or copyright and the use of the Work (or part thereof) or the operation of the Project is restricted or prohibited as a result thereof, Seller shall, at its sole cost and expense, at Seller's option, either procure for Buyer the right to continue using the Work (or part thereof), replace the same with non-infringing comparable substitute Work, or modify the Work (or part thereof) so that it becomes non-infringing (provided that such modification does not adversely affect the Work (or any part thereof)).

(d) Seller shall obtain and transfer to Buyer perpetual, fully-paid licenses to use all computer programs necessary or useful for the operation of the Plant, together with all warranties related thereto. Nothing contained in the Computer Program License shall restrict any of Buyer's rights under this Agreement.

Section 7.14 Seller's Representatives

(a) Seller shall employ one or more competent representatives, whose name or names and details of qualifications and previous experience shall have been provided to Buyer and Buyer's Representative by Seller, to manage the project and who shall have Seller's authority in respect of all matters arising out of or in connection with the Agreement and the Work.

(b) Assigned Project Roster.

(i) Seller shall designate a Project Manager, a Project Engineer, a Lead Mechanical and Lead Electrical, a Construction/Site Manager, a Safety Manager and a Startup or Commissioning Manager for the Project, and shall provide to Buyer a list setting forth each such position prior to beginning the Work. All employees assigned by Seller to perform any of Seller's obligations shall be fully qualified to perform the tasks assigned them.

(ii) Such representatives, or if more than one shall be employed, then one of each such representatives, shall be present on the Site during working hours and at all times the Work is in progress during the times relevant to the representative's duties are applicable to the Work, and any orders or instructions which Buyer or Buyer's Representative may give to the said representative of Seller shall be deemed to have been given to Seller.

(iii) Buyer or Buyer's Representative shall each have the right, in its sole discretion, to approve or disapprove Seller's selections for Project Manager, Project Engineer, Lead Mechanical and Lead Electrical, Construction/Site Manager, Safety Manager, Startup or Commissioning Manager and any Subcontractors or independent contractors or consultants utilized by Seller.

(iv) In the event Seller intends to remove or change its Project Manager, Project Engineer, Lead Mechanical and Lead Electrical, Construction/Site Manager, Safety Manager, or Startup or Commissioning Manager assigned to the project or reassign any such personnel to another project, Seller shall give Buyer fifteen (15) days advance written notice of Seller's intentions. Buyer shall give due diligence and consideration to any request by Seller to replace such persons and shall respond within fifteen (15) days to any such requests. Seller shall not replace its Project Manager, Project Engineer, Lead Mechanical and Lead Electrical, Construction/Site Manager, Safety Manager, or Startup or Commissioning Manager assigned to the project without the prior written consent of Buyer.

(v) Buyer shall have the right to approve Seller's senior staff on Site, and may request the removal of any of Contractor's personnel

(vi) Seller shall not remove any of the individuals identified in Section 7.14(b)(i) from the Work or the Site without the prior written consent of Buyer, and then only if a suitable replacement for such representative has been approved by Buyer prior to the removal of such representative.

(c) Objection to Seller or Contractor Representatives or Employees. Buyer shall be entitled by notice to Seller to object to any representative or person employed directly or indirectly by Seller, Contractor or any Subcontractor in the execution of or otherwise about the Work who, in the opinion of Buyer, misconducts itself, is incompetent or negligent, and Seller, Contractor or any Subcontractor, as the case may be, shall remove and exclude such person from the Work.

Section 7.15 Seller's Personnel/Drugs, Alcohol and Firearms

With regard to the performance of the Work, Seller shall, and shall ensure that Contractor shall, only employ persons qualified to perform the Work. Seller shall, at all times, enforce strict discipline and good order among its employees and the employees of the Contractor and any Subcontractor. Seller shall not permit or allow the introduction or use of any firearms, illegal drugs or intoxicants upon the Work under this Agreement, or upon any of the grounds occupied, controlled, or used by Seller in the performance of the Work. Seller shall immediately remove from the Work, whenever requested by Buyer, any person considered by Buyer to be incompetent, insubordinate, careless, disorderly, in violation of the above restriction on firearms, illegal drugs or intoxicating liquor, or under the influence of illegal drugs or intoxicants, and such person shall not again be employed in the performance of the Work herein without the consent of Buyer.

Section 7.16 Use of Premises and Trespassing

Seller shall confine the storage of materials and construction equipment to locations acceptable to Buyer and in accordance with Applicable Law. Seller shall, at all times, prohibit its staff, workers and all other persons employed directly or indirectly by Seller on the Site from poaching or trespassing and

any such person found so doing shall be removed forthwith from the Work and shall not be re-employed without the prior Written consent of Buyer.

Section 7.17 Electricity, Water and Pipeline Natural Gas

(a) During the construction of the Plant, Seller shall provide for its own use, on-Site distribution for all utilities, including, the following: drainage, water, sewage and electrical power. Seller shall pay for electrical power, fuel and raw water used by Seller during the construction of the Plant. Seller shall make provisions in its temporary construction power load center for loads and feeds of Buyer, provided that Seller have been supplied with adequate information relative to such additional uses prior to initial mobilization at the Site; provided, however, distribution of such additional power feeds, and the cost of usage of such electrical power, shall be borne by Buyer or contractors engaged by Buyer.

(b) Seller shall provide all required supplies of demineralized water, pipeline natural gas and other commodities required for the purposes of commissioning and startup activities and the Performance Tests in accordance with manufacturer's and/or contractors' published specifications for the Plant and Equipment. Notwithstanding the foregoing, Buyer shall reimburse Seller for the cost of providing pipeline natural gas in an amount not to exceed the equivalent to two hundred seventy-five (275) hours of full-load CT operation, without duct burners in operation, based on the design documents for the Project, for purposes of commissioning and startup activities and the Performance Tests. Seller shall provide to Buyer in writing not less than 180 days prior to first firing of the Gas Turbines, the design consumption rate to be used in calculating Buyer's reimbursement obligations under this paragraph. Seller shall be responsible for all pipeline imbalance and other charges that may be assessed by any party in connection with the supply of natural gas and/or electric service to the Plant in connection with commissioning and startup activities and Performance Testing. Seller shall be responsible for the initial filling of all chemicals, lubricants, and any other consumables necessary for the startup activities and Performance Tests.

Section 7.18 Temporary Facilities

Seller shall make provisions, at its cost, for all temporary facilities necessary for the construction of the Project and the installation of the Equipment, including arrangements for the supply of telephone, office equipment, sanitary toilet facilities, compressed air and other services for the Work and shall provide and maintain all pipes, cables and services required for its operation. Seller shall provide and maintain on the Site office accommodations for itself and an office for Buyer and Buyer's Representative. Seller shall also install and maintain, at its own cost and expense, a system of lighting to provide a reasonable degree of illumination over the area of its Work during performance of the Work. Seller shall remove any of such temporary installations pursuant to Section 20.7 ("Removal of Equipment").

Section 7.19 Decisions and Instruction of Buyer's Representative

(a) Seller shall proceed with the decisions and instructions given by Buyer's Representative in accordance with this Agreement. Such decisions or instructions may be given orally, but shall be effective only when confirmed in writing unless and only to the extent that

such instructions are necessary to remedy an emergency situation that would make the provision of written instructions impractical.

(b) If Seller disputes or questions any decision or instruction by Buyer's Representative, Seller shall give notice to Buyer within five (5) days after receipt thereof, giving reasons therefor. Buyer shall within a further period of five (5) days by notice to Seller with reasons, confirm, reverse or vary such decision or instruction. If Seller disagrees with Buyer's response, or if Buyer fails to reply to Seller's notice within the stipulated days, the matter shall be resolved in accordance with article 32 ("Claims, Claim Notice and Dispute Resolution"). Notwithstanding the foregoing, to the extent that an instruction by Buyer's Representative is necessary to remedy an emergency situation and Seller disputes the action requested in such instruction, then Seller shall nonetheless comply with Buyer's instruction and the dispute shall be resolved as provided in article 32 ("Claims, Claim Notice and Dispute Resolution").

Section 7.20 Cooperation Between the Parties

The Parties are expected to be called upon to make decisions regarding matters not reasonably anticipated in order to meet their respective obligations under this Agreement. In making such decisions, the Parties shall cooperate with the intent to improve the performance of the Work and reduce the likely operating and maintenance impacts. The vehicle for reaching agreement and causing a change to occur in the Work and/or the schedule for performance and/or the Guaranteed Substantial Completion Date and/or additional substantiated costs as a result of errors and omissions in information supplied by Buyer shall be by Change Order in accordance with article 13 ("Change Orders"). Additionally, if errors or omissions in information provided by Seller affect Buyer's or its other contractors' work during construction of the Plant, Buyer shall be entitled to make a Claim against Seller for Buyer's costs as the result of errors or omissions. [Notwithstanding the foregoing, the Parties at all times shall abide by and be subject to the terms of the Construction Coordination Agreement]. [Final sentence applicable only to PacifiCorp Sites]

Section 7.21 Spare Parts Inventory

(a) Seller shall provide and include in the Purchase Price all spares and consumables necessary for the complete performance of the Work through Final Acceptance and through the Closing. Such spares and consumables shall be located at Site and immediately available to ensure all works, testing and reliability testing continues unimpeded by such unavailability of onsite spares and consumables.

(b) Seller shall prepare a proposed list of spare parts for the Work to be available one hundred eighty (180) days prior to the Guaranteed Substantial Completion Date. Seller shall submit the proposed inventory of spare parts to Buyer in a timely fashion so as to permit thirty (30) days for Buyer to review the list and for Buyer, in Buyer's sole discretion, to procure such spare parts or, at Buyer's option pursuant to a Change Order, to direct Seller to procure such spare parts and have such spare parts delivered to the Site or cause such spare parts to be procured and delivered to the Site, to the extent practical, prior to the Guaranteed Substantial Completion Date. The proposed inventory of spare parts shall describe each component in detail, identify the manufacturer and supplier thereof and set forth the cost and lead time of such item. Upon the request of Buyer, Seller shall meet with Buyer and its designees to discuss the proposed inventory

of spare parts. If available, Buyer shall allow Seller to use any spare parts owned by Buyer, but in no event shall Buyer be liable or shall Seller be entitled to a Change Order in the event that the absence of any particular spare part or parts impacts completion of the Work.

(c) In the event Seller uses Buyer's spare parts, such spare parts shall be expeditiously replaced by Seller at its sole cost and expense.

(d) Buyer does not warrant the condition, quality, suitability, absence of defects, fitness for any purpose or aspect of any Buyer-supplied spare part and if a Seller uses any Buyer-supplied spare part, it does so at its own risk.

Section 7.22 Maintenance of Buyer Lien

Seller shall take or cause to be taken all actions reasonably required by or deemed desirable by Buyer, in its sole discretion, to maintain and preserve the Lien of the Security Documents and the priority thereof. Seller shall from time to time execute or cause to be executed, or authorize Buyer to prepare and file, any and all further Security Documents and register and record such documents and instruments in such offices reasonably requested by Buyer for such purposes. Seller shall take all action reasonably required by Buyer to cause each Additional Project Document to be or become subject to the Lien of the Security Documents (whether by amendment to the Security Documents or otherwise) and shall deliver or cause to be delivered to Buyer such legal opinions, certificates or other documents, including consent agreements that are substantially similar to the Consents, with respect to such Additional Project Documents as Buyer may reasonably request.

Section 7.23 Further Assurances

Seller shall take all such further actions and execute all such further documents and instruments as Buyer may at any time reasonably determine to be necessary to further carry out and consummate the transactions contemplated by the Transaction Documents or to perfect or protect the Lien of Buyer on the Collateral under the Security Documents.

Section 7.24 Indebtedness

Until the Closing shall have occurred, Seller shall not create, incur, assume, suffer to exist or otherwise become or remain directly or indirectly liable with respect to any Indebtedness other than Indebtedness incurred in the ordinary course of business that does not result in a Material Adverse Change.

Section 7.25 Other Liens

(a) Until the Closing shall have occurred, Seller shall not create, incur, assume or suffer to exist, directly or indirectly, any Lien on any of its property now owned or hereafter acquired in connection with the Project, other than the following:

(i) Liens granted to Buyer pursuant to the Security Documents;

(ii) Easements or other encumbrances on Real Property affecting the Project required to be granted (x) pursuant to Applicable Law or (y) by order of a Governmental

Authority; provided, however, that such easements or other encumbrances on Real Property could not reasonably be expected to have a Material Adverse Change;

(iii) Liens set forth on Schedule 7.25(c);

(iv) Mechanics Liens relating to the Work supplied and performed by the Contractor or by any Subcontractor that have not yet been paid in the ordinary course of business; and

(v) Liens filed with respect amounts payable to the Contractor or any Subcontractor that are being disputed in good faith, provided that Seller have posted a bond against such Liens with a bonding company or other surety reasonably acceptable to Buyer.

(b) Seller shall, and shall cause Contractor, all Subcontractors, and all Suppliers to deliver Lien Releases in the form attached as Exhibit J, Exhibit K, and Exhibit L, respectively, for all Liens that arise with respect to the Project.

Section 7.26 Restriction on Fundamental Changes

(a) Until the Closing shall have occurred, Seller shall not, without Buyer's prior written consent, enter into any merger or consolidation, or liquidate, wind-up or dissolve (or suffer any liquidation or dissolution), discontinue its business.

(b) Until the Closing shall have occurred, and except in the ordinary course of business (such as the replacement of substitution of items from customary wear and tear), Seller shall not convey, sell, lease, assign, transfer or otherwise dispose of any of Seller's assets, except in connection with the Closing, if such sale, lease, assignment, transfer or other disposition would, singly or in the aggregate, result in a Material Adverse Change.

Section 7.27 Contingent Obligations

Until the Closing shall have occurred, Seller shall not create or become or be liable with respect to any Contingent Obligation if, the occurrence of the contingency associated with such Contingent Obligation would result in a Material Adverse Change, other than (a) indemnities of Seller in favor of Buyer pursuant to this Agreement, (b) under the Primary Construction Contracts, (c) indemnities arising in the ordinary course of business under contracts with Subcontractors or (d) any Contingent Obligation to a Governmental Authority arising in connection with Seller's seeking to obtain a Governmental Approval, but only to the extent consented to by Buyer, such consent not to be unreasonably withheld.

Section 7.28 Amendment of Project Documents; Additional Project Documents

Until the Closing shall have occurred, Seller shall not:

(a) without the prior written consent of Buyer (i) assign or permit any Person to assign any of its rights or obligations to or under any Project Document, (ii) terminate any Project Document, or (iii) make any amendment or other modification to any Project Document that would (A) result in a breach of this Agreement or the inaccuracy of any representation or warranty

in this Agreement, (B) increase the Purchase Price, (C) extend the Guaranteed Substantial Completion Date, or (D) have a Material Adverse Change;

(b) to the extent not covered by Section 7.28(a), amend, modify, grant any consent or approval with respect to any obligation under, waive timely performance or observance by any Person (other than Buyer) of any obligation under, exercise any options or remedies or issue any change order, notice or make any elections under any Project Document without providing notice thereof and copies of all material documentation related thereto, to Buyer;

(c) compromise or settle any claim against any Project Party if to do so would have a Material Adverse Change; or

(d) enter into any Additional Project Document that would have a Material Adverse Change. Seller shall deliver copies of all Additional Project Documents to Buyer within three (3) Business Days of the execution thereof.

Section 7.29 Environmental Matters

Until the Closing shall have occurred, Seller shall not permit (a) any underground storage tanks (other than for water or sewage) to be located on any property owned or leased by Seller, (b) any asbestos to be contained in or form part of any building, building component, structure or office space owned or leased by Seller and (c) any polychlorinated biphenyls to be used or stored at any property owned or leased by Seller.

Section 7.30 Records and Accounts

Seller shall maintain all records and accounts in accordance with GAAP consistently applied and in Dollars in order to support any and all invoices, claims and disputes under this Agreement. Seller shall permit Buyer, upon reasonable prior notice and during business hours, to audit Seller's records and accounts to verify invoice amounts and to confirm any increases or decreases to the Purchase Price and any Change Orders.

Section 7.31 Condemnation, Eminent Domain, Casualty Events

(a) In the event that any Governmental Authority or any Person, acting under any Governmental Authority, other than Buyer, takes any action to condemn, seize or appropriate all or any substantial part of the Project (each a "Condemnation Proceeding"), Seller shall promptly notify Buyer of the Condemnation Proceeding and promptly update Buyer on significant events in connection with the Condemnation Proceeding, including with respect to settlement offers, and provide other information reasonably requested by Buyer as often as may be reasonably requested by Buyer. Any monetary offer to settle a Condemnation Proceeding or compensate Seller with respect thereto shall at all times be subject to Buyer's sole and absolute discretion to accept or reject such offer, and in the event that Buyer directs Seller to accept such offer, and provided that no Seller Default, shall have occurred and be continuing, the proceeds thereof shall be applied first as a credit against any cancellation payment that may apply pursuant to Appendix I, and the remainder of such proceeds shall be paid to Buyer.

(b) In the event that any casualty event (other than a Force Majeure) shall occur which causes a suspension of all or a substantial portion of the Work for a period greater than (i) forty-five (45) days after the receipt of insurance proceeds in an amount required to successfully restore or repair the Project without having to increase the Purchase Price or (ii) ninety (90) days after the occurrence of such casualty event, then, provided that no Seller Default shall have occurred and be continuing, the proceeds of any insurance policies in respect of such casualty event shall be applied first as a credit against any cancellation payment that may apply pursuant to Appendix I and the remainder of such proceeds shall be paid to Buyer.

Section 7.32 Seller's Organizational Documents

Within thirty (30) days following the Effective Date, Seller shall deliver to Buyer or its representatives true and complete copies of their [APPLICABLE ORGANIZATIONAL DOCUMENTS] (the "Seller's Organizational Documents"), as amended through (and including) such date.

Section 7.33 Construction Coordination Agreement [PacifiCorp Sites Only]

Seller shall conduct all development, construction, commissioning and testing activities in accordance with the provisions of the Construction Coordination Agreement and in a manner that shall not interfere with the operation of Unit 1.

Section 7.34 Import Permits, Licenses and Duties

Seller shall obtain all import permits or licenses required for any part of the Plant, Equipment or Work within the time stated in the Project Schedule or, if not so stated, in reasonable time having regard to the time for delivery of the Plant, the Equipment and the Time for Completion. Seller shall pay all customs and import duties arising upon the importation of Plant into the applicable port of entry. All such payments shall be deemed to be included in the Purchase Price.

Section 7.35 Compliance with Planning Permissions, Consents

Seller shall comply fully in respect of design and work at Site and all other obligations under the Agreement, with the terms, conditions and requirements of all consents, licenses and planning permissions obtained by Buyer or Seller in accordance with Section 8.2 ("Planning Permissions, Consents").

Section 7.36 Permits

Seller shall, and cause the Contractor and any Subcontractor to, at its sole cost and expense, secure and maintain all applicable construction and construction related permits which are required by Applicable Law (each a "Permit") in order to undertake and perform the Work.

Section 7.37 Lay Out

(a) Seller shall be, and shall ensure that the Contractor and any Subcontractor is, responsible for the true and accurate laying out of the Work by reference to original points, lines and levels of reference given by Buyer's Representative and provide all necessary instruments, appliances and labor therefor.

(b) If, at any time during the execution of the Work, any error appears in the positions, levels, dimensions or alignment of the Work, Seller shall rectify the error.

(c) Seller shall bear the Cost of rectifying any error caused or permitted, directly or indirectly, by Seller.

(d) Seller shall identify and protect bench marks, sight rails, pegs and other monuments or reference points used in laying out the Work.

ARTICLE 8

GENERAL OBLIGATIONS OF BUYER

Section 8.1 Buyer's General Obligations

(a) Buyer's general obligation hereunder is to purchase the Project, upon performance of Seller's obligations as provided in this Agreement.

(b) Additionally, Buyer shall:

(i) keep Seller informed as to the status of any governmental or regulatory or other activities undertaken by Buyer that relates to the Plant and that is likely to materially adversely affect Seller's ability to perform the Work;

(ii) comply with all Applicable Law, the noncompliance with which are likely to materially adversely affect the Work, the Plant, the Site or Seller's or Buyer's obligations under this Agreement; and

(iii) maintain its records and accounts in accordance with GAAP consistently applied in order to support any and all invoices, claims and disputes under this Agreement.

Section 8.2 Planning Permissions, Consents (PacifiCorp Sites Only)

(a) Buyer shall, before the time specified in the schedule for delivery of any Equipment or Plant to the Site, obtain the Planning Consents set forth in Exhibit G. In the event Seller considers that a consent not contained in Exhibit G must be obtained for the execution of the Work and/or operation of the Site and which, as a result of the application of Applicable Law, can only be obtained by Buyer, Seller shall immediately inform Buyer. If Buyer determines, in its sole discretion, that any additional consent is required, Buyer shall use commercially reasonable efforts to obtain such consent.

(b) Except as expressly provided or set out in this Section 8.2 or otherwise agreed in writing, Buyer shall have no obligation to obtain any further planning or similar consents which are or may be necessary for the performance of the Work. The obtaining of any and/or all other necessary consents, permits, planning permission from local or other authorities or adjacent landowners shall be the responsibility of Seller who shall ensure that the same are promptly obtained considering the schedule and the time for delivery of the Equipment, the Plant and the Time for Completion.

(c) Each Party agrees to provide reasonable assistance to the other where such assistance is necessary for any consent, license or permission to be obtained. Seller shall ascertain, comply with, and ensure that the Work complies with, all Applicable Law, and all consents, licenses and permissions relating thereto.

Section 8.3 Operations and Maintenance Staff

Buyer shall provide to Seller reasonable and necessary support during the commissioning and startup of the Plant as set out in this paragraph. Seller shall supply a schedule of requested support not less than sixty (60) days prior to commencing startup and commissioning activities. Buyer shall provide operations and maintenance staff personnel to participate in the commissioning activities and Performance Tests during normal working hours or other times as may reasonably be requested by Seller with advance notice as follows: Buyer shall provide operation and maintenance personnel as may be reasonably required by Seller to carry out the Performance Tests for purposes of commissioning, Performance Tests, training and system turnover, not to exceed 10 FTE (full-time equivalent) personnel for a period not to exceed 180 consecutive days. Buyer's operation and maintenance personnel shall work under the direction of Seller to perform their work in connection with the startup and commissioning activities. Subject to the following sentence, Buyer's personnel shall have acceptable minimum skill levels to operate the equipment. This participation shall be considered on the job training for Buyer's personnel.

Section 8.4 Certificate of Convenience and Necessity

Prior to the issuance of the Notice to Proceed, Buyer shall open a docket before the PSCU with respect to the CCN. Promptly after obtaining the CCN, Buyer shall provide notice thereof to Seller. Seller agrees to take commercially reasonable and prudent steps to represent themselves in the PSCU's regulatory proceedings in support of the CCN, including causing the Contractor and each Subcontractor to provide cooperation and assistance to Buyer in connection therewith. Such regulatory participation by Seller shall be at Seller's sole cost and expense.

Section 8.5 Buyer's Representative

(a) Buyer's Power to Delegate. Buyer may at any time and from time to time delegate to its representative (the "Buyer's Representative") any of its duties and obligations (other than its payment obligations) under the Agreement. Except as explicitly provided herein, any written decision, instruction or order given by Buyer's Representative to Seller in accordance with such delegation shall have the same effect as though it had been given by Buyer.

(b) Duties of Buyer's Representative. Buyer's Representative shall carry out such duties in issuing certificates, decisions, instructions and orders as are specified in the Agreement but except as expressly provided in the conditions neither the performance of or the failure to perform such duties whether properly or at all by Buyer's Representative, nor the fact that a representative has been appointed by Buyer shall in any way relieve Seller of any responsibility or liability for any of its obligations under the Agreement. No approval of, or consent to or failure to approve or disapprove of any matter by Buyer or Buyer's Representative shall relieve Seller of any liability or any of its obligations under the Agreement.

Section 8.6 Standard of Conduct

Unless explicitly stated otherwise in this Agreement, whenever the Parties or their representatives are required to exercise discretion by: (a) giving a decision or consent, (b) expressing satisfaction or approval, (c) determining value, or (d) otherwise taking action which may affect their respective rights and obligations hereunder, the exercise of such discretion shall be made in a reasonable manner and in good faith consistent with this Agreement so as to reasonably minimize any disruption to the other Party, and having regard to all the circumstances reasonably applicable thereto.

ARTICLE 9

WORKING ARRANGEMENTS

Section 9.1 Site Regulations

Seller, while performing Work at the Site, shall make itself aware of and adhere to Buyer's Site regulations, if any, including without limitation environmental protection, loss control, dust control, safety, and security, as well as any plant Site special conditions.

Section 9.2 Site Security

(a) Site security shall be under the direct control of Buyer and shall be in accordance with Buyer's established procedures, which include the requirements stated in this Section. Seller and its personnel and its Subcontractor's personnel of any tier shall strictly adhere to all Site security provisions. Buyer will furnish within fenced-in areas of the Site a guard force to control access to and from the Site.

(b) All personnel working at the Site and all repeat visitors may be provided and where provided, shall be required to keep in their possession at all times, while on the premises, an identification tag ("ID Tag") provided by Buyer. Visitor's ID Tags will be available, but persons with such ID Tags may be required to be escorted by a designated representative of Buyer.

(c) Seller shall be assigned a personnel gate through which its employees must enter and depart. ID Tags issued to Seller's employees may, at Buyer's option, be utilized as "brass", and Seller shall be responsible for the control of ID Tags issued to its employees, subcontractors, suppliers and visitors.

(d) Notwithstanding Buyer's provision of guard service, Seller shall be fully responsible for all Equipment, as well as Buyer-furnished material and Equipment in the care, custody and control of Seller.

(e) Buyer shall designate parking areas for all persons outside the fenced-in area of the Site. Certain individuals, authorized specifically by Buyer, may drive vehicles onto the Site and may enter and leave through the main gate at times designated by Buyer. Access to the Site between the hours of 3:30 P.M. local time and 7:00 A.M. of the normal work week and all hours on weekends shall be subject to the consent of Buyer. Seller shall follow the procedure designated by Buyer in obtaining consent for access to the Site at other than normal working hours.

(f) Seller shall maintain and submit to Buyer an up-to-date inventory of Equipment and tools brought onto the Site.

(g) A representative of Buyer shall have the unqualified right to demand identification of and/or search all persons and all vehicles entering or leaving the Site. Materials leaving the Site must have an appropriate material pass issued by Buyer. Seller shall make, and cause its Subcontractors to make, advanced arrangements for tool inventory when leaving the Site upon completion of the Project. The inventory shall be coordinated with Buyer and can be conducted on weekdays between 9:00 A.M. to 2:00 P.M.

(h) Buyer shall inform Seller of all restricted areas of the Site. Before entering any such restricted area, Seller shall obtain prior consent from Buyer Representative. Any individual found in restricted areas without Buyer consent shall be subject to removal from the Site.

Section 9.3 Preservation of Public and Private Access

Seller shall not damage, close, or obstruct any highway, road, or other public or private easement, except to the extent allowed by Permits. If such facilities are closed, obstructed, damaged, or made unsafe by Seller, Seller shall, at its sole cost and expense, make such repair as necessary and shall also provide such temporary guards, lights, and other signals as necessary or required for safety or as reasonably requested by Buyer.

Section 9.4 Night, Weekend or Holiday Work

In the event Seller determines it necessary to undertake the Work at night, on weekends, or on holidays, and such Work is on the Site, Seller shall provide Buyer's Representative forty-eight (48) hours notice, unless the Work is necessary for the protection of life or property or for the safety of the Work, in which case Seller shall immediately advise Buyer's Representative. Such Work shall be performed in accordance with all Applicable Law, Permits, consents and licenses, and without inconvenience to third parties. Seller explicitly agrees and acknowledges that full consideration and payment for the satisfactory completion of the Work includes all necessary labor hours inclusive of Work during night, weekends and holidays and explicitly agrees and acknowledges that Seller shall not file Change Orders because of the need to attract labor to perform Work at night, weekends or on holidays.

Section 9.5 Avoidance of Noise and Disturbance

All Work at the Site (including night, weekend or Holiday Work subject to the requirements of Section 9.4 ("Night, Weekend or Holiday Work")) shall be carried out in such a way as to minimize noise and disturbance and Seller shall indemnify and keep indemnified Buyer against any costs, losses or expenses, including without limitation, liability for damages arising out of or in connection with noise or other disturbance, falling outside of the limits specified in the Applicable Law and created by Seller in performing the Work.

Section 9.6 Opening Up of Work

(a) No major material part of the Work shall be covered up or put out of view without the prior written consent of Buyer's Representative. Seller shall timely inform Buyer's

Representative and shall afford full opportunity for Buyer's Representative to inspect any part of such Work which is about to be covered up or put out of view and to examine foundations before any part of the Work is placed thereon.

(b) Seller shall uncover any part of such Work or make openings in or through the same as Buyer's Representative may from time to time direct and shall reinstate and Repair such part. The cost of such uncovering, repair or reinstatement shall be borne by Seller unless (i) the requirements of Section 13.2(c), if applicable, have been fulfilled with respect to such part, (ii) such part is found to have been executed in accordance with the Agreement, and (iii) it was not reasonable to have requested the opening up given the existence of Defects of a similar nature in other parts of the Work, in which event the cost of such uncovering, repair, or reinstatement shall be borne by Buyer.

(c) Notwithstanding any other provision of this Section, if Defects are uncovered, Buyer shall be entitled to either accept the defective Work or to accept them only partially remedied and, provided that Seller has had a reasonable opportunity to remedy the Defects (except where such work has been deliberately concealed by Seller) the Purchase Price shall be reduced by an amount mutually agreed by Buyer and Seller, and in the absence of such agreement, an amount as is determined pursuant to the provisions of article 32 ("Claims, Claim Notice and Dispute Resolution").

Section 9.7 Fencing, Protection, Lighting

Seller shall provide adequate safety barriers, signs, lanterns, and other warning devices and service to properly protect any person having access to or near the Site. Seller shall be solely responsible for any act of trespass or any damage to adjacent property resulting from or in connection with its operations under this Agreement.

Section 9.8 Site Services

Seller shall be responsible for obtaining any and all electricity, water, fuel, air and other services as Seller may require for the purposes of the Work, and Seller shall be responsible for the cost thereof .

Section 9.9 Cleanup

Seller shall keep the Work area, including storage areas used by it, free from accumulation of waste materials or garbage arising out of the Work, and shall, prior to completion of the Work, remove and properly dispose of any such waste materials or garbage from and about the Work area as well as remove all tools, equipment and materials not property of Buyer. Upon completion of the Work, Seller shall leave the Work area in a condition reasonably satisfactory to Buyer. In the event of Seller's failure within a reasonable time to comply with any of the foregoing, Buyer may, after written notice to Contractor of such failure, perform the cleanup and removal at the sole cost and expense of Seller.

Section 9.10 Contamination

Seller shall, at all times, be responsible for keeping the Site free from any Contamination brought to or generated at the Site by Seller, the Contractor or any Subcontractor. Prior to the Closing, Seller shall manage any Contamination, whether brought on to the Site or pre-existing, according to Applicable

Law and within the requirements of Buyer's policies and programs for management and disposal of Contamination. Seller shall not be responsible for the remediation or disposal of any pre-existing Contamination. Prior to the disposal or disposition of any Contamination, Seller shall obtain the written approval of Buyer for such disposal or disposition.

Section 9.11 Material Safety Data

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

- (a) Seller shall require that suppliers furnish appropriate Material Safety Data Sheets (collectively, "MSDS") and appropriate labels of all purchased chemicals.
- (b) For materials that a Contractor plans to bring onto the Site, MSDS for those materials must first be presented to Buyer for review by Buyer's Plant Safety Coordinator. Contractors coming onto the Site will provide to Buyer an MSDS for the materials to be used. Materials will be contained so as to meet any State or Federal Regulations.
- (c) Seller and its employees shall review the MSDS of the appropriate hazardous chemicals, and follow the requirements of the OSHA Hazard Communication Standard.
- (d) Seller is responsible for all applicable training and adherence to the program by its employees, Subcontractors, and Subcontractor's employees, subcontractors and agents.
- (e) Any employee of Seller working in an area where hazardous chemicals are or may be present shall be notified in writing by Seller of the chemicals present and provided with appropriate MSDS. It will be the responsibility of Buyer to inform Seller of the hazardous chemicals at the Site to which its employees may be exposed.

Section 9.12 Historical Artifacts (PacifiCorp Sites Only)

In the event that any relics, items or structures with archaeological, geographical or historical value or any Articles (including but not limited to fossils, coins, Articles of value or antiquity and any Native American relics) are discovered by Seller or any of its subcontractors of any tier or any of their representatives or employees, Seller shall leave said items undisturbed and shall immediately notify Buyer and await its direction before proceeding with any work in the vicinity. All such historical artifacts shall be deemed to be the absolute property of Buyer and under no circumstances shall Seller take possession of any item discovered.

ARTICLE 10

PROJECT SCHEDULE

Section 10.1 Project Schedule

Attached hereto as Exhibit C is a preliminary general project timetable setting forth the major tasks that must be completed by Seller (each a "Milestone") and completion dates for such tasks ("Milestone")

Completion Dates”) as provided by Seller in accordance with the Specification. One such Milestone is the final approval by both parties of a more detailed project timetable (the “Project Schedule”) setting forth in more detail Milestones and Milestone Completion Dates, including all design, development and other Milestones to be achieved. In the event that the Notice to Proceed is delayed, within thirty (30) days from the date of the Notice to Proceed, Seller shall submit to Buyer’s Representative an updated version of the Project Schedule for the approval of Buyer’s Representative.

Section 10.2 Form of Project Schedule

The Project Schedule shall be in a form acceptable to Buyer. Such Project Schedule shall specify any tasks, obligations, or responsibilities (each a “Buyer Obligation”) which Buyer must perform or fulfill in order for Seller to achieve the Milestone Completion Dates for each Milestone, and the date by which Buyer is to fulfill each and every Buyer Obligation.

Section 10.3 Rejection of the Project Schedule

(a) Buyer’s Representative shall have the right to reasonably reject, vary, amend, substitute or otherwise change the Project Schedule prior to approval thereof. Any such variation, amendment, substitution, or other change (other than a rejection) shall be considered a Buyer-Initiated Change under Section 13.1 (“Changes”).

(b) If, under Section 10.3(a), Buyer’s Representative rejects any Project Schedule submitted by Seller, Seller shall, within seven (7) days of such rejection, submit four (4) copies of the final form of a revised Project Schedule for approval by Buyer’s Representative and of the Project Schedule.

Section 10.4 Alterations to Project Schedule

Seller shall not, without the prior written consent of Buyer’s Representative, make any material alteration to the Project Schedule.

Section 10.5 Revision of Project Schedule

If Buyer or Buyer’s Representative determines, each in its sole discretion, that progress of the Work does not or is unlikely to match the Project Schedule, or otherwise to enable the Work to be completed by the Time for Completion, Buyer’s Representative may order Seller to revise the Project Schedule. Seller shall thereafter revise the Project Schedule to show the modifications necessary to ensure completion of the Work within the Time for Completion. Seller shall notify Buyer’s Representative as soon as possible of any circumstances of which Seller is or becomes aware which might result in progress not matching the Project Schedule.

Section 10.6 Seller’s Responsibility to Comply with Milestone Completion Dates

Seller shall undertake sole and complete responsibility to complete and to commit sufficient manpower and resources to insure the completion of each Milestone by the appropriate Milestone Completion Date.

Section 10.7 Rate of Progress

(a) Buyer's Representative shall notify Seller if Buyer's Representative decides that the rate of progress of the Work is, in its opinion, too slow to meet the Time for Completion due to a circumstance for which Seller is or is not entitled to an extension of the Time for Completion under the provisions of this Agreement.

(b) Following receipt of such a notice Seller shall at its own cost take such steps as may be necessary and as Buyer's Representative may approve to remedy or mitigate the likely delay, including revision of the Project Schedule. Seller shall not be entitled to any additional payment or additional Cost or any increase in the Purchase Price for taking such steps.

Section 10.8 Progress Reports

(a) Seller shall submit to Buyer's Representative on the third (3rd) working day of each month or such other date as is agreed upon between Seller and Buyer, a progress report ("Progress Report") in compliance with the requirements set forth in the Specification. Seller shall submit two (2) copies of each Progress Report to Buyer's Representative.

(b) The written progress reports submitted by Seller shall specify in detail:

(i) any problem or circumstance (each a "Project Problem") encountered by Seller or Contractor during the preceding month (including without limitation the failure of Buyer to perform any Buyer Obligations under the Agreement or the inadequacy of any such performance by Buyer) which might (A) prevent Seller from completing any Milestone by its Milestone Completion Date or (B) cause Seller to incur additional expenses in completing any Milestones;

(ii) the estimated length of any delay and the estimated amount of any additional expenses, if any, which may be chargeable to Buyer hereunder, as a result of any Project Problem identified pursuant to the Agreement, and

(iii) to the best of Seller's knowledge, after due inquiry and analysis, the cause of any Project Problem specified pursuant to the Agreement and the specific steps taken or proposed to be taken by Seller to correct such problem.

(c) In the event that Seller fails to specify in writing any Project Problem (an "Unidentified Project Problem") with respect to a given monthly period in the appropriate report and in such manner and at such time as specified pursuant to the Agreement as a Project Problem, Seller shall not be entitled to rely on any such Unidentified Project Problem as a purported justification for either (i) claiming that it is entitled to receive any additional amounts pursuant to the Agreement (including without limitation, damages arising out of any alleged failure by Buyer to perform any of Buyer Obligations) or (ii) failing to complete any Milestone by the specified Milestone Completion Date.

(d) The submission by Seller of any Progress Report shall not alter, amend or modify Seller's or Buyer's rights or obligations pursuant to this Agreement, including the Purchase Price. In the event and to the extent any Milestone is not completed by the specified Milestone

PacifiCorp
Draft RFP 2012

Responses due ~~January~~January 2007

2012 Request for Proposals
~~Base Load~~Base Load
Resources

TABLE OF CONTENTS

	Page
<u>Section 1. Introduction.....</u>	<u>1</u>
<u>A. Purpose and Scope.....</u>	<u>1</u>
<u>B. Eligible Resources.....</u>	<u>44</u>
<u>C. Resource Alternatives.....</u>	<u>55</u>
<u>1. Power Purchase Bid.....</u>	<u>1111</u>
<u>2. Tolling Service Agreement.....</u>	<u>1212</u>
<u>3. Asset Purchase and Sale Agreement on PacifiCorp Site.....</u>	<u>1313</u>
<u>4. Asset Purchase and Sales Agreement on a Bidder's Site.....</u>	<u>1414</u>
<u>5. Engineering, Procurement, and Construction Contract ("EPC Contract") for the Currant Creek Site (no proposals for an EPC contract at the Lake Side site will be accepted).....</u>	<u>1515</u>
<u>6. Purchase of an Existing Facility.....</u>	<u>1616</u>
<u>7. Agreement Purchase of a Portion of a Facility Jointly Owned and/or Operated by PacifiCorp.....</u>	<u>1717</u>
<u>8. Restructure of an Existing Power Purchase Agreement or an Exchange Agreement and/or Buyback of an Existing Sales Agreement.....</u>	<u>1717</u>
<u>9. Eligible Resources Exceptions.....</u>	<u>1818</u>
<u>Section 2. Logistics.....</u>	<u>2020</u>
<u>A. Schedule of RFP 2012 Actions: RFP 2012 is anticipated to be issued in November, 2006.....</u>	<u>2020</u>
<u>B. Prebid Conference.....</u>	<u>2020</u>
<u>C. Request for Qualification (RFQ) Bid forms (Appendix A and B).....</u>	<u>2121</u>
<u>D. Submission of Bids.....</u>	<u>2121</u>
<u>E. RFP 2012 Team.....</u>	<u>2323</u>
<u>F. Bidder Evaluation Fees.....</u>	<u>2424</u>
<u>G. Effectiveness of Bids.....</u>	<u>2424</u>
<u>H. Procedural Items.....</u>	<u>2525</u>
<u>1. Request for Qualification (RFQ) Bid Form.....</u>	<u>2525</u>
<u>2. Submission of Proposals by Bidders.....</u>	<u>2626</u>
<u>3. Minimum Eligibility Requirements for Bidders.....</u>	<u>2727</u>
<u>4. Company's Reservation of Rights and Disclaimer.....</u>	<u>2828</u>
<u>5. Accounting.....</u>	<u>2929</u>
<u>6. Confidentiality.....</u>	<u>3131</u>
<u>7. Regulatory Process.....</u>	<u>3131</u>
<u>8. Subsequent Regulatory Action.....</u>	<u>3232</u>
<u>Section 3. RFP 2012 Proposal Content.....</u>	<u>3333</u>
<u>Section 4. Resource Information.....</u>	<u>3939</u>

A. Price and Nonprice Information.....	3939
B. Price Information.....	4040
1. Fixed Costs.....	4040
2. Variable Costs.....	4040
C. Nonprice Information.....	4141
1. Point(s) of Delivery.....	4141
2. Proposals Requiring Third-Party Point-to-Point Transmission Service.....	4343
3. Interpretation with Interconnection Agreement.....	4343
4. PacifiCorp Transmission Interconnection Service.....	4343
5. PacifiCorp Transmission Integration Service.....	4444
6. Use of PacifiCorp’s Sites.....	4444
Section 5. Bid Evaluation Process of the Proposals	4545
A. Step 1—Price and Nonprice Evaluation to Determine the Initial Short List.....	4747
1. Price Factor Evaluation (Up to 80%).....	4747
2. Nonprice Factors (up to 20%).....	4848
B. Step 2—Capacity Expansion Model - Production Cost Run	5050
C. Step 3—Risk Analysis	5151
In order to identify the resources in the highest performing (least cost, adjusted for risk) portfolios, stochastic and deterministic analyses will be performed on each optimized portfolio.....	5151
1. Stochastic Analysis	5151
2. Deterministic Scenario Analysis.....	5151
Section 6. Awarding of Contracts.....	5353
A. Invitation	5353
B. Post-Bid Negotiation.....	5353
C. Confidentiality Agreement.....	5454
D. Nonreliance Letter.....	5454
114151111121131141151161171171181201201201211211231241241241241261 271281291311311321331381381391391401401401421431431431 431451471471481501511511511531531531541541Section 1- Introduction.....	1
A. Purpose and Scope	3
B. Eligible Resources.....	47
1. Power Purchase Bid.....	58
2. Tolling Service Agreement.....	8876
3. Asset Purchase and Sale Agreement on a PacifiCorp Site	79
4. Asset Purchase and Sales Agreement on a Bidder’s Site	1010109

5. Engineering, Procurement, and Construction Contract (“EPC Contract”) for the Currant Creek Site (no proposals for an EPC contract at the Lake Side site will be accepted).....	1111119
6. Purchase of an Existing Facility	11111110
7. Purchase of a Portion of a Facility Jointly Owned and/or Operated by PacifiCorp.....	12121211
8. Restructure of an Existing Power Purchase Agreement or an Exchange Agreement and/or Buyback of an Existing Sales Agreement.....	13131311
9. Eligible Resources Exceptions.....	13131312
Section 2. Logistics.....	14141413
A. Schedule of RFP 2012 Actions: RFP 2012 Is Being Issued as of October 2006.....	14141413
B. Prebid Conference.....	15141413
C. Request for Qualification (RFQ) Bid Form Appendix A and B	1515151314
D. Submission of Bids.....	15151514
E. RFP 2012 Team.....	1616161415
F. Bidder Evaluation Fees.....	17171715
G. Effectiveness of Bids.....	17171716
H. Procedural Items	18181716
1. Request for Qualification Bid Form (RFQ).....	18181716
2. Submission of Proposals by Bidders.....	19191917
3. Company’s Reservation of Rights and Disclaimer.....	21212119
4. Accounting.....	22222120
5. Confidentiality.....	2124
6. Regulatory Process.....	2224
7. Subsequent Regulatory Action.....	2325
Section 3. RFP 2012 Proposal Content.....	2325
Section 4. Resource Information.....	2727272525
A. Price and Nonprice Information.....	2528
B. Price Information.....	2826
1. Fixed Costs.....	268
2. Variable Costs.....	286
3. Operating Flexibility Characteristics.....	286
C. Nonprice Information.....	297
1. Point(s) of Delivery.....	298
2. Proposals Requiring Third-Party Point to Point Transmission Service.....	3028
3. Interpretation with Interconnection Agreement.....	3029
4. PacifiCorp Transmission Interconnection Service.....	3029
5. PacifiCorp Transmission Integration Service.....	3129
6. Use of PacifiCorp’s Sites.....	3129

Section 5. Bid Evaluation Process of the Proposals	3229
A. Step 1— Screening “First Price Sealed Bid Format” — Initial Short List.....	303
B. Price and Nonprice Evaluation to Determine the Initial Short List	304
1. Price Factor Evaluation (Up to 70%).....	304
2. Nonprice Factors	325
C. Step 2— Final Short List — Production Cost Run	336
Section 6. Awarding of Contracts	385
A. Invitation	358
B. Rejection	358
C. Post-bid negotiation.....	358
D. Confidentiality Agreement.....	359
E. Nonreliance Letter	369

A

Appendices.....

Appendix A:	Request for Qualification (RFQ) Bid Form	49
Appendix B:	Bidder's Qualification and Credit Information	56
Appendix C:		66
	Appendix C-1: PPA and TSA Information Request	67
	Appendix C-2: APSA Information Request,	75
	Appendix C-3: EPC Information Request	83
	Appendix C-4: Existing Asset Purchase Information Request	90
Appendix D:	Fuel Supply Form	97
Appendix E:	Officer Certification Form	99
Appendix F:	SFAS No. 13 Form	101
Appendix G:	Bidder Site Control Form	103
Appendix H:	Construction Coordination Agreement	107

Attachments.....

Attachment 1:	Benchmark Resources	129
Attachment 2:	QF Bidder Information	142
Attachment 3:	Power Purchase Contract	149
Attachment 4:	Role of the Independent Evaluation and communications between the Evaluation Team, the Bid Team, the Bidders and the Independent Evaluator	150
Attachment 5:	Tolling Service Agreement Contract	155
Attachment 6:	Asset Purchase and Sale Agreement (APSA) with Appendices	156
Attachment 7:	Lake Side APSA Rights and Facilities	157
Attachment 8:	Currant Creek APSA Rights and Facilities	159
Attachment 9:	Owner's Costs under APSA and EPC	161
Attachment 10:	Owner's Development Cost Assumptions	164
Attachment 11:	Form of Letter of Credit	166
Attachment 12:	Standard & Poor's Inferred Debt Methodology Article	168
Attachment 13:	PacifiCorp Costs Associated with Integration	169
Attachment 14:	Confidentiality Agreement	172
Attachment 15:	Non-Reliance Letter	176
Attachment 16:	Site Purchase Agreement for Lake Side	180
Attachment 17:	Site Purchase Agreement for Currant Creek	194
Attachment 18:	Currant Creek Engineering, Procurement and Construction Contract (EPC)	208
Attachment 19:	Due Diligence Items for the Acquisition of an Existing Facility	209
Attachment 20:	Code of Conduct	224

Attachment 21: -Credit Methodology

22031

Attachment 22: -Credit Commitment Letter

-23724

Forms

Form 1:	Pricing Input Sheet	239
Form 2:	Permitting and Construction Milestones	240

- ~~Appendix A and B Request for Qualifications (RFQ) Bid Form~~
- ~~Bidder's Qualification and Credit Information~~
- ~~Appendix C 1 PPA and TSA Information Request~~
- ~~Appendix C 2 APSA Information Request~~
- ~~Appendix C 3 EPC Information Request~~
- ~~Appendix C 4 Existing Asset Purchase Information Request~~
- ~~Appendix D Natural Gas & Fuel Supply Form~~
- ~~Appendix E Officer Certification Form~~
- ~~Appendix F SFAS No. 13 Form~~
- ~~Appendix G Bidder Site Control Form~~
- ~~Appendix H Construction Coordination Agreement~~

Attachments

- ~~Attachment 1 Benchmark Resources~~
- ~~Attachment 2 QF Bidder Information~~
- ~~Attachment 3 Power Purchase Contract~~
- ~~Attachment 4 Role of the Independent Evaluator and communication between the Evaluation Team, the Bid Team, the Bidders and the Independent Evaluator~~
- ~~Attachment 5 Tolling Service Agreement Contract~~
- ~~Attachment 6 Asset Purchase and Sale Agreement (APSA) with Appendices~~
- ~~Attachment 7 Lake Side APSA Rights and Facilities~~
- ~~Attachment 8 Currant Creek APSA Rights and Facilities~~
- ~~Attachment 9 Owner's Costs under APSA and EPC~~
- ~~Attachment 10 Owner's Development Cost Assumptions~~
- ~~Attachment 11 Form of Letter of Credit~~
- ~~Attachment 12 Standard & Poor's Inferred Debt Methodology Article~~
- ~~Attachment 13 PacifiCorp Costs Associated with Integration~~
- ~~Attachment 14 Confidentiality Agreement~~
- ~~Attachment 15 Non-Reliance Letter~~
- ~~Attachment 16 Site Purchase Agreement for Lake Side~~
- ~~Attachment 17 Site Purchase Agreement for Currant Creek~~
- ~~Attachment 18 Currant Creek Engineering, Procurement and Construction Contract (EPC)~~

PacifiCorp
Draft RFP 2012

Responses due January 2007

~~Attachment 19 — Due Diligence Items for the Acquisition of an Existing Facility~~

~~Attachment 20 — Code of Conduct~~

~~Attachment 21 — Credit Methodology~~

~~Attachment 22 — Credit Commitment letter~~

~~Bidder Supplied Forms~~

~~Form 1 — Pricing Input Sheet~~

~~Form 2 — Permitting and Construction Milestones~~

SECTION 1. INTRODUCTION

A. Purpose and Scope

The purpose of this document is to prescribe the process by which PacifiCorp (“the Company”) will request and evaluate proposals from third parties to fulfill a portion of the supply-side resource need identified in the Company’s 2004 Integrated Resource Plan (“~~IRP~~” ~~Update~~ and the 2004 ~~IRP~~ update (“~~IRP~~”). The scope of this Request for Proposals (“RFP 2012”), subject to the limitations described herein, is focused on all Base Load a supply-side resource capable of delivering energy and capacity in or to the Company’s ~~n~~Network ~~t~~Transmission system in the Company’s Eastern Control Area (“PACE”) ~~;~~ (www.oasis.pacificorp.com) and that fulfills the requirements of being a ~~n~~Network ~~r~~Resource. A Base Load supply side resource is defined as any resource with any type of fuel source that provides unit contingent or firm capacity and associated energy that are incremental to the Company’s existing capacity and energy resources and are available for dispatch or scheduling by June 1, 2012, June 1, 2013 and/or June 1, 2014.

Potential Bidders should note that the Company’s affiliates will ~~be~~ not be eligible to respond to the RFP 2012. As described in more detail below, the Company has put in place prudent safeguards to assure that no bias occurs. The Company seeks proposals from all potential suppliers who can meet the conditions of RFP 2012.

~~In Chapter 5 (pages 45-49) of the 2004 IRP update the Company has identified a Preferred Portfolio as Portfolio number two. The Preferred Portfolio includes a Brownfield coal plant in Utah in 2012 and Brownfield coal plant in Wyoming 2014. In addition, the Preferred Portfolio includes 700MW of Front Office transactions on the east side of the system. Please refer to the Company’s web site at www.pacificorp.com to view the IRP.~~ Bidders should note that although from a planning basis the IRP ~~and the IRP update~~ uses specific types of resources in the base case and in the preferred portfolio this should not be considered by Bidders to be the only resource type or technology that the Company is willing to consider. **Any Bidder who has a question with respect to any resource characteristic it is considering to bid is instructed to contact the Independent Evaluator (“IE”), [Merrimaack Energy Group at www.merrimaackenergy.com](http://www.merrimaackenergy.com) described below after the final and approved issuance of the RFP 2012-RFP.**

The Company may opt to contract for more or less power, depending among other things, on the quality of bids received in response to RFP 2012, updates to the Company’s forecasts, regional transmission availability and timing, and changes in the wholesale energy market conditions.

This introductory section describes the type, timing and amount of ~~Base Load~~Base Load resources sought for 2012 through 2014 (“the Term”). Section 2 covers logistics such as where and when proposals must be submitted, Bidder fees and important policies and procedures. Section 3 provides information related to power delivery requirements, including RFP related requirements for those proposals involving interconnection of new generation facilities directly to the transmission system. Section 4 outlines the requirements to be included within each proposal. Section 5 outlines the evaluation process. Section 6 outlines the awarding and rejecting of proposals. The Appendices include all the required Attachments and Forms for each of the Eligible Resources.

The resource need assessment for the Term is outlined below. The total resource need is a combination of supply side resources and front office transactions required for the PacifiCorp's system during the Term. The renewable targets set forth in the IRP are not included in the Base Load RFP 2012 however; the fixed amount of renewable targets will be ~~an inputted~~ into the CEM model (which is discussed in more detail in Section 5) based on IRP forecasted price. The resource need in the IRP and the IRP update has changed. ~~The 1775MW supply side resources, from both the IRP and the IRP update, assume a 15% planning margin and the inclusion of front office transactions. The IRP identified a resource need of 2743MW for the Term and the IRP update identified a resource need for the Term of 1775MW assumes a 15% planning margin and the planned front office transactions for the east of 700MW. The range of the resource need identified in the IRP and the IRP update for the Term is between 1775MW and 2743MW. The resource need previously filled with market purchases, i.e. front office transactions, on a planning basis will use an specific generation assets for the purposes of a benchmark in this RFP.~~

~~The chart below shows the total resource need identified in the IRP and the IRP update by year during the term, the range of benchmark resource options by year and the difference between the total resource need and the Company Benchmark Resource(s) being solicited in this RFP.~~

~~The chart below shows the total resource needs identified in the IRP and the IRP update by year during the term, the range of benchmark resource options by year and the difference between the total resource need and the Company Benchmark(s) resources being solicited in this RFP.~~

~~Company Benchmark being solicited in this RFP.~~

<u>Total Resource Requirements (East-Side)</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
<u>A combination of Supply Side resources and Front Office Transactions in the 2004 IRP and 2004 IRP Update</u>	<u>1800 MW (2004 IRP) (includes prior years)</u>	<u>560 MW (2004 IRP)</u>	<u>383 MW (2004 IRP)</u>
	<u>1275 MW (2004 IRP Update)</u>	<u>335 MW to 935 MW* (2004 IRP Update)</u>	<u>500 MW (2004 IRP Update)</u>
<u>RFP 2012 Benchmark Resources</u>	<u>Hunter 4 600 MW IPP 3 340 MW</u>	<u>Bridger 5 750 MW</u>	<u>IGCC 250 MW to 600 MW</u>
<u>Annual Benchmark Resources in the RFP 2012</u>	<u>340MW to 940 MW</u>	<u>750 MW</u>	<u>250 MW to 600 MW</u>
<u>Total Benchmark Resources in the RFP 2012</u>	-	-	<u>1600 MW to 2290 MW</u>
<u>Total Resources in the 2004 IRP and 2004 IRP Update</u>	-	-	<u>1775 MW to 2,743 MW</u>
Resource	2012	2013	2014
<u>Total Resources identified by year as a combination of</u>		<u>335MW to 935MW¹</u>	<u>500MW</u>

¹ If resource quantities in the amount of Hunter and IPP benchmark are acquired in 2012, then the 2013 resources quantities are 335MW. If resource quantities only in the amount of IPP benchmark are acquired in 2012, then the 2013 resource requirement is 935MW.

Supply Side resources and Front Office purchases in the 2004 IRP Update.	1275MW		
RFP2012			
	Hunter 600MW IPP 340MW	Bridger 750MW	IGCC 250MW- 600MW
Total Resources required in the RFP 2012	600MW to 940MW	750MW	250MW to 600MW
Total Resources in the Term			1600MW to 2290MW
Total Resources in the RFP 2012			1775MW

The issues of timing and requirements of resources in light of uncertain load growth, changes in technology, environmental requirements and costs (i.e. CO₂ and mercury impacts), market prices and resources availability and other factors are exacerbated by the trend toward long lead time coal based resources. To address such uncertainty the ~~company~~ Company has included two benchmark options that have different risk and cost profiles for the benchmark for 2012. The Utility Company will submit a detailed evaluation for each Benchmark Resource, with supporting cost information, to the Oregon Commission and the IEs prior to the opening of proposals submitted by the bidderBidders. If during the course of the RFP process, the eCompany, with input from the IEs, sdetermines that a bidderBidder update is appropriate, the eCompany will themthen also be entitled to update the assumptions in the Benchmark Resource(s). The IEs will review the reasonableness of the Benchmark Resource(s). To the extent Bidders want to propose in service date deferral options, use Form 1 and or contract buyout options, use Form 2, as a component of their bids, they should be sure to identify them clearly with specific triggers (i.e., triggers associated with specific milestones) within the Bidder’s proposal. The Company has included, in Form 1, for Bidders to provide proposals with different on line dates as options to the companyCompany and Form 2 with suggested milestones and breakup fees for the bidderBidders to consider Pricing Input Sheet (Form 1) For each resource and option (Form 1 and Form 2) should be completed.- Each base proposal will be evaluated under one bid fee if it is the same project with up to two alternatives. However, each proposal and any given option will have separate bid numbers. to address these issues however, three bid numbers would be provided to the Bidder.- This will allow bidderBidders to structure different pricing associated with different on line dates and provide break up fees for specific resource proposals. -Potential Bidders should note that pursuant to applicable law, this RFP process will be subject to the safeguards of review by and involvement of an independent evaluator consistent with selected by the Utah, Senate Bill 26, the -Utah Energy Resource Procurement Act Section 54-17-203, and Oregon Order No. 06-446 Guideline 5.-(Section)Utah Division of Public Utilities with input and feedback from stakeholders. More information concerning the role of the Independent Evaluator (“IE”) is provided below. An IE has been hired by the Utah Commission and a separate IE is in the process of being hired in Oregon and will be retained prior to receiving proposals.

B.B. Eligible Resources

The Company is seeking up to four ~~b~~Base ~~l~~oad resource(s) for the Term of 2012, 2013, and/or 2014. (See **Attachment 1** for an description of the engineering specifications, fuel type, technology, efficiency, location, projected life, transmission requirements and operation and dispatch characteristics of each Company Benchmark). Unless a resource qualifies for one of the exceptions outlined below, the minimum bid that will be accepted is for 100 MW of dependable capacity or greater and a minimum term of ~~fiveten~~ years. Any ~~base load~~Base Load resource(s) bid must provide unit contingent or firm capacity and associated energy that are incremental to the Company's existing capacity and energy resources and are available for dispatch or scheduling by June 1, 2012, June 1, 2013 and/or June 1, 2014.

For each proposal submitted by a Bidder, the Bidder **must** submit its individual proposal under only one of the eight Resource Alternatives or one of the two exceptions listed below. The Company will not consider a proposal unless the Bidder has selected one of the eight alternatives **or** one of the two exceptions of Eligible Resources listed in the Request for Qualifications (Appendix A and Appendix B). One Bidder may submit more than one proposal, but each proposal can be for only one Resource Alternative, which must specify the year within the Term or specify the Company's options within the Term for the Eligible Resource, designated by the Bidder. If the Bidder submits the same Eligible Resource proposal in different years or in the form of an alternative proposal however, it is the same resource, then proposal will be considered one proposal with two alternatives ~~however and~~ the Bidder will receive three separate bid numbers for the resource and pay one bid fee.

The Company will not accept proposals where the Bidder retains the option to displace any resource for economic reasons and/or where the Bidder holds the unilateral option to select one or more alternate Point(s) of Delivery. In addition, the Company will not accept any proposal that provides for planned maintenance or planned derates (as defined by NERC) during the months of June through September or December through February in any year.

~~If a Bidder is submitting a proposal under any of the Eligible Resources that might be constructed in Utah and which require the engagement of one or more contractors (each a "Contractor") for purposes of constructing or modifying a physical facility, the Bidder shall, and shall cause the Contractor to award construction contracts and subcontracts of any tier for the Work (i) in compliance with the requirements of U.S. federal and Utah state laws and regulations and (ii) on a "Merit Shop" basis or (iii) through a project labor agreement. Each Contractor shall, subject always to the requirements of law or regulation or applicable collective bargaining agreement, and to the fullest extent commercially reasonable, perform the Work using a majority of Utah labor. Each Contractor shall, and shall require each of its subcontractors to, refrain from any discrimination against any employee on the basis of that employee's membership or non-membership in any labor organization. Contractor shall, and shall require its subcontractors to, comply with all applicable requirements of law or regulation regarding labor relations and employment matters. Any administrative or civil proceedings related to labor relations or employment matters related to the Work and filed against the Contractor or any subcontractor shall be promptly reported to Company. Nothing in this provision shall affect any obligation of any Contractor or its subcontractors pursuant to a collective bargaining agreement applicable to some or all of its performance of the Work or obligations pursuant to the Contract.~~

~~Subject to the exception outlined below for distributed generation,~~ Qualifying Facilities (“QFs”), as defined under the regulations implementing the Public Utility Regulatory Policies Act of 1978 (“PURPA”), with 100 MW or greater of capacity are eligible to participate in this RFP 2012. Firm QFs with 100 MW or greater of capacity and a minimum term of ~~five~~ten years or longer will fall under the Eligible Resource exception as outlined in Section B. that elect to pursue traditional PURPA contracts rather than participate in this RFP 2012 will not be eligible for capacity payments under the traditional PURPA contract. Each QF Bidder must submit the required information in **Attachment 2** in order to be evaluated under this RFP 2012. Any QF Bidder that has a question regarding these provisions is instructed to contact the IE.

B.C. Resource Alternatives

The Company will consider bids that take one of the following forms: (1) Power Purchase Agreement; (2) Tolling Service ~~Agreement~~Agreement, which may include gas or coal;; (3) Asset Purchase and Sale Agreement (PacifiCorp site and PacifiCorp’s specifications); (4) Asset Purchase and Sale Agreement (Bidder ~~S~~site); (5) Engineering, Procurement and Construction Contract (Currant Creek ~~S~~site ~~O~~only); (6) purchase of an existing facility; (7) purchase of a portion of a facility jointly owned or operated by the Company; ~~or~~ (8) restructuring of an existing Power Purchase Agreement or Exchange Agreement or (9) Exceptions which include Load Curtailment or Qualified Facilities.

Descriptions of each of these categories are set out below. Each bid must be for one and only one of the categories, although a Bidder may submit separate bids for energy and capacity from a single resource for any of the categories. The chart outlines a summary of the eligible forms which are then discussed in more detail. The ~~company~~Company has attached Pro ~~f~~Forma Agreements to the Request for Proposals. There are eight Eligible resources, with two exceptions. There are more types of resource options than there are ~~Pro-Forma~~Proforma agreements. These ~~Pro-Forma~~Proforma Agreements will be used to initiate the negotiations between the Company and those Bidders on the final shortlist.

Eligible Resources	Term	Location	Requirements
1) Power Purchase Agreements	Fixed term specified in the bid up to the life of the asset from a single resource located in or delivering to PACE under the PPA. <u>Must be a minimum of 105 years and 100MW.</u>	Bidders can bid on their sites or on PacifiCorp ("PPW") sites; however, PPW is not required to operate the facilities, <u>and it canwhich can not impact PPW existing generation on the site.</u>	If the bidder <u>Bidder</u> bids on one of the PPW sites the bidder <u>Bidder</u> must bid a minimum of 420MW and 85% of the facility's dependable generation with no less than 420MW nominal generating capacity a minimum of 20 years and a maximum of the life

			of the asset. Life of asset will be evaluated consistent with IRP Tables C.27 and C.28.
2) Tolling Service Agreements <u>Gas or Coal</u>	Same as #1 under the PPA	Same as #1	Same as #1
3) Asset Purchase and Sale Agreements on PPW sites	Life of asset will be evaluated consistent with IRP Tables C.27 and C.28.	Currant Creek or Lake Side facilities.	Must be bid to result in the development and construction of a facility that complies with the specifications in the APSA and the specification for each site set forth in the Appendices. <u>The eCompany will require that the project be operated and maintained by bidderBidder for up to a 10 year term to ensure cost effectiveness, availability and reliability of the resources prior to the companyCompany's acceptance of the resource.</u>
<u>Eligible Resources</u>	<u>Term</u>	<u>Location</u>	<u>Requirements</u>
4) Asset Purchase and Sales Agreement <u>for gGas or eCoal</u>	Life of asset will be evaluated consistent with IRP Table C.27 and	Facility built on a Bidder's site which is a new facility. If it is an existing facility, it should	Must be pursuant to the APSA Contract; PPW will own and operate the facility following

	C.28.	be bid under #6.	commercial operation. <u>All bidderBidders must complete Appendix C-2. The eCompany will require that the project be operated and maintained by bidderBidder for up to 10 years in order to ensure cost effectiveness, availability and reliability of the resources prior to the companyCompany's acceptance of the resource</u>
5) EPC Contract for Currant Creek	Life of asset will be evaluated consistent with IRP Table C.27	Currant Creek site.	Must be pursuant to the EPC Contract with a Fixed price bid in accordance with Attachment 19 and the specifications for Currant Creek. Must complete the information in Appendix C-3. <u>The eCompany will require that the project be operated and maintained by bidderBidder for up to 10 years in order to ensure cost effectiveness, availability and reliability of the resources prior to the companyCompany's acceptance of the</u>

			<u>resource.</u>
6) Purchase of an existing facility	Evaluation will be completed based on the remaining depreciated life of the asset. Life of the asset will be determined by the IRP Table C.27.	A single resource located in or delivering to PACE <u>and integrated as a Network Resource.</u>	Due Diligence of facility that PPW deems appropriate. Must complete information in Appendix C-4. PPW would own and operate the facility.
<u>7) Purchase of a portion of a facility jointly owned by and or operated by PPW.</u>	<u>Same as #6</u>	<u>Same as #6</u>	<u>Same as #6</u>
8) Restructuring of eExisting Power Purchase Agreement or Exchange Agreement	<u>Fixed term specified in the bid up to the life of the PPA or Exchange Agreement. Must be a minimum of 10 5 years and 100MW.</u>	<u>Same as #6</u>	<u>The restructuring of the PPWPPA or Exchange Agreement must result in incremental capacity and energy.</u>
<u>Exceptions</u>			
9) (a) Load curtailment	<u>Same as above</u>	<u>Existing end use PPW customers with a load that can be physically curtailed and must be not less than 25MW. The load</u>	<u>Bidder must adhere to the same terms and conditions as other supply side resources in the RFP 2012. PPW will not accept</u>

		<u>must respond within 30 minutes prior to the hour and remain curtailed for one continuous hour blocks.</u>	<u>proposals for the financial curtailment nor will it accept proposals that result in PPW having a residual delivery obligation via any other contract, law or regulatory rule or order.</u>
<u>9) (b) Qualified Facility</u>	<u>Same as above</u>	<u>Same as #6</u>	<u>Bidder must adhere to the same terms and conditions as other supply side resources in the RFP 2012. <u>Qualifying Facilities ("QFs")</u>, QFs are as defined under the regulations implementing the <u>Public Utility Regulatory Policies Act of 1978 ("PURPA. ")</u>, Each QF Bidder must submit the required information in Attachment 2 in order to be evaluated under this RFP 2012.</u>

<u>Eligible Resources</u>	<u>Term</u>	<u>Location</u>	<u>Requirements</u>
<u>Exceptions</u>			
<u>Load curtailment</u>	<u>Same as above</u>	<u>Existing end use PPW customers with a load that can be physically curtailed and must be not less than 25MW. The load must respond within 30 minutes prior to the hour and remain curtailed for one continuous hour blocks.</u>	<u>Bidder must adhere to the same terms and conditions as other supply side resources in the RFP 2012. PPW will not accept proposal for the financial curtailment nor will it accept proposal that result in PPW having a residual delivery obligation via any other contract, law or regulatory rule or order.</u>
<u>Qualified Facility</u>	<u>Same as above</u>	<u>Same as #6</u>	<u>Bidder must adhere to the same terms and conditions as other supply side resources in the RFP 2012. Qualifying Facilities (“QFs”), as defined under the regulations implementing the Public Utility Regulatory Policies Act of 1978 (“PURPA”), Each QF Bidder must submit the required information in Attachment 2 in order to be evaluated under this RFP 2012.</u>

1. ~~1.~~ Power Purchase Bid

Power purchase bids must be for a fixed term at a stated price which may be indexed or vary in price by year from a single resource located in or into PACE, and must be in the form of the Power Purchase Agreement (“PPA”) attached as Attachment 3. The source of energy and capacity for the PPA should be (a) a generation facility located on a Bidder-supplied site, (b) a generation facility located on one of the PacifiCorp sites identified in this RFP, or (c) from the Bidder’s electrical system. For purposes of this RFP 2012, the PacifiCorp Ssites consist of real property currently owned by the Company immediately adjacent to the Company’s Currant Creek and Lake Side facilities.

In the event a Bidder proposes to locate a facility on a PacifiCorp Ssite, the Bidder must propose a PPA for quantity equal to no less than 85% of the facility’s dependable generation capacity, with such amount being no less than 420 MW nominal generation capacity, and a minimum term equal to or greater than 20 years or a maximum consistent with ~~the~~ IRP Tables C. 27 and C.28 life of the asset. Design evaluation criteria that the Company will use for bid screening and evaluation purposes can be located in Appendix C (Tables C.27 and C.28) of the IRP. These minimums are put in place on PacifiCorp sites because both of these sites are capable of second units, and PacifiCorp must ensure the value of these assets are used in the best interest of customers.

The Bidder should assume that the Company will not own or operate any facility bid into this category. All Bidders in this category must complete the information requested in **Appendices C-1 and D.**

In the event a facility is proposed to be located on a PacifiCorp Ssite, the Bidder must negotiate and enter into a lease or land purchase agreement acceptable to the Company, together with a Construction Coordination Agreement substantially in the form attached as Appendix H. Appendix H. These negotiations will occur after if and when the ~~bidder~~ Bidder is selected in the final shortlist. **THIS RFP 2012 IS NOT AN OFFER TO SELL A PACIFICORP SITE TO ANY BIDDER, AND IN NO EVENT WILL PACIFICORP BE OBLIGATED TO SELL A PACIFICORP SITE TO ANY BIDDER. ANY SALE OF A PACIFICORP SITE WILL BE SUBJECT TO THE NEGOTIATION, EXECUTION AND DELIVERY OF ALL AGREEMENTS AND OTHER DOCUMENTS NECESSARY AND PROPER FOR THE SALE OF PROPERTY, AND TO PACIFICORP’S SATISFACTION, IN ITS SOLE DISCRETION, THAT SUCH TRANSACTION WILL BE IN THE BEST INTERESTS OF PACIFICORP’S CUSTOMERS AND WILL NOT IMPAIR IN ANY MANNER PACIFICORP’S OPERATION OF ITS FACILITIES THEN LOCATED ON OR ADJACENT TO THE PACIFICORP SITES.**

At the Bidder’s request, the Company may agree to provide certain facility connection points at a PacifiCorp site for facilities located at a PacifiCorp Ssite. The estimated cost and description of these points are contained in **Attachments 7 and 8**; however, actual costs to the Bidder may vary.

Bidders should note that any proposal submitted in this category that proposes new construction of a generation facility must utilize the services of a single primary Contractor under a single engineer, procure, construct (EPC) contract or an equivalent structure which will not increase the risk of default by multiple contractors to the eCompany and its customers. Any Contractor

must be experienced with the type of facility being proposed and, in addition to any other credit provision described herein, this entity must have a Credit Rating that is BBB-/Baa3 or greater from S&P/Moody's or, if not publicly rated, an equivalent Credit Rating as determined by PacifiCorp Credit.

2. ~~2.~~ Tolling Service Agreement

Tolling Service Agreement bids must be for a fixed term at a stated price from a single resource which may be either coal or gas which is located in or delivering to PACE, and must be in the form of the Tolling Service Agreement ("TSA") attached as Attachment 5. The facility from which the TSA is bid can be located on (a) a Bidder-supplied site, or (b) a PacifiCorp Ssite. In the event the Bidder proposes to locate a facility on a PacifiCorp Ssite(s), the Bidder must propose a TSA for an amount equal to no less than 85% of the facility's dependable generating capacity, with such amount being no less than 420 MW nominal generating capacity, and a minimum term equal to or greater than 20 years or a maximum consistent with ~~the~~ IRP Tables C. 27 and C.28 life of the asset. Design evaluation criteria that the Company will use for bid screening and evaluation purposes can be located in Appendix C (Tables C.27 and C.28) of the IRP.

The TSA Bidder should assume that the Company will not own or operate any facility bid into this category. All Bidders in this category must complete the information requested in Appendices C-1 and D.

In the event a facility is proposed to be located on a PacifiCorp Ssite, the Bidder must negotiate and enter into a land purchase agreement acceptable to the Company, together with a Construction Coordination Agreement substantially in the form substantially in the form attached as **Appendix H** if and when the Bidder has been advised that they are on the Final Shortlist. **THIS RFP 2012 IS NOT AN OFFER TO SELL A PACIFICORP SITE TO ANY BIDDER, AND IN NO EVENT WILL THE COMPANY BE OBLIGATED TO SELL A PACIFICORP SITE TO ANY BIDDER. ANY SALE OF A PACIFICORP SITE WILL BE SUBJECT TO THE NEGOTIATION, EXECUTION AND DELIVERY OF ALL AGREEMENTS AND OTHER DOCUMENTS NECESSARY AND PROPER FOR THE SALE OF PROPERTY, AND TO THE COMPANY'S SATISFACTION, IN ITS SOLE DISCRETION, THAT SUCH TRANSACTION WILL BE IN THE BEST INTERESTS OF THE COMPANY'S CUSTOMERS AND WILL NOT IMPAIR IN ANY MANNER THE COMPANY'S OPERATION OF ITS FACILITIES THEN LOCATED ON OR ADJACENT TO PACIFICORP'S SITES.**

At the Bidder's request, the Company may agree to provide certain facility connection points at a PacifiCorp Ssite for facilities located at a PacifiCorp Ssite. The estimated cost and description of these points are contained in **Attachments 7 and 8**; however, actual costs to the Bidder may vary.

The Bidder must specify in its bid whether the TSA will take the form of a financially settled physical TSA or physical TSA, if applicable. Provided the TSA is (1) a financially settled physical tolling arrangement, the Bidder will be responsible to purchase the fuel, transportation, fuel-related O&M, and start-up charges, if any, or (2) a physical tolling arrangement, the Company may will supply the fuel. In the case of physical tolling arrangements, the Bidder may will be responsible to for obtaining or demonstrate the ability to provide fuel, fuel transportation, long-term coal contract(s) and identify the coal quality in such contract(s), lime and/or limestone for Air Quality Control System and, and/or rail arrangements in quantities sufficient to operate the facility at its maximum capacity, and shall

make all necessary assignments ~~of rights of such transportation rights~~ to the Company for the term of the TSA.

If a TSA Bidder proposes to locate a facility on a PacifiCorp Ssite, and the Bidder proposes the utilization of the existing natural gas lateral to the site, then the Company will accept only a physical tolling arrangement that does not adversely impact the Company's existing fuel resource deliveries and cost at a PacifiCorp Ssite. PacifiCorp maintains contractual rights to 190,000 Dth/day of transportation capacity on each natural gas lateral connection to the Currant Creek and Lake Side sites. Assuming a capacity to burn natural gas at each plant of 95,000 Dth/day, PacifiCorp would release for such plant up to 95,000 Dth/day of transportation capacity on the respective laterals to each site.

Bidders are not limited to a physical tolling arrangement on a PacifiCorp Ssite as the Bidder may make its own arrangements for delivery of natural gas to a PacifiCorp Ssite.

Bidders should note that any proposal submitted in this category that proposes new construction of a generation facility must utilize the services of a single primary Contractor under a single engineer, procure, construct (EPC) contract or an equivalent structure which will not increase the risk of default by multiple contractors to the eCompany and its customers. Any Contractor must be experienced with the type of facility being proposed and, in addition to any other credit provision described herein, this entity must have a Credit Rating that is BBB-/Baa3 or greater from S&P/Moody's or, if not publicly rated, an equivalent Credit Rating as determined by PacifiCorp Credit.

3 ~~3~~. Asset Purchase and Sale Agreement on PacifiCorp Site

Asset Purchase and Sale Agreement ("APSA") bids for construction on a PacifiCorp sSite must be in the form of the APSA attached as Attachment 6 and its Appendices which have the PacifiCorp Ssite specifications set forth therein. Any APSA proposal for development and construction on a PacifiCorp Ssite (Lake Side or Currant Creek), must be bid that results in the development and construction of a facility that complies with the specifications in the APSA. Pricing for the purchase and sale of the facility can be structured to include progress payments, or as a single lump sum payment due upon achievement of commercial operation. The Company will in no event make progress payments to a Bidder unless each such payment results in the transfer of a tangible asset or a percentage ownership of an asset at the time each payment is made. Bidders must submit bids that comply with one of these two payment structures.- All Bidders in this category must complete the information requested in **Appendix C-2**.

The Bidder will be required to enter into an APSA Contract, and a Construction Coordination Agreement, which is attached to the APSA as Appendix S. The Bidder shall be responsible for all aspects of the development and construction of the facility, including, but not limited to, permitting, engineering, procurement, construction and all related costs up to achieving commercial operation, with the exception of those costs to be borne by the Company to support start-up, testing, commissioning, and acceptance that are explicitly defined in the Bidder's proposal. The Operating and Maintenance (O&M) contract will be negotiated between the Parties after the final shortlist is selected. Without limiting the foregoing, the Bidder shall be responsible for obtaining all rights and resources required to construct and provide an operational generation resource consistent with the

Bidder's proposal. Such rights and facilities may include without limitation water, emissions reduction credits, wells and pipelines.

The Company may, but will not be required to, make available for the successful Bidder's purchase those rights and facilities outlined in **Attachment 7** for Lake Side and **Attachment 8** for Currant Creek. Bidder costs related to such rights and facilities subsequent to commercial operation of the facility shall be as negotiated under defined in the APSA Contract. The Company will require that the project be operated and maintained by Bidder for up to 10 years in order to ensure cost effectiveness, availability and reliability of the resources prior to the Company's acceptance of the resource. The Parties agree to negotiate an O&M Agreement after the final shortlist is selected.

In the event a facility is proposed to be located on a PacifiCorp ~~S~~site, the Bidder must negotiate and enter into a lease or land purchase agreement acceptable to the Company, together with a Construction Coordination Agreement substantially in the form attached as **Appendix S** to the APSA after theythe Bidder has have been notified that theyit is -are inon the Final Shortlist. **THIS RFP 2012 IS NOT AN OFFER TO SELL A PACIFICORP SITE TO ANY BIDDER, AND IN NO EVENT WILL THE COMPANY BE OBLIGATED TO SELL A PACIFICORP SITE TO ANY BIDDER. ANY SALE OF A PACIFICORP SITE WILL BE SUBJECT TO THE NEGOTIATION, EXECUTION AND DELIVERY OF ALL AGREEMENTS AND OTHER DOCUMENTS NECESSARY AND PROPER FOR THE SALE OF PROPERTY, AND TO THE COMPANY'S SATISFACTION, IN ITS SOLE DISCRETION, THAT SUCH TRANSACTION WILL BE IN THE BEST INTERESTS OF THE COMPANY'S CUSTOMERS AND WILL NOT IMPAIR IN ANY MANNER THE COMPANY'S OPERATION OF ITS FACILITIES THEN LOCATED ON OR ADJACENT TO THE PACIFICORP SITES.**

Bidders should note that any proposal submitted in this category that proposes new construction of a generation facility must utilize the services of a single primary Contractor under a single engineer, procure, construct (EPC) contract or an equivalent structure which will not increase the risk of default by multiple contractors to the eCompany and its customers. Any Contractor must be experienced with the type of facility being proposed and, in addition to any other credit provision described herein, this entity must have a Credit Rating that is BBB-/Baa3 or greater from S&P/Moody's or, if not publicly rated, an equivalent Credit Rating as determined by PacifiCorp Credit.

The aggregate of the "all-in" capital cost for the APSA resource shall include all payments to be made to the Bidder under the APSA and all Company costs. A complete listing of categories of Company costs can be found in **Attachment 10**.

4. 4. Asset Purchase and Sales Agreement on a Bidder's Site

APSA bids for construction on a Bidder-owned site must be in the form of the APSA attached as Attachment 6. A Bidder may propose an APSA for a facility located on a Bidder-owned site. Pursuant to the APSA Contract, the Company will own and operate the facility following commercial operation. All Bidders in this category must complete the information requested in Appendix C-2.

Pricing for the purchase and sale of the facility can be structured to include progress payments or as a single lump sum payment due upon achievement of commercial operation. The Company will in no event make progress payments to a Bidder unless each such payment results in the transfer of a tangible asset or percentage ownership of an asset at the time each payment is made according to a schedule set forth in the associated bid and acceptable to the Company.

This bid category is only for facilities that have not reached commercial operation as of the bid response date. In the event the facility being proposed is existing and commercially operable as of the bid response date, then the Bidder should submit a bid pursuant to Resource Alternative #6. The Bidder shall be responsible for all aspects of the development and construction of the facility, including, but not limited to, permitting, engineering, procurement, construction and all related costs up to commercial operation with the exception of those costs to be borne by the Company to support start-up, testing, commissioning, and acceptance that shall be explicitly defined in the Bidder's proposal. The eCompany will require that the project be operated and maintained by bidderBidder for up to 10 years in order to ensure cost effectiveness, availability and reliability of the resources prior to the companyCompany's acceptance of the resource. The Parties agree to negotiate an O&M Agreement after the final shortlist is selected.

Bidders should note that any proposal submitted in this category that proposes new construction of a generation facility must utilize the services of a single primary Contractor under a single engineer, procure, construct (EPC) contract or an equivalent structure which will not increase the risk of default by multiple contractors to the eCompany and its customers. . Any Contractor must be experienced with the type of facility being proposed and, in addition to any other credit provision described herein, this entity must have a Credit Rating that is BBB-/Baa3 or greater from S&P/Moody's or, if not publicly rated, an equivalent Credit Rating as determined by PacifiCorp Credit.

The Company will own and the bidderBidder will operate the facility following commercial operation for up to ten years. Any existing power supply obligations (if any) associated with the facility shall not be assigned to the Company unless the Company, in its sole discretion, accepts.

The aggregate of the "all-in" capital cost for the APSA resource shall include all payments to be made to the Bidder under the APSA and all Company costs. A complete listing of categories of Company costs can be found in Attachment 9 and Attachment 10.

5.5. Engineering, Procurement, and Construction Contract ("EPC Contract") for the Currant Creek Site (no proposals for an EPC contract at the Lake Side site will be accepted)

An EPC proposal can be bid at the Currant Creek PacifiCorp Ssite only. The EPC Contract must be in the form of a fixed price bid, and may be structured to include progress payments or a single lump sum payment due upon achievement of commercial operation. The Company will, in no event, make progress payments to the Bidder unless each such payment results in the simultaneous transfer of a tangible asset or a percentage ownership of an asset at the time each such payment is made. Bidders must bid one of these two payment structures and in accordance with the EPC Contract in Attachment

198 and the specifications for Currant Creek contained therein. All Bidders in this category must complete the information requested in Appendix C-3.

The Company will be responsible for the development and permitting of the proposed facility at the Currant Creek site. The Company's assumptions for all aspects of development on the Currant Creek site are outlined in Attachment 8. The successful Bidder shall be responsible for all development and permitting and any other costs not identified in Attachment 8.

The aggregate of the "all-in" capital cost for the EPC resource and Owner's Cost in Attachment 10 shall include all payments to be made to the Bidder and all Company costs. A complete listing of categories of Company costs can be found in Attachment 10.

Bidders should note that any proposal submitted in this category shall result in the Bidder directly performing the EPC services, as opposed to utilizing a sub-EPC contractor or an equivalent structure which will not increase the risk of default by multiple contractors to the eCompany and its customers. A Bidder in this category must be experienced with the type of facility being proposed and, in addition to any other credit provision described herein, this entity must have a Credit Rating that is BBB-/Baa3 or greater from S&P/Moody's or, if not publicly rated, an equivalent Credit Rating as determined by PacifiCorp Credit.

6. ~~6.~~ Purchase of an Existing Facility

In the event sale of an existing facility is proposed by a Bidder, and if the facility is interconnected to PACE and commercially operable as of the bid response date, the Company will consider purchasing, owning and operating the facility. Any such purchase would be contingent on disclosure to the Company by the Bidder of all information regarding the facility that may be material to the Company's decision to make the purchase, including without limitation all potential or existing claims or liabilities, on the Company's completion of and satisfaction with the results of such due diligence inquiries that the Company may deem appropriate in its sole discretion, and on the transfer of good and marketable title to the Company by the Bidder, free and clear of any and all liens and encumbrances. Such inquiries may include, but will not be limited to, site inspections, interviews, audit of all applicable books, contracts, forecasts, and records, and/or an assessment of past, future, or potential environmental liabilities. In addition, any existing network or point-to-point transmission rights associated with the facility's output must be released and reassigned to the Company, at the Company's option.

Such due diligence will be performed by qualified generation experts, who may be third-party legal and environmental experts and consultants satisfactory to the Company in its sole discretion, in addition to Company personnel. - The Company reserves the right to no longer consider the resource, if in its sole discretion; it determines that there are aspects of the resource not in the best interest of the Company and its customers. The Company will require the following information outlined in **Appendix C-4** to be provided by the Bidder in order to determine if the asset will be evaluated and the priorities of the evaluation.

Existing power supply obligations associated with the facility, if any, shall not be assigned to the Company unless the Company, in its sole discretion, accepts such assignment.

The Company's aggregate "all-in" capital cost for the EPC resource shall include all payments to be made to the Bidder.

7. ~~7.~~ Agreement Purchase of a Portion of a Facility Jointly Owned and/or Operated by PacifiCorp

A Bidder may propose that the Company purchase all or an additional portion of a facility in which the Company already has an existing ownership interest or one that the Company currently operates. Any such purchase by the Company would be contingent upon disclosure to the Company by the Bidder of all information regarding the facility and the Bidder's interest that may be material to the Company's decision to make the purchase, including without limitation, potential or existing claims or liabilities, on the Company's completion of and satisfaction with the results of such due diligence inquiries that the Company may deem appropriate in its sole discretion, and on the transfer of good and marketable title to the Company by the Bidder of the Bidder's interest, free and clear of any and all liens, claims and encumbrances. The Company's due diligence inquiries may include, but will not be limited to, an audit of all applicable books and records, and/or an assessment of past, future, or potential environmental liabilities. In addition, any existing network or point-to-point firm transmission rights associated with the facility's output owned or controlled by the Bidder must be released and reassigned to the Company, at the Company's option.

Such due diligence will be performed by qualified generation experts, which may be third-party legal and environmental experts and consultants, in addition to Company personnel. The Company reserves the right to no longer consider the resource, if in its sole discretion it determines that there are aspects of the resource that are not in the best interests of the Company and/or its customers. The Company will require the following information outlined in **Appendix C-4** to be provided by the Bidder, in order to determine if the asset will be evaluated and the priorities of the evaluation.

The Company would own and operate the prospective facility following closing on the sale. Existing power supply obligations associated with the facility, if any, shall not be assigned to the Company unless the Company, in its sole discretion, accepts such assignment.

8.8. ~~8.8.~~ Restructure of an Existing Power Purchase Agreement or an Exchange Agreement and/or Buyback of an Existing Sales Agreement.

The Company will accept proposals under this category of bids for one or more of (a) restructuring of an existing PPA between the Company and the Bidder; (b) an Exchange Agreement between the Company and the Bidder; and (c) the termination or buyback of an existing agreement for the sale of energy and capacity by the Company to the Bidder in the PACE.

If the bid calls for the restructuring of an existing PPA between the Company and the Bidder, such restructuring must result in making available to the Company incremental dependable energy and capacity in an amount of not less than 100 MW within PACE during the summer season (June through September) for delivery as provided in this RFP 2012 starting June 1, 2012, June 1, 2013 or June 1, 2014~~3~~ for a minimum term of ~~ten~~ five years. The Bidder would assign any and all existing network or point-to-point firm transmission rights associated with the incremental energy and capacity to the Company at the Company's request at no additional cost should the Company select this bid.

If the bid calls for an exchange agreement, such agreement would provide for the delivery by the Bidder to the Company of dependable energy and capacity in an amount of not less than 100 MW for delivery of a minimum of a ~~ten year~~five year term as described in this RFP, in exchange for power to be supplied by the Company to the Bidder at another location, other than PACE and/or during another time period.

9. ~~9.~~ Eligible Resources Exceptions

As noted above, all resources must be for 100 MW of dependable capacity and for a minimum period of ~~5~~10 years, except to the extent that the resources qualify for one of the two exceptions set forth below:

~~a)~~ Distributed Generation

~~Bids constituting "Distributed Generation" may be smaller than 100 MW; however, they must still meet the ten year term flexibility resource requirement and Point(s) of Delivery. For the purpose of this RFP 2012, "Distributed Generation" means Combined Heat and Power (CHP) generation facilities with a nominal continuous generation capacity of 3 MW or more.~~

~~A bid that proposes to consolidate end-use customer standby generation such that the combined dependable capacity of the generation qualifies as a flexible resource when dispatched, and is equal to or greater than 3 MW, will be deemed to satisfy this definition.~~

~~Nothing in this RFP 2012 is intended to prevent the ability of owners of facilities that qualify for QF status under PURPA and that are less than 100 MW in size from seeking contracts outside this RFP 2012 as provided under PURPA and the rules and regulations of the Utah PSC. Contracts entered into outside this RFP 2012 process may not qualify for capacity payments, however.~~

~~b)~~ a) Load Curtailment

~~While this RFP 2012 is not intended to implement the Demand Side management (DSM) initiatives contained in its IRP, the Company does consider certain types of load management measures to be appropriate for consideration under this RFP 2012.~~ The Company has found that bilateral agreements with large end-use customers for the physical curtailment of load have proven to be effective in reducing the need for incremental energy and capacity at critical times. ~~As a result, the Company invites end-use customers to bid physical load curtailment under this RFP 2012. Any such bid must meet the following requirements: (a) the Bidder must be an existing end-use customer of the Company; (b) the load to be curtailed must be not less than 25 MW; (c) the curtailment must be a physical curtailment of the load; (d) the load to be curtailed must respond to the curtailment order 30 minutes prior to the hour within and remain curtailed for continuous one-hour blocks; (e) the Company must not have any residual delivery obligation upon exercising its curtailment rights hereunder under any other contract, law, regulation or order, and Bidder must waive any and all rights to assert any such contrary rights; and (f) the Bidder must provide the Company with contractual surety and adequate credit assurances that such load curtailment will take place at times and in amounts required by this RFP 2012. The Company will not accept proposals for the financial~~

curtailment of load nor will it accept physical load curtailment proposals that result in the Company having a residual delivery obligation via any other contract, law, or regulatory rule or order.

~~b)~~ ~~—~~ ~~b)~~ Qualifying Facility

Qualifying Facilities (“QFs”), as defined under the regulations implementing the Public Utility Regulatory Policies Act of 1978 (“PURPA”), with 10 MW or greater of capacity are eligible to participate in this RFP 2012. QFs must be 10 MW or greater of firm capacity and a minimum term of five~~ten~~ years or longer. Each QF Bidder must submit the required information in **Attachment 2** in order to be evaluated under this RFP 2012.

SECTION 2. LOGISTICS

A. Schedule of RFP 2012 Actions: RFP 2012 is ~~anticipated to be~~ Being I issued ~~in as of~~ October~~November~~, 2006

The anticipated schedule will be:

Event	Anticipated Date
RFP 2012 issued	October <u>November</u> 2006
RFP bid conference	Issued + 15 days
RFQ form	Issued + 30 days
Responses due	Issued + 75 days
Evaluation complete	Issued + 120 days
Bidder negotiation	Issued + 270 days
<u>Oregon Commission acknowledgement of Final Shortlist</u> Short List ²	<u>Issued + 275 days</u>
PacifiCorp decision	Issued + 280 days
Utah Public Service Commission approval proceeding -180 days	Issued + 460 days
Avoided cost filing ³	Issued + 500 days

Bidders should note that the above schedule is an anticipated schedule only and is subject to change. The Company accepts no liability to the extent the actual schedule is different from the anticipated schedule.

B. Prebid Conference

- Time: tbd
- Date: tbd
- Location: tbd

Interested parties and Bidders may submit questions prior to the RFP bid conference, so that such questions may be addressed in a more timely fashion. All information, including the pre-bid conference materials, questions and answers will be posted by PacifiCorp on the PacifiCorp website at www.pacificorp.com prior to the issuance of the final approved RFP 2012. After the final approval of the RFP 2012 the IE and the eCompany will be responsible to maintain and post all material on a website established by the IE at www.merrimackenergy.com, ~~insert Oregon IE website~~ and on the Company's website at www.pacificorp.com.

² The Oregon Commission will may acknowledge the Final Shortlist~~Short list~~. See Oregon Order No. 06-446 Guideline 13.

³ Updated avoided costs filing by state will be made to the extent required by law or regulatory order.

C. Request for Qualification (RFQ) Bid forms (Appendix A and B)

Bidders who intend to be considered as part of this RFP 2012 process **must** return the “RFQ Form” (**Appendix A and B**) to the IE no later than close of business on the date indicated in Section 2. The RFQ is not blinded. The IE will provide each Bidder who has met the qualifications under the RFQ (which will include creditworthiness, demonstrated capability, experience, performance references and qualifications to deliver the indicated Eligible Resource option selected on the form) with a bid number. ~~The Bidder will be required to submit its proposal(s) utilizing only the bid number, and with no other identifying information. Each Bidder is expected to adequately blind its proposals such that the bid number is the only identifying aspect of the bid.~~

~~Five (5) copies of the Request for Qualifications must be sent to each of the following addresses by the date indicated in Section 2.~~

PacifiCorp RFP 2012

Independent Evaluator Utah
Merrimack Energy Group, Inc.: PacifiCorp RFP 2012
c/o Utah Division of Public Utilities
~~Address:~~ 160 E 300 S, 4th floor
Salt Lake City, Utah 84111

~~Five (5) copies of the Request for Qualifications must be sent to the following address by the date indicated in Section 2.~~

PacifiCorp RFP 2012

Independent Evaluator Oregon
[Insert Name Once Selected]: PacifiCorp RFP 2012
c/o Oregon Public Utility Commission
550 Capitol Street, N.E. Suite 215
Salem, OR 97301
~~Salem OR, 97308-2148~~

_____ Insert address.

D.

D. Submission of Bids

Each Bidder must submit its bids to the offices of the Utah Public Service Commission's office and the Oregon Public Utility Commission to the attention of: ~~the~~ Independent Evaluators. The Bidder

will be required to submit its proposal(s) utilizing only the bid number, and with no other identifying information. Bidders are responsible to check all of their document headers and footers and the Property tab of the electronic copies that are submitted to ensure that no reference to their company is on the electronic copies.

Utah Independent Evaluator Merrimack ~~Consulting~~ Energy Group, Inc.: PacifiCorp RFP 2012

1. a signed original and ~~five~~ (405) hard copies of each bid and any required forms, and
2. two (2) electronic copies of the bid and any required forms (on two separate compact discs) that are in PDF format.

The IE will review all submissions, to ensure that only bid numbers are in the proposals and electronic submissions, prior to forwarding them to the RFP 2012 Evaluation ~~†~~Team. All bids must be submitted utilizing only the assigned bid number(s) and such must be transmitted by express, certified or registered mail or hand delivered to:

_____ PacifiCorp RFP 2012

Independent Evaluator

Merrimack ~~Consulting~~ Energy Group, Inc.: PacifiCorp RFP 2012

c/o Utah Division of Public Utilities

~~Address:~~ 160 E 300 S, 4th floor

Salt Lake City, Utah 84111

Oregon ~~Independent~~ Independent Evaluator (TBA): PacifiCorp RFP 2012

3. a signed original and five (5) hard copies of each bid and any required forms, and
4. two (2) electronic copies of the bid and any required forms (on two separate compact discs) that are in PDF format.

The IE will review all submissions, to ensure that only bid numbers are in the proposals and electronic submissions, prior to forwarding them to the RFP 2012 Evaluation Team. All bids must be submitted utilizing only the assigned bid number(s) and such must be transmitted by express, certified or registered mail or hand delivered to:

Independent Evaluator Oregon

[Insert Name Once Selected]: PacifiCorp RFP 2012

c/o Oregon Public Utility Commission

550 Capitol Street, N.E. Suite 215

Salem, OR 97301

Bids will be accepted until 5 p.m. Pacific Prevailing Time on January X, 2007. Any bids received after this time, at the Company's discretion, will be returned by the IE~~s~~^s, unopened to the Bidder.

All bids will be reviewed by ~~both of the~~ IEs to determine that they are adequately blinded and then will be provided to the RFP 2012 Evaluation ~~†~~Team for further analysis. The IEs will provide an

original copy (with a cross-reference table to Bidders) to the Company's credit, risk and legal departments who will have access to the unblinded Bids and will not be allowed to discuss specific bids with the Blinded individuals in the Evaluation Team or with the Benchmark Team ([See Code of Conduct in Attachment 20](#)). To the extent the IEs determine that any proposal is not adequately blinded, the IEs will determine if the IEs can effectuate effective blinding itself or, as determined by the IEs, may request that the Bidder undertake the appropriate blinding. If the Bidder is nonresponsive to the IE's requests, then the bid will be rejected by the IEs and returned to the Bidder.

E. RFP 2012 Team

A Bid Team will be established by the Company prior to the final Approval of the RFP 2012. The Bid Team shall consist of an Evaluation Team and a Benchmark Team which will be made up of various work groups within the Company. The composition of the Bid Evaluation Team and the Benchmark Team and their primary roles and responsibilities of each Team are shown below. Additional Protocols between the Teams are outlined in Attachment 4 [and in Attachment 20](#):

Work Group	Roles
Independent Evaluator (IE)	The IE has been hired by the Utah Public Service Commission to ensure a fair and reasonable process is used in the RFP 2012. The IE will provide oversight of the RFP 2012 process and will validate, audit and review all aspects of all proposals, providing an oversight to the process and validation on the models, inputs, assumption(s), risk assessment, and generation specifications for the PacifiCorp Sites and the Benchmark resources. See Attachment 4 for Roles, Function and Communications of IE.
Evaluation Team: Origination and/or Third Party generation Engineering (not a part of the Benchmark Team) or Engineering Consultant as Consultants as required. (Blinded prior to Shortlist Short List)	Overall coordinator of the process. Bid process management for all proposals and coordination with the IE and all of the work groups. Evaluation of the non price components of the analysis. Specifying, evaluating and confirming conformity with design specifications; conducting, as needed, technological and operational due diligence, generation expertise, environmental due diligence on all resources.
Evaluation Team: Structuring and Pricing (S&P), and Integrated Resource and/or Third-Party Engineering Consultant as Consultant as required. Planning (Blinded prior to Shortlist Short List)	Economic analysis and modeling including the validation on the inputs to the risk assessment of the bid.
Evaluation Team: Commercial and Trading Regulated Transmission Manager (Blinded prior to Shortlist) Short List)	Assist S&P and Origination with transmission requests and evaluations in determining the appropriate costs and/or agreements.
Evaluation Team: Environmental (Blinded prior to Shortlist) Short List)	Air, water and discharge, emission credits, site permits and facilities.

Evaluation Team: Credit (Unblinded)	Credit screening, evaluation and monitoring throughout the process.
Evaluation Team: Legal and Risk (Unblinded)	Legal will confirm compliance of bids to requirements of RFP and its Forms, Attachments and Appendices; conduct of legal process; conducting due diligence inquiries; supervising any documentation entered into as part of the RFP process. Risk will validate the internal modeling of the proposals and the company Company benchmark.
Benchmark Team: Generation and/or Third-Party Engineering Consultant (as needed) Blinded will not have discussion with the Evaluation Team or the Bidders without IE present.	Development of the Benchmark Resources. Specifying, evaluating and confirming conformity with design specifications; conducting, as needed, technological and operational due diligence, generation expertise, environmental due diligence on all resources.

F. Bidder Evaluation Fees

To help defray the cost of the IE, each Bidder shall submit with each of its bid proposals a nonrefundable “Bid Fee” of \$10,000. A bid may consist of one proposal in addition to two alternatives for the Base Load resource for the same resource under the same bid fee. The alternatives may consist of a different term or eligible resource options for the same Base Load resource. Bidders submitting a bid in Resource Alternative category #9 (~~CHP and~~load curtailment and QF) shall have a per-bid fee of \$1,000. A Bidder submitting more than one bid will be required to submit a bid fee for each bid. The bid fee(s) must be submitted with the proposals to Merrimack Energy Group.

Bidders may submit multiple bid proposals in response to this RFP 2012. The IE and the Company shall determine in their sole discretion whether a Bidder’s submission constitutes one or more proposals, for purposes of assessing the foregoing fee.

Bid proposals for the same site and the same generation technology and size will be considered a single bid proposal; provided, that all such proposals are submitted under only one Resource Alternative. If a bid is submitted under more than one Resource Alternative then the bid will be considered as two separate proposals, and two separate bid fees will be required. A single proposal that offers two in-service years will only be required to pay for one bid evaluation fee.

G. Effectiveness of Bids

Each bid proposal must remain open for acceptance by the Company from the date of submittal through February X, 2008, unless earlier released in writing by the Company. To the extent the pricing is tied to or subject to that any pricing is subject to market indices changes (ie inflation, steel prices, etc). the Bidder must identify which components of their capacity prices are subject to these movements, and what triggers will effectuate these changes and when pricing will be fixed.

H. Procedural Items

~~1.~~ 1. Request for Qualification (RFQ) Bid Form

Each Bidder must complete and submit to the IE the RFQ Bidders Form which consists of Appendix A and B for each Resource Alternative it intends to submit in its proposal to participate in the RFP 2012 by the date ~~called-out~~identified in Section 2. The Company will require each Bidder to meet the specific credit requirements and capability requirements outlined below.

Bidders Qualification, Capability and Credit in the RFQ Bid Form (Appendix A and B)

Each Bidder must be able to demonstrate its Credit Capability and its capability, experience and qualification under each Eligible Resource. This should include but not be limited to its ability to perform its obligations that would arise upon execution and delivery of the documents associated with the Company's acceptance of the Bidder's bid, and references to support its capability in each of the selected Eligible Resources options which it will be submitting in this RFP.

Appendix A and B will be attached to the RFQ Bid Form and must be completed to receive a bid number by the IE for each Eligible Resource. In Appendix A, the ~~bidder~~Bidder must ~~provide~~ demonstrate that the ~~bidder~~Bidder's project development team has successfully completed the development and commissioning of at least one generation project with characteristics similar to the proposed project. The proposal must pose an acceptable level of development and technology, as determined by PacifiCorp's bid evaluation team. In Appendix B the Bidder must be investment grade or have the ability to post credit assurance to qualify as an investment grade entity. Each ~~bidder~~Bidder must provide the requested financial and credit information and indicate if it is not investment grade what its ability will be to post any necessary credit assurances to be equivalent to an investment grade entity. All Bidders must demonstrate how they can meet Security requirements in the appropriate ~~Pro forma~~Proforma Agreement for the Eligible Resource they are proposing and how they intend to qualify. If appropriate, the Bidder will be notified that it will not be eligible to submit a proposal.

Eligible Bidders will then be permitted to submit proposal(s) into the RFP 2012 process. In the event that the Bidder's credit status changes at any time after submission of a bid into the RFP 2012 process, PacifiCorp Credit reserves the right to request updated information pursuant to the Credit Appendix B, to reevaluate the Bidder and to request further credit assurances. In the event that the Bidder does not provide evidence of its ability to provide such further credit assurances, the Company reserves the right to reject the Bidder's proposal after consultation with the IE and return the bid fee.

~~—If the amount of credit assurances required exceeds the Amount of Unsecured Credit, the Bidder will be required to post credit assurances in the amount of this excess. The Bidder will be required to demonstrate its ability to post credit assurance in the amounts outlined in the Credit Matrix in Appendix B. - A Credit methodology paper explaining the rationale behind the Credit Matrix is provided in Attachment 21—.~~ A Bidder must be able to demonstrate its ability to post any necessary credit assurances in the form of a ~~commitment~~letter from a proposed guarantor or from a financial institution that would be issuing a Letter of Credit. ~~—A form of credit commitment letter is provided in Attachment 22—.~~ The amount of any credit assurances to be provided will be determined based upon (a) the Credit Rating in the Credit Matrix of either the Bidder or the entity

providing credit assurances on behalf of the Bidder, (b) the size of the project, and c) the type of Eligible Resource bid.

-The Credit Rating will be the lower of: (x) the most recently published senior, unsecured long-term debt rating (or corporate rating if a debt rating is not available) from Standard & Poor's ("S&P") or (y) the most recently published senior, unsecured debt rating (or corporate rating if a debt rating is not available) from Moody's Investor Services. If option (x) or (y) is not available, the Credit Rating will be determined by PacifiCorp Credit through an internal process review and utilizing a proprietary credit scoring model developed in conjunction with S&P. All Bidders will receive a Credit Rating which will determine the amount of any credit assurances to be posted.

Please note that should a Bidder be an existing counterparty with PacifiCorp, PacifiCorp Credit reserves the right to protect itself from counterparty credit concentration risk and require credit assurance in addition to that outlined in the Credit Matrix.

In the event that the Bidder posts a Letter of Credit as collateral it must be issued by a bank acceptable to the Company in the Company's reasonable discretion, and be in form and substance consistent with the form of the Letter of Credit set out in **Attachment 11**.

~~2.2.~~ **Submission of Proposals by Bidders**

All bid proposals must be received by the IE no later than the date specified in Section 2. All bid proposals must be in the format set forth in the RFP 2012 Proposal Form for the specific Eligible Resource as indicated in Section 3 which outlines the requirements for each Eligible Resource. The RFP 2012 Proposal Form identifies all the required Attachments and Forms for each Resource Alternative selection the Bidder intends to submit. Any bid proposal that does not contain all of the required information by the due date ~~called out~~ specified in Section 2, will be subject to rejection as nonresponsive by the Company. It is each Bidder's responsibility to submit additional information related to its bid proposal if such information will materially improve the value of its bid proposal or the Company's understanding thereof.

-Each bid proposal must be signed by an officer of the bidding company via an Officer Certification **found in Appendix E**.

a) Each bid must include a statement by the Bidder that the Terms and Conditions of the Attachment, selected as part of the Resource Alternatives submitted by Bidder, are acceptable to the Bidder or identify any and all exceptions to the Pro-~~f~~orma contracts when submitting the proposal.

~~To the extent that the bidde modification to any of the Proforma contracts, such modifications must bedoes so in a manner that benefits or is neutral to the eCompany and its customers. thThe modifications will not impact the scoring of the Proforma changes.~~

b) Proposals must clearly specify all pricing terms. Any and all index prices and or price escalations must be fully explained. Proposals with pricing that is subject to change prior to February ~~Xx~~, 2008

must explain what triggers the change, what the change ~~is~~^{are} tied to and any information the Company will require to evaluate ~~d~~ the pricing risks associated with the proposal. All pricing must be in terms of nominal dollars. Prices and dollar figures quoted will be assumed to be in nominal terms for the year in which they occur unless clearly stated otherwise. The Form Pricing Input Sheet (Form 1) contains the applicable pricing inputs which will be required to be completed by the Bidder for the bid to be evaluated. This Form Pricing Input Sheet includes inputs such as start/end date, point of interconnection, resource type, variable and fixed O&M, start-up costs, capacity payment or capital expenditures, PPA or TSA escalation rates, heat rates and capacity levels adjusted for both expected temperature, degradation per the manufacturer's recommended maintenance schedule, start-up charges, and a variety of other inputs, including specific published indices if applicable.

A Bidder will also complete SFAS No. 13 Form (**Appendix F**), which will require the Bidder to complete the inputs to support the Bidder's assertion regarding Capital Lease versus Operating Lease.

~~e~~a) All bid proposals must be for a capacity greater than 100 MW ~~EXCEPT~~^{EXCEPT} ~~except~~^{for} ~~FOR~~: (a) ~~Qualified~~^{Qualified} ~~Qualifying~~^{Qualifying} ~~Facility~~^{Facility} ~~Distributed~~^{Distributed} ~~Generation~~^{Generation} ~~which~~^{which} ~~must~~^{must} ~~be~~^{be} ~~have~~^{have} ~~3~~¹⁰ MW or greater of installed capacity; and (b) end-use customers of the Company with physical load curtailment proposals for a minimum of 25 MW each.

~~e~~b) Bid proposal prices must include all costs that the Bidder expects the Company to pay associated with any of the ~~e~~^eEligible ~~r~~^rResources, including but not limited to station service, test energy, fuel for testing, gas lateral construction, electrical interconnection, and all costs (including fuel) incurred as necessary to accomplish synchronization.

~~3.3.~~ Minimum Eligibility Requirements for Bidders

Bidders may be disqualified for failure to comply with the RFP 2012 if any of the requirements are not met. ~~To~~ the extent proposals do not comply with these requirements they will be deemed ineligible and will not be considered for further evaluation. ~~PacifiCorp~~ will return those proposals, ~~which~~ in its sole discretion ~~it~~ deems ineligible together with the bid evaluation fee. Reasons for rejection of a ~~b~~^B Bidder or its bid include:

a) Receipt of Proposal and ~~/~~^{or} Request for Qualifications after the response deadline.

b) Failure to meet the requirements and provide all the information requested in Section 3 of the RFP 2012.

c) Failure to permit disclosure of information contained in the proposal to PacifiCorp's s agents, contractors or regulators.

d) Any attempt to influence PacifiCorp or the IE in the evaluation of the proposals, outside the solicitation process.

e) Any failure to disclose the real parties of interest in the proposal submitted.

f) The Bidder is in current litigation or has threatened litigation against PacifiCorp. Threatened litigation includes circumstances in which, which is defined by either 1) having the Bidder has

~~received~~ issued a demand letter to PacifiCorp, the Bidder and PacifiCorp are currently involved in current dispute resolution, the Bidder and PacifiCorp have an unresolved dispute resolution pending or the Bidder has noticed a pending law suit against PacifiCorp. ~~e-against PacifiCorp.~~

g) Proposal must include all applicable content requirements described in Section 3 for each Eligible Resource.

h) Proposal must include a check for the appropriate Bid Evaluation fee.

i) Proposal must clearly specify all pricing terms.

kj) Proposals must offer unit contingent or system firm capacity and energy, and include appropriate contract term lengths and commercial operation dates.

kl) Proposal must not present any unacceptable level of development and technology risk, with the exception of IGCC, however, Bidder still must demonstrate that its proposed IGCC is fully backed by the respective gasifier technology supplier and constructors as determined by PacifiCorp in consultation with the IE.

ml) Proposal must demonstrate that the ~~bidder~~ Bidder project development team has successfully completed the developmental and commissioning of at least one generation project, with the exception of IGCC, however, Bidder still must demonstrate that its proposed IGCC is fully backed by the respective gasifier technology supplier and constructors with characteristics similar to the proposed project.

nm) Bidder must demonstrate, to PacifiCorp's satisfaction that they can meet the security requirements for each Eligible Resource they are proposing consistent with the requirements in the appropriate Proforma Contracts for that resource.

~~4.~~ **4. Company's Reservation of Rights and Disclaimer**

The Company reserves the right, without qualification and in its sole discretion, to reject any or all bids, and to terminate this RFP 2012 in whole or in part at any time. Without limiting the foregoing, the Company reserves the right to reject as nonresponsive any or all bid proposals received for failure to meet any requirement of this RFP 2012 outlined in Section 3 of the RFP 2012. The Company also reserves the right to request that the IE contact any Bidder for additional information. The Company further reserves the right without qualification and in its sole discretion to decline to enter into any agreement with any Bidder for any reason, including but not limited to change in regulation or regulatory requirements that impact the Company and/or any collusive bidding or other anticompetitive behavior or conduct.

Bidders who submit bid proposals do so without recourse against the Company, its parent company, its affiliates and its subsidiaries, or against any director, officer, employee, agent or representative of any of them, for any modification or withdrawal of this RFP 2012, rejection of any bid proposal, failure to enter into an agreement, or any other reason. The Bid Fees submitted by any Bidder, once the bid is accepted, will not be refunded (unless otherwise determined in the sole discretion of the Company) in

the event of any modification or withdrawal of this RFP 2012, rejection of any bid proposal, or failure to execute an agreement.

5.5. Accounting

All contracts proposed to be entered into as a result of this RFP 2012 will be assessed by the Company for appropriate accounting and/or tax treatment. Bidders shall be required to supply the Company with any and all information that the Company reasonably requires in order to make such assessments.

Specifically, given the term lengths that PPA, TSA, and/or exchange proposals may cover in response to RFP 2012, accounting and tax rules may require either: (i) a contract be accounted for by PacifiCorp as a Capital Lease or Operating Lease⁴ pursuant to SFAS No. 13, or (ii) the seller or assets owned by the seller, as a result of an applicable contract, be consolidated as a Variable Interest Entity⁵ (VIE) onto PacifiCorp's balance sheet. To the extent a Bidder proposal results in an applicable contract, the following shall apply with respect to VIE treatment:

- The Company is unwilling to be subject to accounting or tax treatment that results from VIE treatment. As a result, all Bidders are required to certify, with supporting information sufficient to enable the Company to independently verify such certification, that none of their proposals will subject the Company to such VIE treatment. Bids that result in VIE treatment will be rejected.
- Further, any applicable contract that the Company executes will require that: (i) the Seller covenant that the Company will not be subject to VIE treatment at any point during the term of the agreement, and (ii) in the event that the contract causes the Company to be subject to VIE treatment at any point during the term of the agreement, unless cured, such treatment will constitute a seller event of default.

Each Bidder must also declare, in each of its proposals, whether or not each such proposal will subject the Company to Capital Lease treatment or Operating Lease treatment pursuant to SFAS No. 13. In any case for which the Bidder declares that the proposal will subject the Company to lease treatment pursuant to SFAS No. 13, after application of Emerging Issues Task Force ("EITF") 01-08 ("Determining Whether an Arrangement Contains a Lease"), the Bidder is required to certify such declaration (Capital Lease or Operating Lease), with supporting information sufficient to enable the Company to independently verify the Bidder's opinion of how the Company will be required to account for the proposal.

Each Bidder must also agree to make available at any point in the bid evaluation process, any and all financial data associated with the Bidder, the Facility and/or the PPA, TSA or other contract that PacifiCorp requires to independently verify the Bidder's accounting declarations or certifications

⁴ "Capital Lease" and "Operating Lease" - shall have the meaning as set forth in the Statement of Financial Accounting Standards ("SFAS") No. 13 as issued and amended from time to time by the Financial Accounting Standards Board.

⁵ "Variable Interest Entity" or "VIE" - shall have the meaning as set forth in Financial Accounting Standards Board ("FASB") Interpretation No. 46 (Revised December 2003) as issued and amended from time to time by the FASB.

required above. Such information may include, but may not be limited to, data supporting the economic life (both initial and remaining), the fair market value, executory costs, nonexecutory costs, and investment tax credits or other costs (including debt specific to the asset being proposed) associated with the Bidder's proposal. Financial data contained in the Bidder's financial statements (e.g., income statements, balance sheets, etc.) may also be required to provide additional information.

A SFAS No. 13 Form (Appendix F) must be completed to the extent the Bidder submits a proposal which results in either direct or inferred debt.

Cost Associated with Direct or Inferred Debt

PacifiCorp will take into account a cost associated with direct or inferred debt as part of its economic analysis in the [final initial](#)-screening.

- **Direct debt** results when a contract is deemed to be a Capital Lease pursuant to EITF 01-08 and SFAS No. 13 and the lower of the present value of the nonexecutory minimum lease payments or 100% of the fair market value of the asset must be added to PacifiCorp's balance sheet.
- **Inferred debt** results when credit rating agencies infer an amount of debt associated with a power supply contract and, as a result, take the added debt into account when reviewing PacifiCorp's credit standing.

In both instances, PacifiCorp would need to inject equity to maintain the same debt/equity ratio as before the power supply contract. Since equity has a cost, this cost will be taken into account when evaluating the bids to determine the [final short](#)-list.

For the purposes of RFP 2012, PacifiCorp will determine the amount of debt associated with each bid that would result in an applicable contract, derive the associated equity infusion, then include in its analysis the cost associated with the equity amount multiplied by the pre-tax difference between Return on Equity ("ROE") and PacifiCorp's Weighted Average Cost of Capital ("WACC"). Pre-tax ROE will be assumed to be equal to 16.92% and pre-tax WACC will be assumed to be 11.48%. The amount of debt will be the higher of the direct or inferred debt. This will be updated prior to the issuance of the final RFP 2012.

Direct debt will be determined for each year as of the beginning of the contract as the amount PacifiCorp must place on its balance sheet as a result of a Capital Lease. If the bid does not result in a Capital Lease then the amount of direct debt will be zero.

Inferred debt will be determined by utilizing the methodology used by Standard & Poor's in the article attached as Attachment 12. At the beginning of the contract, the net present value of the remaining fixed payments will be calculated using a 10% discount rate and then multiplied by a "risk factor." The risk factor will be 50%.

The eCompany will be required to justify and defend its use of imputed and/or direct debt costs in the final shortlist.

~~6.~~ 6. Confidentiality

The Company will attempt to maintain the confidentiality of all bids submitted, to the extent allowed by law or regulatory order, as long as such confidentiality does not adversely impact a regulatory proceeding.

It is the Bidder's responsibility to clearly indicate in its proposal what information it deems to be confidential. Bidders may not mark their entire proposal as confidential, but must mark specific information on individual pages to be confidential in order to receive confidential treatment for that information.

All information supplied to the Company or generated internally by the Company shall remain the property of the Company. Bidder shall maintain the confidentiality of such information and shall not be available to any entity before, during or after this RFP 2012 process unless required by law or regulatory order. The Bidder expressly acknowledges that the Company may retain information submitted by the Bidder in connection with this RFP 2012.

Only those Company employees who are directly involved in this RFP 2012 process or with the need to know for business reasons will be afforded the opportunity to view submitted bids or Bidder information.

Bidders should be aware that information supplied by Bidders may be requested and supplied during docketed regulatory proceedings, subject to appropriate confidentiality provisions applicable to that particular proceeding. This means that parties to docketed proceedings may request to view confidential information. If such a request were to occur, the Company will attempt to prevent such confidential Bidder information from being supplied to intervening parties who are Bidders or who may be providing services to a Bidder, but the Company shall not be held liable for any information that it is ordered to be released or that is inadvertently released.

Lastly, the Company intends to utilize its internal, proprietary, forward price projections in its evaluation process. The resulting projections and evaluations will not be shared with entities external to the Company, including with Bidders, unless required by law or regulatory order.

~~7.~~ 7. Regulatory Process

Utah Code § 54-17-101, *et seq.* requires PacifiCorp to use a solicitation process to construct or acquire a significant energy resource, defined as 100 MW or more with a dependable life of ten years or more. This law requires the participation of an independent evaluator, appointed by the Utah Public Service Commission, to actively monitor the solicitation process for fairness and compliance with state law. Prior to execution of any of the eight alternatives, [or the two exceptions](#) listed above, the Company will go through a [preapproval n-up-front prudeneeprocess, consistent with the](#) ~~the laws in Utah, in~~

~~Utah Senate Bill 26~~ Utah Energy Resource Procurement Act⁶; and acknowledgement of resources pursuant to Oregon Order No. 046-446.⁷;

~~_____ review consistent with the law in the state of Utah.~~

~~_____~~

~~That law may be viewed at:~~

~~<http://www.leg.state.ut.us/~2005/htmdoc/sbillhtm/SB0026S01.htm>~~

~~8. 8. Subsequent Regulatory Action~~

The Company does not intend to include a contractual clause whereby the Company is allowed to adjust contract prices in the event a regulatory agency exercises jurisdiction over the Company, and does not fully recognize the contract prices in determining the Company's revenue requirement. As of the issuance date of this solicitation, PacifiCorp is unaware of any such actual or proposed law or regulatory order.

~~Section 3.~~

⁶ ~~That SB~~ Utah Senate Bill 26 law The Utah Energy Resource Procurement Act -may be viewed at: <http://www.leg.state.ut.us/~2005/htmdoc/sbillhtm/SB0026S01.htm>.

⁷ Oregon Order No. 06-446 is located at: <http://edocs.puc.state.or.us>.

SECTION 3. RFP 2012 PROPOSAL CONTENT

The following outlines the content and format requirements for all proposals by Eligible Resource when responding to RFP 2012. Proposals that do not include the information requested in this form will be deemed ineligible for further evaluation unless the information is not relevant.

The Bidder is required to provide information in the following format to meet the criteria of this RFP. All sections must be completed and in compliance with the RFP in order for the bid to be accepted. Bidders must provide the appropriate bid fee for the number of Eligible Resources that are being provided.

Each Bidder must provide the following information 1) All RFP Appendices, Form(s) and Attachments in Section 3.A for each Eligible Resource as applicable with the exception of 3.J and 3.K and 2) the applicable Appendices, Form(s) and Attachment identified under each of the Eligible Resources identified in Section 3.B through 3.K.

<u>Proposal Type</u>	<u>Required Information</u>
<p><u>All bidders will may be required to submit to submit the following (with the exception of 3J and 3K):</u></p>	<ul style="list-style-type: none"> <u>RFQ Bid Form: Appendix A and Appendix B</u> <u>Appendix D – Fuel Supply Form (may vary if Bidders offer fixed price)</u> <u>Appendix E – Officer Certificate Form</u> <u>Attachment 13 - PacifiCorp Costs Associated with Integration that will be used in the analysis</u> <u>Form 1 - Pricing and Input Sheet</u> <u>Form 2 - Permitting and Construction Milestones depending on the resource.</u>

<u>Proposal Type</u>	<u>Additional Required Information</u>
<u>Power Purchase Bid (1):</u>	<ul style="list-style-type: none"> ▪ Attachment 3 - Power Purchase Contract ▪ Attachment 16 - Site Purchase Agreement for Lake Side (if applicable) ▪ Attachment 17 - Site Purchase Agreement for Currant Creek (if applicable) ▪ Appendix C-1 - PPA and TSA Information Request ▪ Appendix F - SFAS No. 13 Form ▪ Appendix G - Bidder Site Control Form ▪ Appendix H - Construction Coordination Agreement (if applicable)
<u>Tolling Service Agreements Bids (2):</u>	<ul style="list-style-type: none"> ▪ Attachment 5 – Tolling Service Agreement Contract ▪ Attachment 16 - Site Purchase Agreement for Lake Side (if applicable) ▪ Attachment 17 - Site Purchase Agreement for Currant Creek (if applicable) ▪ Appendix C-1 - PPA and TSA Information Request ▪ Appendix F - SFAS No. 13 Form ▪ Appendix G - Bidder Site Control Form ▪ Appendix H - Construction Coordination Agreement (if applicable)
<u>APSA Bids at PacifiCorp Sites (3):</u>	<ul style="list-style-type: none"> ▪ Attachment 6 - Asset Purchase and Sale Agreement (APSA) with Appendices – Lake Side ▪ Attachment 6- Asset Purchase and Sales Agreement (APSA) with Attachment 18 Currant Creek, Engineering, Procurement and Constructing Contract (EPC) ▪ Site Purchase Agreement – Attachment 16 or Attachment 17. ▪ Appendix C-2 - APSA Information Request ▪ Bidders form of O&M Agreement
<u>APSA Bids at Bidder Sites (4):</u>	<ul style="list-style-type: none"> ▪ Attachment 6 - Asset Purchase and Sale Agreement (APSA) with Appendices ▪ Appendix C-2 - APSA Information Request ▪ Appendix G - Bidder Site Control Form ▪ Bidders form of O&M Agreement
<u>EPC Bids at Currant Creek Site only (5):</u>	<ul style="list-style-type: none"> ▪ Attachment 18 - Currant Creek Engineering, Procurement and Construction Contract (EPC) ▪ Appendix C-3 - EPC Information Request ▪ Bidders form of O&M Agreement
<u>Sale of Existing Facilities Bids (6):</u>	<ul style="list-style-type: none"> ▪ Attachment 19 – Due Diligence items for the Acquisition of an Existing Facility ▪ Appendix C-4 – Existing Asset Purchase

PacifiCorp
Draft RFP 2012
Responses due January 2007

	Information Request
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<u>Proposal Type</u>	<u>Additional Required Information</u>
<u>Sale of Portion of Jointly Owned or Operated Bids (7):</u>	<ul style="list-style-type: none"> ▪ <u>Attachment 19 - Due Diligence Items for the Acquisition of an Existing Facility</u> ▪ <u>Appendix C-4 - Existing Asset Purchase Information Request</u> ▪ <u>Appendix F - SFAS No. 13 Form</u>
<u>Restructuring Bids of an Existing Power Purchase Agreement or an Exchange Agreement and/or Buyback of an Existing Sales Agreement (8):</u>	<ul style="list-style-type: none"> ▪ <u>Any other form deemed to be required based on the restructuring.</u> ▪ <u>Appendix F - SFAS No. 13 Form</u>
<u>Exceptions (9)</u> <u>Qualifying Facilities (9):</u> <u>Load Curtailment:</u>	<ul style="list-style-type: none"> ▪ <u>Attachment 3 - Power Purchase Contract</u> ▪ <u>Attachment 16 - Site Purchase Agreement for Lake Side (if applicable)</u> ▪ <u>Attachment 17 - Site Purchase Agreement for Currant Creek (if applicable)</u> ▪ <u>Appendix C-1 - PPA and TSA Information Request</u> ▪ <u>Appendix F - SFAS No. 13 Form</u> ▪ <u>Appendix G - Bidder Site Control Form</u> ▪ <u>Appendix H - Construction Coordination Agreement (if applicable)</u> ▪ <u>Attachment 2- QFs Bidder Information</u>
<u>Load Curtailment</u>	

A) All Bidders will be required to submit the following (with the exception of 3.J and 3K):

- ~~RFQ Bid Form Appendix A and Appendix B~~
- ~~Appendix D - Natural Gas & Fuel Supply Form~~
- ~~Appendix E - Officer Certification Form~~
- ~~Attachment 13 - PacifiCorp Costs Associated with Integration that will be used in the analysis~~
- ~~Form 1 - Pricing and Input Sheet~~
- ~~Form 2 - Permitting and Construction Milestones~~

~~B) Power Purchase Bid (1):~~

- ~~• Attachment 3— Power Purchase Contract~~
- ~~• Appendix C 1— PPA and TSA Information Request~~
- ~~• Appendix D— Natural Gas & Fuel Supply Form~~
- ~~• Appendix G— Bidder Site Control Form~~
- ~~• Appendix H— Construction Coordination Agreement (if applicable)~~
- ~~• Attachment 16— Site Purchase Agreement for Lake Side (if applicable)~~
- ~~• Attachment 17— Site Purchase Agreement for Currant Creek (if applicable)~~
- ~~• Appendix F— SFAS No. 13 Form~~

~~C) Tolling Service Agreements Bids (2):~~

- ~~• Attachment 5— Tolling Service Agreement Contract~~
- ~~• Appendix C 1— PPA and TSA Information Request~~
- ~~• Appendix D— Natural Gas & Fuel Supply Form~~
- ~~• Appendix G— Bidder Site Control Form~~
- ~~• Appendix H— Construction Coordination Agreement (if applicable)~~
- ~~• Attachment 16— Site Purchase Agreement for Lake Side (if applicable)~~
- ~~• Attachment 17— Site Purchase Agreement for Currant Creek (if applicable)~~
- ~~• Appendix F— SFAS No. 13 Form~~

~~D) APSA Bids at PacifiCorp Sites (3):~~

- ~~• Attachment 6— Asset Purchase and Sale Agreement (APSA) with Appendices— Lake Side~~
- ~~• Attachment 6— Asset Purchase and Sales Agreement (APSA) with Attachment 18 Currant Creek, Engineering, Procurement and Constructing Contract (EPC)~~
- ~~• Site Purchase Agreement— Attachment 16 or Attachment 17.~~
- ~~• Attachment 13— PacifiCorp Costs Associated with Integration that will be used in the analysis~~
- ~~• Appendix C 2— APSA Information Request~~
- ~~• Form 1— Pricing Input Sheet~~
- ~~• Form 2— Permitting and Construction Milestones~~

~~E) APSA Bids at Bidder Sites (4):~~

- ~~• Attachment 6— Asset Purchase and Sale Agreement (APSA) with Appendices~~
- ~~• Attachment 13— PacifiCorp Costs Associated with Integration that will be used in the analysis~~
- ~~• Appendix C 2— APSA Information Request~~
- ~~• Appendix D— Natural Gas & Fuel Supply Form~~
- ~~• Appendix G— Bidder Site Control Form~~

- ~~Form 2 – Permitting and Construction Milestones~~

~~F) EPC Bids at Currant Creek Site Only (5):~~

- ~~Attachment 13 – PacifiCorp Costs Associated with Integration that will be used in the analysis~~
- ~~Attachment 18 – Currant Creek Engineering, Procurement and Construction Contract (EPC)~~
- ~~Appendix C 3 – EPC Information Request~~
- ~~Form 2 – Permitting and Construction Milestones~~

~~G) Sale of Existing Facilities Bids (6):~~

- ~~Attachment 13 – PacifiCorp Costs Associated with Integration that will be used in the analysis (if required)~~
- ~~Attachment 19 – Due Diligence items for the Acquisition of an Existing Facility~~
- ~~Appendix C 4 – Existing Asset Purchase Information Request~~

~~H) Sale of Portion of Jointly Owned or Operated Bids (7):~~

- ~~Attachment 13 – PacifiCorp Costs Associated with Integration that will be used in the analysis (if required)~~
- ~~Attachment 19 – Due Diligence Items for the Acquisition of an Existing Facility~~
- ~~Appendix C 4 – Existing Asset Purchase Information Request~~
- ~~Appendix F – SFAS No. 13 Form~~

~~I) Restructuring Bids of an Existing Power Purchase Agreement or an Exchange Agreement and/or Buyback of an Existing Sales Agreement (8):~~

- ~~Attachment 13 – PacifiCorp Costs Associated with Integration that will be used in the analysis (if required)~~
- ~~Any other form deemed to be required based on the restructuring.~~
- ~~Appendix F – SFAS No. 13 Form~~

~~J) Distributed Generation (9.a):~~

- ~~Attachment 13 – PacifiCorp Costs Associated with Integration that will be used in the analysis (if required)~~
- ~~Appendix F – SFAS No. 13 Form~~

~~K) Load Curtailment (9.b)~~

SECTION 4.~~SECTION 4.~~ RESOURCE INFORMATION

A. Price and Nonprice Information

The Company's IRP incorporated numerous price and nonprice resource cost(s) and assumptions which resulted in the IRP Action Plan. Bidders should refer directly to the IRP for the Company's estimated cost and availability of new resource alternatives. Bidders are reminded that the IRP is a planning document and certain resource assumptions were used as a proxy for planning purposes. As such, the Company shall rely on the outcome from this RFP to ascertain the most prudent resource decision. Bidders should note that the IRP is a useful document for information purposes and **Bidders should not infer in any way that the IRP should prescriptively guide their specific proposal.** The Company intends to use then-current assumptions in its evaluation of bids. ~~These assumptions may be different than the assumptions contained in the IRP.~~

With respect to air quality standards, it is PacifiCorp's intent to incorporate cost assumptions into all bids that are consistent with the "then current assumptions." The base case assumptions can be located in the 2004 IRP in Appendix C. This represents the best information currently available at this point in time to the Company via the IRP public input process and other information sources. The base case will be updated through the RFP process only if any new assumptions become available to the Company.

This RFP will incorporate assumptions regarding the future cost, if any, associated with future tax assessment(s) or other impositions based on the quantity of carbon dioxide (CO₂) emissions produced from the combustion of fuel by a facility selected and contracted through this RFP. If a Bidder proposes an arrangement wherein a specific facility is not identified (such as may be the case with a PPA), the resulting contract shall explicitly state that the buyer (PacifiCorp) shall not be liable for any CO₂-related expenses, and the Bidder will be required to enter into a CO₂ Indemnity Agreement. For bids with a specified facility, ~~which would including include an asset backed PPA,~~ the potential CO₂-related expenses will be included in the Company's evaluation. The CO₂-related expenses will be consistent with the reference case assumptions utilized in the 2004 IRP or the then current assumptions if applicable. The bid evaluation process will incorporate the assumption that the Bidder does not contractually absorb the liability associated with potential future CO₂ expenses.

As such, even if the bid does not provide for the passing through of such costs, Bidders are directed to submit bids that specify the results of the assumption that Bidders will pass through any costs associated with meeting future air quality requirements relating to specified facilities.

B. Price Information

Fixed & Variable cost for Capacity and Energy

~~1.~~ 1. Fixed Costs

The fixed resource costs will include, but are not limited to, the following components:

The Bidder-specified capacity cost payment (\$/kw-mo) or equivalent capital cost purchase price (including Owner's cost) plus ongoing capital estimates for the term of the resource. The Bidder-specified fixed O&M payment (\$/kw-mo).

The Bidder-specified property tax, sales tax, and insurance payment, if not included in capacity cost or fixed O&M payment (\$/kw-mo). To the extent that bidders include escalators they must be included.

Transport costs which may included: 1) The cost associated with direct or inferred debt.

Fuel pipeline costs which include the for the estimated costs offer adequate firm natural gas capacity or 2) railway and or other transportation, if applicable. Interconnection, integration and any other costs (e.g., applicable transmission wheeling expense) necessary to deliver the energy to load. Proposed fixed cost adjustment factor for availability.

~~2.~~ 2. Variable Costs

The variable generation costs will include, but are not limited to, the following components:

The variable energy commodity price, which, depending on structure, will likely be variable, tied to a natural gas price (including variable gas transportation costs) and a contractual or manufacturer recommended heat rate and capacity at the time of delivery (adjusted for temperature) or a coal index , and any variable cost associated with coal. - In certain structures, the variable energy commodity price will be fixed, or potentially fixed with an annual escalation. Escalators must be a fixed annual percentage, CPI, or GDP.

Variable O&M (\$/MWh).

Potential CO2 costs (\$/ton) (\$/MWh based on a \$/ton CO2 basis).

Transmission losses in those cases where the Company will incur third-party transmission losses (if applicable).

Start costs (if applicable) per plant and per machine (if applicable). Bidders must define if this start cost is from initiation of start to minimum sustainable load or to full load. Start costs and variable O&M must be clearly separated. Cost presentation format provided by the Bidder should

be in \$/MWh terms, assuming both eight- and sixteen- hour run periods, for up to 365 starts per year at 100% availability.⁸

C. Nonprice Information

4.1. Point(s) of Delivery

RFP 2012 is requesting resources that are capable for delivery into or in the Company's network transmission system⁹ in PACE. All proposals will be contingent on the Company Merchant function's ability to designate the proposed resource (new, existing, imported, etc.) as a Network Resource under the network service contract between PacifiCorp Transmission (www.oasis.pacificorp.com) and PacifiCorp Merchant.

PacifiCorp is interested in resources that are capable of delivery into or in a portion of the Company's network transmission system in PACE. Specifically, the point(s) of delivery of primary interest to PacifiCorp are:

- Salt Lake Valley
- PacifiCorp Sites
 - Currant Creek
 - Lake Side
- Mona¹⁰ 345 kV
- Glen Canyon 230 kV
- Nevada/Utah Border:
 - Gonder-Pavant 230 kV line known as "Gonder 230 kV"
 - Sigurd – Harry Allen 345 line known as "NUB" or Red Butte 345 kV
 - Crystal 500 kV¹¹ Located in Nevada—PacifiCorp is willing to purchase capacity and associated energy that is sourced from Nevada; provided, the selling entity is able to purchase firm transmission from the resource to either Gonder or NUB.

⁸ The number of starts assumed per year should be adjusted down for expected mechanical availability. For example, if a resource has an expected mechanical availability of 90%, the number of assumed starts per year should equal $365 \times 90\% = 328$.

⁹ Any costs required to upgrade PacifiCorp's electrical infrastructure (integration costs) will be considered in the overall economics of the resource. See Attachment 13 for cost assumptions for Integration costs. If the Bidder is proposing another site that is not stated in Attachment 13, PacifiCorp will use the best available information at the time of evaluation to determine the integration costs for the analysis.

¹⁰ PacifiCorp's transmission function has broken Mona into three distinct delivery points. These three points are "MDWP" (IPP-Mona from LADWP control area), "MDGT" (Bonanza-Mona within the PACE control area), and "MPAC" (all other lines into Mona with the PACE control areas). In order for PacifiCorp to properly incorporate deliveries at Mona as a network generation resource, the respondent should indicate which point at Mona the deliveries will be made from. PacifiCorp requested a system impact study (SIS) from PacifiCorp Transmission, which will be available in September and will update the timing and costs to integrate resources at Mona, Nevada Utah Border, Gonder, Glen Canyon 230kV and Currant Creek.

- West of Naughton

The Company is generally not interested in resources delivered to the following areas:

- Wyoming, unless the resource(s) electrically reside south of the Naughton-Monument 230 kV line and the cost of the upgrade is included.
- Borah, Brady or Kinport unless such resource is interconnected to the Company's Southwest Idaho electrical system near the Goshen area.

Specifically, the point(s) of delivery of primary interest to PacifiCorp are:

- ~~Within the Eastern Control Area—the point of interconnection between the resources, or electrical system to which the resource is connected, and PacifiCorp's Utah network transmission system~~
- ~~Mona¹² 345 kV~~
- ~~Nevada/Utah border on the Gonder-Pavant 230 kV line~~
- ~~Nevada/Utah border on the Sigurd-Harry Allen 345 kV know as "NUB" or Red Butte 345 kV~~
- ~~Arizona/Utah border on the Glen Canyon-Sigurd 345 kV line~~
- ~~Crystal 500 kV¹³~~
- ~~Located in Nevada—PacifiCorp is willing to purchase capacity and associated energy that is sourced from Nevada; provided, the selling entity is able to purchase firm transmission from the resource to either Gonder or NUB.~~
- ~~Four Corners 345 kV~~

~~The Company is also generally not interested in resources located in Wyoming, unless the resource(s) electrically resides south of the Naughton-Monument 230 kV line and the cost to upgrade the needed transmission is included in the economic evaluation¹⁴. Lastly, the Company is not interested in resources delivered to Borah, Brady or Kinport unless such resource is interconnected to the Company's Southeast Idaho electrical system near the Goshen area. The cost to upgrade and provide adequate transfer capability or to accommodate those times when economic resources exceed loads within the Southeast Idaho area should be taken into account within the Bidder's economic evaluation.~~

¹¹ Crystal substation is currently not a valid network point of delivery on PacifiCorp's system. PacifiCorp is studying the expansion of facilities to Crystal 500 kV. Bidders are warned that the ability to accept proposals delivered to Crystal is highly contingent on the expansion of such facilities.

¹² PacifiCorp's transmission function has broken Mona into three distinct delivery points. These three points are "MDWP" (IPP-Mona from LADWP control area), "MDGT" (Bonanza-Mona within the PACE control area), and "MPAC" (all other lines into Mona with the PACE control areas). In order for PacifiCorp to properly incorporate deliveries at Mona as a network generation resource, the respondent should indicate which point at Mona the deliveries will be made from. PacifiCorp requested a system impact study (SIS) from PacifiCorp Transmission, which will be available in September and will update the timing and costs to integrate resources at Mona, Nevada Utah Border, Gonder, Glen Canyon 230kV and Curren Creek.

¹³ Crystal substation is currently not a valid network point of delivery on PacifiCorp's system. PacifiCorp is studying the expansion of facilities to Crystal 500 kV. Bidders are warned that the ability to accept proposals delivered to Crystal is highly contingent on the expansion of such facilities.

¹⁴ The Company's Benchmark, Bridger is located south of Naughton- Monument 230kV.

2-2. Proposals Requiring Third-Party Point-to-Point Transmission Service

For proposals that will require third-party transmission service to provide delivery of capacity and associated energy to the bid-specified Point of Delivery on PacifiCorp's system, Bidders are responsible for any interconnection, electric losses, transmission and ancillary service arrangements required to deliver the proposed capacity and associated energy to the bid specified Point(s) of Delivery. Such proposals must identify all third-party interconnection, electric losses, transmission and ancillary service products, provide a complete description of those service agreements, and provide documentation that such service(s) will be available to Bidder during the full term of offer(s) proposed. Bidders who propose unit contingent arrangements or system portfolio bids and rely on third-party transmission should be aware that the use of nonfirm transmission in any segments of the schedule from the source to the Point(s) of Delivery will result in the Company's evaluating the need to carry 100% reserves against the import schedule. The third-party transmission service is NOT a transmission service agreement with the Company Merchant function; rather it is with the Company's Transmission function, which must maintain strict functional and informational separation.

3-3. Interpretation with Interconnection Agreement

Each Bidder responding to RFP 2012 must conduct its operations in compliance with FERC Order No. 2004, Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions. This RFP requires that all Bidders responding must enter into a separate Interconnection Agreement or Transmission Service Agreement (TSA), in accordance with the PacifiCorp's Open Access Transmission Tariff, with PacifiCorp Transmission if such agreements are necessary.

4-4. PacifiCorp Transmission Interconnection Service

Bidders requiring interconnection service from PacifiCorp Transmission must specify in their proposal if they have requested transmission service or not, and if so, what type of service (Energy Resource Interconnection Service (ER) or Network Resources Interconnection Service (NR)). Bidders must advise PacifiCorp Transmission that they are requesting the service as part of this RFP.

All Proposals that will require a new electrical interconnection to the PacifiCorp Transmission system or an upgrade to an existing electrical interconnection to the PacifiCorp Transmission system must include (a) a statement of the cost of interconnection, together with a diagram of the interconnection facilities. The Bidder will be responsible for, and is required to include in its bid, all costs to interconnect to the Company's Transmission system. The Bidder will be responsible for applying to the Company Transmission for a Large Generator Interconnection Agreement ("LGIA"), except in connection with the EPC Contract, in which case PacifiCorp Generation will apply for the LGIA. However, the interconnection costs will be included in the bid evaluation. PacifiCorp's Transmission function has the option of funding the interconnection upgrades or requiring the Bidder to fund such upgrades and then receive revenue credits. Any such refunds shall be assigned to PacifiCorp's Merchant function by the Bidder.

5.5. PacifiCorp Transmission Integration Service

PacifiCorp has preliminarily identified the potential costs to integrate resources in Attachment 13.

These costs will be used in the evaluation analysis. In the event that a Bidder proposes a facility, PPA or TSA that is not at one of the locations identified in Attachment 13, PacifiCorp will utilize the best information reasonably available at the time of evaluation to estimate the cost to integrate the resource. Both the cost to integrate and interconnection upgrades will be utilized in the economic evaluation to determine the least-cost resource. **Bidders are reminded that they shall bear 100% of the costs to interconnect to PacifiCorp's Transmission system.** Bidders are encouraged to contact PacifiCorp's Transmission function (at www.pacificorp.com) for information related to system interconnection.

6.6. Use of PacifiCorp's Sites

In the event a facility is proposed to be located on a PacifiCorp Site, the Bidder must negotiate and enter into a land purchase agreement acceptable to the Company (Attachment 16 and/or 17), together with a Construction Coordination Agreement substantially in the form attached as Appendix S to Attachment 7 or Appendix H if and when the Bidder has been selected as a resource in the final shortlist. **THIS RFP 2012 IS NOT AN OFFER TO SELL PACIFICORP'S SITE TO ANY BIDDER, AND IN NO EVENT WILL THE COMPANY BE OBLIGATED TO SELL A PACIFICORP SITE TO ANY BIDDER. ANY ~~SALE OF SALE OF~~ A PACIFICORP SITE WILL BE SUBJECT TO THE NEGOTIATION, EXECUTION AND DELIVERY OF ALL AGREEMENTS ~~AND OTHER DOCUMENTS NECESSARY AND PROPER FOR THE LEASE OF PROPERTY, A~~ AND TO THE COMPANY'S SATISFACTION, IN ITS SOLE DISCRETION, THAT SUCH TRANSACTION WILL BE IN THE BEST INTERESTS OF THE COMPANY'S CUSTOMERS AND WILL NOT IMPAIR IN ANY MANNER THE COMPANY'S OPERATION OF ITS FACILITIES THEN LOCATED ON OR ADJACENT TO THE COMPANY SITES.**

SECTION 5. SECTION 5: BID EVALUATION PROCESS OF THE PROPOSALS

The Bidders must submit their proposals on or before January X, 2007. The RFP 2012 Evaluation Team and the IE will adhere to the following bid evaluation process.

Overview of the Evaluation Process

~~The Company intends to utilize a “first price sealed bid format” in order to determine both the initial and final short -list of proposals in each of the Resource Alternatives. The sSelection of an initial shortlistshort list of bids will be based on price and non-price factors taking into account resource diversity of the term and fuel source. The Company intends to utilize a “first price sealed bid format” in order to determine both the initial and final short list of proposals in each of the Resource Alternatives. The price factor will be derived, in the intialinitial shortlistshort list—The Initial Screening analysis of the proposals will be performed usinganalysis, using the PacifiCorp Structuring and Pricing RFP Base Model. The RFP Base Model is a Microsoft Excel workbook that includes a number of proprietary Visual Basic macros, custom add-ins, and computational code written in C++. The RFP Base Model will be used to establish the initial short–list of the top performing proposals in each of the Eligible Resource Ccategories specified in the RFP 2012 based on the projected net present value revenue requirement (net PVRR) per kilowatt month (Net PVRR/kW-mo). The non-price factors will evaluate the resource characteristics, the bidderBidders’ characteristics and compliance with the Proforma contracts.~~

~~Subsequently, tThe results of the initial short-list will be run through a production cost model to establish a preferred portfolio, and subsequently used to establish a final shortshort -list. After the final short -list is determined, post-bid negotiations will take place. Under this format, contract payments are based on the price contained in each winning bid proposal. The “first price sealed bid format” means that the Company will utilize the initial prices and/or pricing structure submitted by the Bidders in order to determine the initial short-listed entities and the final short-listed entities.~~

~~In selecting the RFP 2012 bids for contract negotiations, the analysis will use an optimization model will be used to that-picks the least cost portfolio of resource options from anthe initial short list under a given set of assumptions (prices, CO2 taxesemission expenses, etc.) about the future. The optimization procedure will be applied under a set of future scenarios to develop a set of optimal resource portfolios. Additional deterministic and stochastic analyses will be performed to determine the expected present value revenue requirement (PVRR), and selected risk measures for each of the optimal portfolios determined by the optimization model.~~

~~The three-step process described below is consistent with that used in the Ccompany’s Integrated Resource Planning process and is expected to provide sufficient analytical basis from which to make resource choices. The evaluation will lead to the resources in the highest performing (least cost, adjusted for riskfor risk) portfolios as the RFP “winners” that will then advance to contract negotiations. —The Company will not ask for, or accept, updated pricing from Bidders during this evaluation period. It is the Company’s intent to negotiate both price and nonprice issues during the post-bid negotiations. Selection for the initial short -list, final short -list, and/or post-bid negotiation~~

does not constitute a “winning bid proposal.” For the purpose of the RFP 2012, only execution of the definitive agreement by both the Company and the Bidder that is specific to the Bidder’s proposal, as the same may be amended pursuant to any post-bid negotiations, will constitute a “winning bid proposal.”

Bidders should also be aware that operational separation exists, pursuant to FERC’s Standards of Conduct order, between the merchant and transmission functions of PacifiCorp (See Amendment Attachment 20). As a result, it is PacifiCorp’s requirement that the Bidder is responsible for the negotiation, execution and cost of interconnection and integration with the interconnection control area. The Bidder will be responsible for all incremental transmission expenses associated with delivery to the PacifiCorp network transmission system (inclusive of any third-party system upgrade needed to deliver such energy to PACE). Any anticipated transmission cost which is not included in Attachment 13 or otherwise that is not disclosed in the Bidder’s response will be added by PacifiCorp using information reasonable and readily available during the economic evaluation phase.

The Company will not make any of the evaluation models - the RFP Base Model, the Capacity Expansion Model, the Planning and Risk Model - available to Bidders.

A. Step 1—Screening “First Price Sealed Bid Format”—Initial Short List

The Company intends to utilize a “first price sealed bid format” in order to determine both the initial and final short list of proposals in each of the Resource Alternatives. The initial short list will be run through a production cost model to establish a preferred portfolio used to establish a final short list. After the final short list is determined post-bid negotiations will take place. Under this format, contract payments are based on the price contained in each winning bid proposal. The “first price sealed bid format” means that the Company will utilize the initial prices and/or pricing structure submitted by the Bidders in order to determine the initial short listed entities and the final short listed entities. The Company will not ask for, or accept, updated pricing from Bidders during this evaluation period. It is the Company’s intent to negotiate both price and nonprice issues during the post-bid negotiations. Selection for the initial short list, final short list and/or post-bid negotiation does not constitute a “winning bid proposal.” For the purpose of the RFP 2012, only execution of the definitive agreement by both the Company and the Bidder that is specific to the Bidder’s proposal, as the same may be amended pursuant to any post-bid negotiations, will constitute a “winning bid proposal.”

Bidders should also be aware that operational separation exists, pursuant to FERC order, between the merchant and transmission functions of PacifiCorp. As a result, it is PacifiCorp’s requirement that the Bidder is responsible for the negotiation, execution and cost of interconnection and integration with the interconnection control area. The Bidder will be responsible for all incremental transmission expenses associated with delivery to the PacifiCorp network transmission system (inclusive of any third-party system upgrade needed to deliver such energy to PACE). Any anticipated transmission cost which is not included in Attachment 13 or otherwise that is not disclosed in the Bidder’s response will

~~be added by PacifiCorp using information reasonable and readily available during the economic evaluation phase. The Initial Shortlist will comprise of Step 1 Bids submitted to the RFP 2012 will be evaluated in three steps described in turn below.:~~

A. **Step 1—Price and Nonprice Evaluation to Determine the Initial Short List**

The Company intends to evaluate each bid received in a consistent manner by breaking the resource and price characteristics of the structure into individual components. Each component will be evaluated separately and recombined to determine the bundled price and nonprice score. The price factor will be weighted up to ~~780%~~ 78% ~~in the determination of which proposals will be chosen for post-bid negotiation~~, while the nonprice factor will be weighted up to ~~320%~~ 32%. No proposal will receive a total weighting in excess of 100%. The Price and Non-Price evaluation will be added together and used to determine the initial ~~shortlist~~ short list. The initial short list will be made up of the highest scoring proposals ~~in for~~ in each Resource Alternative.

1.1—Price Factor Evaluation (Up to 78%)

The Company will utilize the RFP Base Model to screen the proposals and to evaluate and determine the initial short list. The RFP Base Model is contained in a Microsoft Excel workbook that includes a number of proprietary Visual Basic macros, custom add-ins, and computational code written in C++.

RFP Base Model Inputs:

- Market Quote Date: The model will pull corresponding forward price, volatilities, and correlation projections for electricity and ~~fuel~~ gas commodities. Treasury ~~and LIBOR~~ discount curves are also included. The same Market Quote Date will be used for all bids during each evaluation phase.
- Term: Start and End date
- Transmission Cost assumptions
- Emission Inputs, ~~Lease Accounting Inputs,~~
- Rate Base Inputs: if applicable
- Point of Delivery (POD) and Point of Receipt (POR)
- Dispatch Pattern
- Limitation of Duct Firing or Power Augmentation Capability (hours per day, hours per year, etc.)
- Firm/Unit Contingent
- Resource Type
- Product Source
- Temperature-adjusted undegraded (new and clean) Capacity Curve ~~for Simple Cycle, Combined Cycle, Duct Firing, and Power Augmentation if applicable.~~
- Temperature – adjusted undegraded (new and clean) Heat rate Curve ~~for Simple Cycle, Combined Cycle, Duct Firing, and Power Augmentation, if applicable.~~
- Capacity (MW) Degradation Schedule: ~~Simple Cycle, Combined Cycle, Duct Firing, and Power Augmentation, if applicable~~ (Expected and/or Guaranteed);

- ~~Heat Rate Degradation Schedule: Simple Cycle, Combined Cycle, Duct Firing, and Power Augmentation, if applicable~~ (Expected and/or Guaranteed);
- ~~Turbine Type: Combined Cycle or Simple Cycle~~
- Variable O&M Payment (\$/MWh)
 - VOM costs (\$/MWh)
 - Start-Up Costs (\$/MWh)
- Fixed O&M Payment (\$/KW-mo)
- Gas Capacity (MMBtu/day)
- Gas Demand Charge (\$/MMBtu-mo)
- Gas Transportation/Delivery Adder (\$/MMBtu)
- Fixed Energy Payment (\$/MWh, if applicable)
- Capacity Charge (\$/KW-mo)
- Resource/POD Availability by Month
- Forward Price Curve Multiplier by Month
- Corporate Financial Inputs – Inflation Curve, WACC, etc.

Comparison Metric

The ~~benchmark~~ comparison metric will be the projected net present value revenue requirement (net PVRR) per kilowatt month (Net PVRR/kW-mo). The net PVRR component views the value of the energy and capacity as a positive, and the offsetting costs as negative. The larger the net PVRR, the more valuable a given resource is to the Company’s customers. The net PVRR/kW-mo metric is the annuity value which, when applied to the nominal kilowatts on a monthly basis and present-valued, will result in the same net PVRR as a straight NPV calculation.¹⁵

Bid Cost relative to adjusted price curves	Price Factor Weighting
Less than or equal to 80% of adjusted price projections	7 80%
Greater than 80% of adjusted price projections but less than 120% of adjusted price curves	Linearly interpolated
Equal to or greater than 120% of the adjusted price projection	0%

~~2.2.~~ Nonprice Factors (up to ~~3~~20%)

The primary purpose of the nonprice analysis is to help gauge the relative development, construction and contractual risk associated with each proposal and have parties bid to a consistent set of Terms and Conditions within the Proforma Contracts. A matrix will be established for each nonprice factor and used to compare the bids with one another.

Nonprice factors will be weighted up to ~~3~~20% in the determination of which proposals will be chosen for the initial short list.

¹⁵ The term “straight NPV calculation” refers to the act of present-valuing the net of the nominal capacity and energy value, and costs, to derive a net present value of the net margin between value and costs. To the extent that all proposals are above 120% of adjusted price curves, they will be ranked by percentage.

The nonprice factor weighting for operation issues shall consist of the following:

Nonprice	Nonprice Weighting Factor
Development, Construction and Operational experience	up to 10%
Compliance with the Pro Forma Proforma Agreements that are submitted with the Proposal	up to 10%
Site Control and Permitting	up to 10%

Development, Construction, and Operational Experience

Bidders will be evaluated on the number of projects they have developed, constructed, and or operated. The scoring will be separated into two areas:-- 1) One percentage point will be awarded for each project the bidderBidder has developed a projects however, not to exceed 5%..-- 2)-- one percentage point will be awarded for the number of projects that the bidderBidder has constructed and/or operated in the past however, not to exceed 5%.- A partial percent will be awarded if the bidder has demonstrated experience with some but not all of the experience metrics. Scores for development, construction, and/or operational experience will not exceed 10%.

~~Compliance with the Pro fForma Agreements Nonprice Weighting Factor~~

~~Each section within the Proforma Agreements will be given a percentage based on the financial or risk impact of change. All sections may not have a percentage applied; however, the total will equal 100%. The individual percentages per sections will be based on the financial and or risk impact to rate payers if the Bidder were to change the section. If the Bidder changes these sections where a material risk or cost is shifted from the Bidder to the Company then they will not receive that percentage. However, if the Bidder changes the section in a manner that benefits or is newtrualneutral to the Ccompany and its customers and no financial or risk impact to the rate payer occurs then the percentage will be awarded to the Bidder. This process and percentage application per section within the Proformas will be validated by the IE.~~

Site Control and Permits

Bidders must be able to 1) document they have has-obtained document site control and necessary permits, awarded 10% or 2) Bidders can demonstrate how site control and permits will be obtained, awarded 5%. For Bidders to Ddemonstrateion on how they will obtain site control, they must submit documentations which supports and the site control requirements and all required permits that must be will be obtained. The Bidder must also submit and a will require a defined plan and/or process with specific milestones in addition to any and all and how hurdles with an explanation of and how these hurdles will be overcome they will be overcome in order to obtain. To the extent the Bidder has site control or can demonstrate how they will obtain site control, the bidder will receive 5%. To the extent that the bidder has all the required permits or can demonstrate how they will obtain them, the bidder

~~will obtain 2.5%.~~

The initial short list will be established using the combined price and nonprice results. The initial short list will include the top bids in each Resource Alternative, up to the approximate megawatt needs for each year during the ~~t~~Term.

The Final Shortlist Short List will be comprised of Steps 2 and Step 3.

C.B. Step 2—Final Short List—Capacity Expansion Model/Planning And Risk Model - Production Cost Run

Based on the initial short list, Global Energy Decision's Capacity Expansion Model (CEM®) will be used to develop optimized portfolios under various assumptions for future ~~emission expense~~carbon dioxide tax levels and market prices. CEM® will develop a corresponding number of optimized portfolios—one for each combination of ~~emission~~CO₂ and wholesale market price assumptions—drawing from resource options ~~from~~ the initial short list (described above) along with the ~~e~~Company's benchmark resources. These assumptions will be conceptually consistent with the 2006 Integrated Resource Planning- high, medium, and low cases, but may reflect more recent data at the time the analysis is conducted.

Each portfolio from the CEM® scenarios will be a candidate for the optimum combination of resources to be selected through the RFP 2012 process and will therefore be advanced to the stochastic/~~deterministic~~ analysis step described below. Resources bid into the RFP 2012 that are not included in any of the portfolios resulting from this step will no longer be considered candidates for acquisition by the ~~company~~Company.

~~_____The final short list will be derived utilizing the Capacity Expansion Model (CEM) and the Planning and Risk Model (PaR). Both of these models are production cost models.~~

~~_____From the initial short list which is made up of the top bids for each Resource Alternative, the CEM will construct portfolios by optimizing for lowest cost. The portfolios generated by the CEM will then be run in the PaR model. The PaR model will provide the results of the constructed portfolios on both a deterministic and stochastic basis. The PaR model results of portfolios generated by CEM will then be compared to the PaR model results of the Company's Benchmark portfolios.~~

C.C. Step 3—Risk Analysis

In order to identify the resources in the highest performing (least cost, adjusted for risk) portfolios, stochastic and deterministic analyses will be performed on each optimized portfolio.

C.a1.A-1.- Stochastic Analysis

Global Energy Decision's Planning and Risk (PaR®) model will be used in stochastic mode to develop expected PVRR and PVRR volatility parameters. PaR® is an hourly dispatch model that varies loads, wholesale gas prices, wholesale electric prices, hydro variations, and thermal unit performance. The model dispatches resources to meet load with given markets and transmission access to minimize PVRR using linear programming techniques. The resulting distribution of PVRR, typically over 100 draws of the variables, can be evaluated for the expected PVRR, tail risk PVRR, and PVRR volatility. It is proposed that these studies be performed only for the expected future scenario.

2.C.b2B- Deterministic Scenario Analysis

As an additional risk analysis step, the optimal portfolios will be subjected to a more in depth deterministic dispatch model ~~using~~ CEM®, with each portfolio being assessed for each of the future scenarios ~~in the Portfolio Development / Optimization analysis step described~~ described in Step 2 above. For example, Portfolio 1 will have been optimized for Scenario 1, but in this step Portfolio 1 will be reevaluated under scenarios 2 through N in order to assess the consequences of choosing a portfolio under non-optimal futures. This step is intended to identify portfolios with especially poor performance under certain future scenarios and used to inform the selection of final resource options.

Inputs used in CEM® and PaR® ~~include~~includes:

The Company Benchmarks will consist of three separate Benchmark Portfolios using a combination of the Benchmark Resources identified in Section One. Benchmark Portfolio one will consist of Hunter 4, Bridger 5 and the IGCC project. Benchmark Portfolio two will consist of IPP 3, Bridger 5 and the

~~IGCC¹⁶ project. Benchmark Portfolio three will consist of IPP 3, Hunter 4, Bridger 5 and the IGCC project.~~

Operational Costs

For each portfolio, the operational information for each added proposal will be entered into the production cost simulation (CEM[®] and PaR[®]). ~~I~~In addition, the Company will include any changes to the system topology to reflect transmission upgrades required by the added proposals. The operational information used in the production cost simulations includes:

1. Maximum capacity of each unit
2. Minimum capacity of each unit
3. Dependable per-unit capacity
4. Peaking capacity, for use under specified conditions
5. Actual pre-specified commitment and/or unit dispatch
6. Daily charge for operating a unit for at least one hour in the day
7. Variable O&M cost of each unit
8. The heat rate curve for a unit
9. Pre-scheduled maintenance, number of units and duration
10. Maintenance rate, for distributed maintenance per unit
11. Mean, maximum, and minimum time to repair, for outages scheduled by Convergent Monte Carlo
12. Minimum up- and downtimes of a unit
13. Per-hour operating cost, exclusive of fuel and variable O&M costs
14. Pumped storage pumping capacity and pumping minimum
15. Unit ramp and run-up rates
16. Unit start-up O&M and fuel costs and corresponding hours
17. Emission rates/costs

The production-cost model simulations (CEM[®] and PaR[®]) will provide information on net system costs for fuel, variable plant O&M, unit start-up, market contracts and spot market purchases and sales.

Fixed Costs

As mentioned above, the revenue requirement costs associated with additional investments required by the bid—investment in new resources and/or transmission—will be added to the variable operating costs. The information required for new resources in order required to calculate the Fixed cCosts include:

1. Capital Costs—generation and transmission
2. Fixed O&M
3. Incremental Transmission Asset Life
4. Incremental Resource Asset Life
5. Direct & Inferred Debt

¹⁶ Portfolio two and three will be evaluated using 250MW to 600MW however; the ~~company~~Company reserves the right to evaluate the portfolios with and without IGCC to determine the costs and risks associated with the portfolios..

SECTION 6.~~SECTION 6.~~ AWARDING OF CONTRACTS

A.A. Invitation

RFP 2012 is merely an invitation to make proposals to the Company. No proposal in and of itself is a binding contract. The Company may, in its sole and absolute discretion, perform any one or more of the following:

Determine which proposals are eligible for consideration as proposals in response to this RFP 2012.

Issue additional subsequent solicitations for information and conduct investigations with respect to the qualifications of each respondent.

Disqualify proposals contemplating resources that do not meet this RFP 2012's definition of [Base Load](#) resources.

Supplement, amend, or otherwise modify this RFP 2012, or cancel this RFP 2012 with or without the substitution of another RFP.

Negotiate and respond to Bidders to amend any proposals.

Select and enter into agreements with the respondents who, in the Company's sole judgment, are most responsive to the RFP 2012 and whose proposals best satisfy the interest of the Company and its customers, and not necessarily on the basis of any single factor alone.

Issue additional subsequent solicitations for proposals.

Reject any or all proposals in whole or in part.

Vary any timetable.

Conduct any briefing session or further RFP 2012 process on any terms and conditions.

Withdraw any invitation to submit a response.

B.B. Post-Bid Negotiation

The Company will further negotiate both price and nonprice factors during post-bid negotiations. The Company will continually update its economic and risk evaluation until a definitive agreement acceptable to the Company in its sole and absolute discretion is executed by both parties. [The Company will allow bidder](#)Bidders to ~~negotiate~~negotiate final contract terms that are different from

the generic ProForma contracts as long as such negotiated terms constitute contract provisions that are acceptable to PacifiCorp on a legal, contractual, credit and other business basis.

The Company shall have no obligation to enter into any agreement with any Bidder to this RFP 2012 and the Company may terminate or modify this RFP 2012 at any time without liability or obligation to any Bidder.

C. C. **Confidentiality Agreement**

All parties will be required to sign Confidentiality Agreements if they are short-listed (**Attachment 14**) prior to entering into negotiations with the Company.

D. D. **Nonreliance Letter**

All parties will be required to sign a nonreliance letter if they are short-listed (**Attachment 15**) prior to entering into negotiations with PacifiCorp.

**Request for Qualification Bid Form
for 2012 Request for Proposal
*Due November X, 2006***

Complete Appendix A and Appendix B

Request for Qualification (RFQ) Bid Form for RFP 2012

This RFQ is comprised of Appendix A and Appendix B of which both must be fully completed and submitted by November X, 2006 to the Independent Evaluator (IE) in order to participate in PacifiCorp's RFP 2012.

This is to declare that the undersigned intends to respond to PacifiCorp's:

Request for Proposals, Electric Resources (RFP 2012)

Please include:

<u>Company:</u>	
<u>Mailing Address:</u>	
<u>Phone:</u> <u>Fax:</u>	
<u>Email:</u>	
<u>Contact Person:</u>	
<u>Authorized Signature:</u>	
<u>Date:</u>	

Company _____

Mailing Address/Phone/Fax/Email _____

Contact Person _____

Authorized Signature and Date _____

Return by FedEx Mail by November X, 2006 to:

Attention: Independent Evaluator
Merrimack Consulting Energy Group, Inc.: PacifiCorp RFP 2012

RFQ Draft RFP
Due November X, 2006

c/o Utah Division of Public Utilities

Address: 160 E 300 S, 4th floor

Salt Lake City, Utah -84111

Phone:

The RFQ consists of Appendix A and Appendix B. Both Appendices **must be completed in their entirety**. Bidders must be able to demonstrate their credit, capability, experience and qualification to deliver, along with specific references for each and every selected Eligible Reference resource option being submitted in response to the RFP 2012.

PacifiCorp reserves the right, without qualification and in their sole discretion, to reject as non-responsive any, all, or portions of bid proposals received for failure to meet any requirement of this RFP 2012. PacifiCorp also reserves the right to request that the IE contact any Bidder for additional information. PacifiCorp further reserves the right without qualification and in their sole discretion to decline to enter into any Agreement with any Bidder for any reason.

RFQ Bid Form 2012
APPENDIX A
Qualification, Capability and
Experience

1. ELIGIBLE RESOURCES

Bidder must submit a separate form for each Eligible Resource it is going to submit. Each Eligible Resource will have a separate Bid number. Bidder must select by marking with an "X" only one of the following Eligible Resources which is described in Section C.1 of the RFP 2012. To the extent the Bidder submits a proposal that is different than the one checked, in the RFQ, PacifiCorp reserves the right not to accept the RFP Proposal.

Power Purchase

Tolling Agreement

Asset Purchase and Sale Agreement on Bidder's Site

Asset Purchase and Sales Agreement on PacifiCorp Site

Curr~~ent~~ Creek Lake Side

Engineering, Procurement and Construction Contract (EPC) (Currant Creek site only)

Purchase of an existing Facility

Purchase of a portion of a facility, jointly owned or operated by PacifiCorp

Restructure of an existing Power Purchase Agreement (PPA)

Restructure of an existing Exchange Agreement

~~Qualified~~Qualifying Facility~~Distributed Generation~~

Load Curtailment

Full Legal Name of Seller:	
Full Legal Name of Guarantor:	
Commercial Contact:	
Title:	
Office Phone:	
Cell Phone:	
Email Address:	
Credit Contact:	
Title:	
Office Phone:	
Cell Phone:	
Email Address:	
Legal Contact:	
Title:	
Office Phone:	
Cell Phone:	
Email Address:	
Proposed Project <small>(As applicable but not limited to the project submitted. Describe all that apply)</small>	<ul style="list-style-type: none"> • Commercial Operation Date (earliest June 1, 2007<u>6</u>) - _____ • Size (100 MW minimum) - _____ • Location and Delivery Point _____ • Technology (e.g. LM 6000, CT, CCGT, etc.) _____ • New, Repowered or Relocated _____ • Status of Project development and engineering _____ • Status of Construction and Air Applications and Permits _____ • Status of Electric Interconnection Request and Studies _____ • Status of Gas System Interconnection Agreements _____ • Other Information - _____

2. BIDDER QUALIFICATION

Please complete and/or provide documentation on the following sections listed below

1. Corporate structure and primary and secondary businesses

2. Location of offices

3. Biographies of key officers

4. Please provide documentation of your company's previous experience providing the Proposed Eligible resource over the last three to five years.

5. At least one contact (name and telephone number) for each project or power supply venture (for reference purposes) the Bidder has entered into.

~~5. At least one contact (name and telephone number) for each project or power supply venture (for reference purposes) the Bidder has entered into.~~

6. -Description of any current or previous contract dispute(s) involving similar projects in which the Bidder is or was involved during the last five years.

7. -Provide separate descriptions, as appropriate, for each member of a consortium or partnership of two or more firms and the relationship between the firms for this Proposal.

3. Bidder Experience

In the case where a bid contains a proposal to develop a new project or an existing project please describe the status of all activities necessary to either fully develop and/or implement the project, such as negotiations for partnership agreements, equipment supplier agreements, and EPC agreements, fuel supply agreements, if applicable, permitting, financing etc. **Any and all contingencies must be described in detail.**

If the Bidder cannot demonstrate to the Company's reasonable satisfaction that the Bidder possesses the requisite expertise and experience in providing or operating the Eligible Resources, proposed by the Bidder, the ~~company~~Company, after consulting with the IE, reserves the right to exclude the Bidder from the RFP process.

4. Bidder Capability

Site Description and Control

Provide the following information:

- ~~(i)~~ ~~(i)~~ Address of the site where the Project will be located (the "Project Site").

- ~~(ii)~~ ~~(ii)~~ Name of existing facility at the Project Site, if any.

- ~~(iii)~~ ~~(iii)~~ True and correct copies of maps showing the boundaries of the Project Site and key facilities, including any off-sites (fuel, water, wastewater and electrical interconnections).

- ~~(iii)~~ ~~(iii)~~ and key facilities, including any off-sites (fuel, water, wastewater and electrical interconnections).

- ~~(iv)~~ ~~(iv)~~ List and provide a copy of documentation establishing that the Seller has and ~~(iii)~~ ~~(iii)~~ /or will have site control for the entire Term of the Definitive Agreements.

- ~~(iv)~~ ~~(iv)~~ If Seller does not have site control as of the date of this Offer Sheet, Seller must describe in detail how it plans to obtain site control by the first date of the Term of the Definitive Agreements, including a description of the current status of any negotiations regarding the Project Site and a timeline of when Seller will have site control.

- ~~(v)~~ ~~(v)~~ Status of permits or process applicable to the Project

- ~~(vi)~~ ~~(vi)~~ Emissions offsets and credits required and how these will be obtained.

- ~~(vii)~~ ~~(vii)~~ Source of water – if the Bidder has control and if not, how will it be obtained.

- ~~(viii)~~ ~~(viii)~~ Proposed Project schedule including both the development and Construction schedule to be updated with the proposal.

~~(vii) Emissions offsets and credits required and how these will be obtained.~~

~~====(viii) Source of water if the Bidder has control and if not, how will it be obtained.~~

~~====(ix) Proposed Project Construction schedule to be updated with the proposal.~~

~~(x)~~

If the Bidder cannot demonstrate to the Company's reasonable satisfaction that the Bidder possesses the capability to provide the Eligible Resources, proposed by the Bidder, the Company, after consulting with the IE, reserves the right to exclude the Bidder from the RFP process

RFQ 2012 Bid Form
APPENDIX B
Credit and Credit Matrix

BIDDER'S CREDIT INFORMATION AND CREDIT MATRIX

Please provide the following information so PacifiCorp can evaluate the financial viability of the Bidder or any entity providing credit assurances on behalf of the Bidder.

Bidder's Credit Information

1. Credit information for Bidder

A. Exact, legal name and address of Bidder:

B. Debt Ratings from S&P and/or Moody's (please provide senior unsecured long term debt rating (or corporate rating if a debt rating is unavailable). Please indicate type of rating, rating, and source:

C. Please attach copies of audited financial statements (including balance sheet, income statement, and cash flow statement) for the three most recent fiscal years.

Fiscal Year End:

D. Identify pending legal disputes (describe):

E. Please state whether Bidder is or has within the past five (5) years been the debtor in any bankruptcy proceeding.

F. If Bidder is unable to provide audited financial statements or is relying upon another entity to provide credit assurances on its behalf, Bidder must indicate so here and complete the following section.

Is Bidder unable to provide audited financial statements?

Is Bidder relying upon another entity to provide credit assurances on Bidder's behalf?

2. Credit information for entity providing credit assurances on behalf of Bidder (if applicable)

A. Exact, legal name and address of entity providing credit assurances on behalf of Bidder:

B. Describe relationship to Bidder and describe type of credit assurances to be provided (e.g. parental guaranty, letter of credit, etc.).— Bidder must provide a letter of commitment from the entity providing the credit assurances on behalf of the Bidder executed by an authorized signatory and indicating the amount and form of credit assurances it will provide.

C. Debt Ratings from S&P and/or Moody's (please provide senior unsecured long term debt rating (or corporate rating if a debt rating is unavailable). Please indicate type of rating, rating, and source:

D. Please attach copies of audited financial statements (including balance sheet, income statement, and cash flow statement) for the three most recent fiscal years.

Fiscal Year End:

E. Pending legal disputes (describe):

~~F. F.~~ Please state whether entity providing credit assurances on behalf of the Bidder is or has within the past five (5) years been the debtor in any bankruptcy proceeding.

CREDIT MATRIX

The Bidder should utilize the Credit Matrix to determine the maximum credit assurance requirements based on its credit rating and the size and type of Eligible Resource bid. The Bidder will be required to demonstrate the ability to post any required credit assurances in the form of a comfort letter from a proposed guarantor or from a financial institution that would be issuing a Letter of Credit.

The amount of any credit assurances to be provided will be determined based upon the a) the Credit Rating in the Credit Matrix of either the Bidder or the entity providing credit assurances on behalf of the Bidder, b) the size of the project, and c) the type of Eligible Resource. The Credit Rating will be the lower of: x) the most recently published senior, unsecured long term debt rating (or corporate rating if a debt rating is unavailable) from Standard & Poor's (S&P) or y) the most recently published senior, unsecured debt rating (or corporate rating if a debt rating is unavailable) Moody's Investor Services.

If option x) or y) is not available, the Credit Rating will be determined by PacifiCorp Credit through an internal process review utilizing a proprietary credit scoring model developed in conjunction with S&P. All Bidders will receive a Credit Rating which will determine the Amount of Unsecured Credit. Please note that should a Bidder be an existing counterparty with PacifiCorp, PacifiCorp reserves the right to protect itself from counterparty credit concentration risk and require credit assurance in addition to those outlined in the Credit Matrix.

[Credit Appendix B for RFP 2012-2014](#)

[Credit Matrices Notes](#)

- [Maximum Value of Credit Assurances to be Posted for each range of MW for a 2012-2014 Resource](#)
- [Based on Size and Type of Resource Alternative Bid](#)
- [For projects between 5-10 years the credit may be adjusted.](#)

PacifiCorp
Draft RFP 2012
Responses due January, 2007

|

PacifiCorp
 Draft RFP 2012
 Responses due January, 2007

RFP 2012 Credit Matrices

For Eligible Resources B3, B4, B5, B6 and B7

Size of Nameplate bid in MW =>	100	101-150	151-200	201-250	251-300	301-350	351-400	401-450	451-500	501-550	551-600	601-650	651-700	701-750	751-800	801-850	851-900	901-940
Credit Rating																		
AAA/Aaa and above	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$21,929,500	\$30,638,750	\$39,348,000	\$48,057,250	\$56,766,500	\$63,733,900	\$63,733,900
BBB/Baa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$20,801,750	\$29,511,000	\$38,220,250	\$46,929,500	\$55,638,750	\$64,348,000	\$73,057,250	\$81,766,500	\$88,733,900	\$88,733,900
BBB-/Baa3	\$0	\$0	\$0	\$0	\$0	\$10,964,750	\$19,674,000	\$28,383,250	\$37,092,500	\$45,801,750	\$54,511,000	\$63,220,250	\$71,929,500	\$80,638,750	\$89,348,000	\$98,057,250	\$106,766,500	\$113,733,900
Below BBB-/Baa3	\$17,418,500	\$26,127,750	\$34,837,000	\$43,546,250	\$52,255,500	\$60,964,750	\$69,674,000	\$78,383,250	\$87,092,500	\$95,801,750	\$104,511,000	\$113,220,250	\$121,929,500	\$130,638,750	\$139,348,000	\$148,057,250	\$156,766,500	\$163,733,900

For Eligible Resources B1, B2 and B8 (ASSET BACKED)

Size of Nameplate bid in MW =>	100	101-150	151-200	201-250	251-300	301-350	351-400	401-450	451-500	501-550	551-600	601-650	651-700	701-750	751-800	801-850	851-900	901-940
Credit Rating																		
AAA/Aaa and above	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$21,929,500	\$30,638,750	\$39,348,000	\$48,057,250	\$56,766,500	\$63,733,900	\$63,733,900
BBB/Baa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$20,801,750	\$29,511,000	\$38,220,250	\$46,929,500	\$55,638,750	\$64,348,000	\$73,057,250	\$81,766,500	\$88,733,900	\$88,733,900
BBB-/Baa3	\$0	\$0	\$0	\$0	\$0	\$10,964,750	\$19,674,000	\$28,383,250	\$37,092,500	\$45,801,750	\$54,511,000	\$63,220,250	\$71,929,500	\$80,638,750	\$89,348,000	\$98,057,250	\$106,766,500	\$113,733,900
Below BBB-/Baa3	\$17,418,500	\$26,127,750	\$34,837,000	\$43,546,250	\$52,255,500	\$60,964,750	\$69,674,000	\$78,383,250	\$87,092,500	\$95,801,750	\$104,511,000	\$113,220,250	\$121,929,500	\$130,638,750	\$139,348,000	\$148,057,250	\$156,766,500	\$163,733,900

For Eligible Resources B1, B2 and B8 (NON ASSET BACKED)

Size of Nameplate bid in MW =>	100	101-150	151-200	201-250	251-300	301-350	351-400	401-450	451-500	501-550	551-600	601-650	651-700	701-750	751-800	801-850	851-900	901-940
Credit Rating																		
AAA/Aaa and above	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$42,127,800	\$116,565,500	\$191,003,200	\$265,440,900	\$339,878,600	\$399,428,760	\$399,428,760
BBB/Baa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$68,814,700	\$143,252,400	\$217,690,100	\$292,127,800	\$366,565,500	\$441,003,200	\$515,440,900	\$589,878,600	\$649,428,760	\$649,428,760
BBB-/Baa3	\$0	\$0	\$0	\$0	\$0	\$21,063,900	\$95,501,600	\$169,939,300	\$244,377,000	\$318,814,700	\$393,252,400	\$467,690,100	\$542,127,800	\$616,565,500	\$691,003,200	\$765,440,900	\$839,878,600	\$899,428,760
Below BBB-/Baa3	\$148,875,400	\$223,313,100	\$297,750,800	\$372,188,500	\$446,626,200	\$521,063,900	\$595,501,600	\$669,939,300	\$744,377,000	\$818,814,700	\$893,252,400	\$967,690,100	\$1,042,127,800	\$1,116,565,500	\$1,191,003,200	\$1,265,440,900	\$1,339,878,600	\$1,399,428,760

PacifiCorp
 Draft RFP 2012
 Responses due January, 2007

For Eligible Resource B9a)

	For a term of greater than 10 years			
Size of Nameplate bid in MW ==>	Up to 25	26 to 50	51 to 75	76 to 100
Credit Rating				
AAA/Aaa and above	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$0
BBB/Baa2	\$0	\$0	\$0	\$0
BBB-/Baa3	\$0	\$0	\$0	\$0
Below BBB-/Baa3	\$37,218,850	\$74,437,700	\$111,656,550	\$148,875,400

—For projects between 5-10 years the credit may be adjusted.

PacifiCorp
 Draft RFP 2012
 Responses due January, 2007

RFP 2013 Credit Matrices

For Eligible Resources B3, B4, B5, B6 and B7

Size of Nameplate bid in MW ==>	100	101-150	151-200	201-250	251-300	301-350	351-400	401-450	451-500	501-550	551-600	601-650	651-700	701-750
Credit Rating														
AAA/Aaa and above	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$20,287,000	\$29,815,700	\$39,344,400	\$48,873,100	\$58,401,800	\$67,930,500
BBB/Baa2	\$0	\$0	\$0	\$0	\$0	\$0	\$19,979,600	\$29,508,300	\$39,037,000	\$48,565,700	\$58,094,400	\$67,623,100	\$77,151,800	\$86,680,500
BBB-/Baa3	\$0	\$0	\$0	\$10,143,500	\$19,672,200	\$29,200,900	\$38,729,600	\$48,258,300	\$57,787,000	\$67,315,700	\$76,844,400	\$86,373,100	\$95,901,800	\$105,430,500
Below BBB-/Baa3	\$19,057,400	\$28,586,100	\$38,114,800	\$47,643,500	\$57,172,200	\$66,700,900	\$76,229,600	\$85,758,300	\$95,287,000	\$104,815,700	\$114,344,400	\$123,873,100	\$133,401,800	\$142,930,500

For Eligible Resources B1, B2 and B8 (ASSET BACKED)

Size of Nameplate bid in MW ==>	100	101-150	151-200	201-250	251-300	301-350	351-400	401-450	451-500	501-550	551-600	601-650	651-700	701-750
Credit Rating														
AAA/Aaa and above	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$20,287,000	\$29,815,700	\$39,344,400	\$48,873,100	\$58,401,800	\$67,930,500
BBB/Baa2	\$0	\$0	\$0	\$0	\$0	\$0	\$19,979,600	\$29,508,300	\$39,037,000	\$48,565,700	\$58,094,400	\$67,623,100	\$77,151,800	\$86,680,500
BBB-/Baa3	\$0	\$0	\$0	\$10,143,500	\$19,672,200	\$29,200,900	\$38,729,600	\$48,258,300	\$57,787,000	\$67,315,700	\$76,844,400	\$86,373,100	\$95,901,800	\$105,430,500
Below BBB-/Baa3	\$19,057,400	\$28,586,100	\$38,114,800	\$47,643,500	\$57,172,200	\$66,700,900	\$76,229,600	\$85,758,300	\$95,287,000	\$104,815,700	\$114,344,400	\$123,873,100	\$133,401,800	\$142,930,500

For Eligible Resources B1, B2 and B8

Size of Nameplate bid in MW ==>	100	101-150	151-200	201-250	251-300	301-350	351-400	401-450	451-500	501-550	551-600	601-650	651-700	701-750
Credit Rating														
AAA/Aaa and above	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$51,717,000	\$131,888,700	\$212,060,400	\$292,232,100	\$372,403,800	\$452,575,500
BBB/Baa2	\$0	\$0	\$0	\$0	\$0	\$0	\$78,873,600	\$159,045,300	\$239,217,000	\$319,388,700	\$399,560,400	\$479,732,100	\$559,903,800	\$640,075,500
BBB-/Baa3	\$0	\$0	\$0	\$25,858,500	\$106,030,200	\$186,201,900	\$266,373,600	\$346,545,300	\$426,717,000	\$506,888,700	\$587,060,400	\$667,232,100	\$747,403,800	\$827,575,500
Below BBB-/Baa3	\$160,343,400	\$240,515,100	\$320,686,800	\$400,858,500	\$481,030,200	\$561,201,900	\$641,373,600	\$721,545,300	\$801,717,000	\$881,888,700	\$962,060,400	\$1,042,232,100	\$1,122,403,800	\$1,202,575,500

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 Responses due January, 2007

For Eligible Resource B9a)

	For a term of greater than 10 years			
Size of Nameplate bid in MW ==>	Up to 25	26 to 50	51 to 75	76 to 100
Credit Rating				
AAA/Aaa and above	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$0
BBB/Baa2	\$0	\$0	\$0	\$0
BBB-/Baa3	\$0	\$0	\$0	\$0
Below BBB-/Baa3	\$40,085,850	\$80,171,700	\$120,257,550	\$160,343,400

- For projects between 5-10 years the credit may be adjusted.

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[RFP 2014 Credit Matrices](#)

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For Eligible Resources B3, B4, B5, B6 and B7

Size of Nameplate bid in MW ==>	100	101-150	151-200	201-250	251-300	301-350	351-400	401-450	451-500	501-550	551-600
Credit Rating											
AAA/Aaa and above	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$17,606,750	\$28,628,100	\$39,649,450	\$50,670,800	\$61,692,150	\$72,713,500	\$83,734,850	\$94,756,200
BBB/Baa2	\$0	\$0	\$15,960,400	\$26,981,750	\$38,003,100	\$49,024,450	\$60,045,800	\$71,067,150	\$82,088,500	\$93,109,850	\$104,131,200
BBB-/Baa3	\$0	\$14,314,050	\$25,335,400	\$36,356,750	\$47,378,100	\$58,399,450	\$69,420,800	\$80,442,150	\$91,463,500	\$102,484,850	\$113,506,200
Below BBB-/Baa3	\$22,042,700	\$33,064,050	\$44,085,400	\$55,106,750	\$66,128,100	\$77,149,450	\$88,170,800	\$99,192,150	\$110,213,500	\$121,234,850	\$132,256,200

For Eligible Resources B1, B2 and B8 (ASSET BACKED)

Size of Nameplate bid in MW ==>	100	101-150	151-200	201-250	251-300	301-350	351-400	401-450	451-500	501-550	551-600
Credit Rating											
AAA/Aaa and above	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$17,606,750	\$28,628,100	\$39,649,450	\$50,670,800	\$61,692,150	\$72,713,500	\$83,734,850	\$94,756,200
BBB/Baa2	\$0	\$0	\$15,960,400	\$26,981,750	\$38,003,100	\$49,024,450	\$60,045,800	\$71,067,150	\$82,088,500	\$93,109,850	\$104,131,200
BBB-/Baa3	\$0	\$14,314,050	\$25,335,400	\$36,356,750	\$47,378,100	\$58,399,450	\$69,420,800	\$80,442,150	\$91,463,500	\$102,484,850	\$113,506,200
Below BBB-/Baa3	\$22,042,700	\$33,064,050	\$44,085,400	\$55,106,750	\$66,128,100	\$77,149,450	\$88,170,800	\$99,192,150	\$110,213,500	\$121,234,850	\$132,256,200

For Eligible Resources B1, B2 and B8

Size of Nameplate bid in MW ==>	100	101-150	151-200	201-250	251-300	301-350	351-400	401-450	451-500	501-550	551-600
Credit Rating											
AAA/Aaa and above	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$26,465,750	\$106,758,900	\$187,052,050	\$267,345,200	\$347,638,350	\$427,931,500	\$508,224,650	\$588,517,800
BBB/Baa2	\$0	\$0	\$39,922,600	\$120,215,750	\$200,508,900	\$280,802,050	\$361,095,200	\$441,388,350	\$521,681,500	\$601,974,650	\$682,267,800
BBB-/Baa3	\$0	\$53,379,450	\$133,672,600	\$213,965,750	\$294,258,900	\$374,552,050	\$454,845,200	\$535,138,350	\$615,431,500	\$695,724,650	\$776,017,800
Below BBB-/Baa3	\$160,586,300	\$240,879,450	\$321,172,600	\$401,465,750	\$481,758,900	\$562,052,050	\$642,345,200	\$722,638,350	\$802,931,500	\$883,224,650	\$963,517,800

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 Draft RFP 2012
 Responses due January, 2007

For Eligible Resource B9a)

	For a term of greater than 10 years			
Size of Nameplate bid in MW ==>	Up to 25	26 to 50	51 to 75	76 to 100
Credit Rating				
AAA/Aaa and above	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$0
BBB/Baa2	\$0	\$0	\$0	\$0
BBB-/Baa3	\$0	\$0	\$0	\$0
Below BBB-/Baa3	\$40,146,575	\$80,293,150	\$120,439,725	\$160,586,300

For projects between 5-10 years the credit may be adjusted.

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RFP 2012
Appendix C
Information Required in Bid
Proposals for each Eligible Resource

Appendix C-1

Power Purchase Agreements and Tolling Agreements

Information Required in Bid Proposals

In general, PacifiCorp expects Bidders to provide any information that could impact the cost, reliability, dispatch frequency, or output capability of a resource. In the event a Bidder is proposing a transaction that does not require the construction of a resource, much of the following information may not apply. PacifiCorp believes these resources attributes largely consist of, but may not be limited to, the following information categories:

Impact of Temperature on Output – If Project output will vary with ambient conditions, capacity, and any associated performance impact, should be stated in terms of conditions expected during a summer day, with ambient air conditions of 95°F and 20% relative humidity, and a winter day with ambient conditions of 20°F and 75% relative humidity. The Bidder will complete Table C-1.1 showing output at specific ambient conditions, with and without duct firing and/or power augmentation, if applicable. To the extent pricing, capacity and/or availability vary based on specific characteristics of the facility, the Bidder shall clearly identify those relationships in tabular form.

Impact of Other Factors on Output – PacifiCorp prefers generation facilities designed, permitted, and operated so that, to the extent practicable, the proposed capacity and any related energy provided to PacifiCorp is not restricted by:

- Environmental permits or other environmental limitation or environmental forfeitures
- Hours of operation
- Sales of capacity or energy to other parties
- Interruption of primary fuel supply
- Sale of thermal energy
- Any other factor relevant to the technology (noise, agreements with neighbors, etc.
- Bidders shall describe in detail any such limitations in their Proposal
- Ability to provide additional capacity over the net capable rating
- Non-environmental or technology factors that could encumber the facility
- Water availability

Siting – Bidders are responsible for all construction and coordination with the applicable service provider(s) for any new electrical transmission and fuel transportation facilities required in response to this RFP. Bidders are responsible for satisfying all zoning and environmental requirements.

Facility Information – To the extent applicable, the Bidder should clarify the following information with respect to any proposed facility:

- Proposed air emissions (all criteria pollutants and air toxics), description of emission controls, description of plan to acquire any required emission offsets, and description of criteria used to determine requirement.
- List of required environmental, construction, and other regulatory permits and timeline for acquisition.
- Proposed water usage quantity, quality and source.
- Proposed water discharge quantity and quality, plus description of water discharge plan.
- Receiving water body identity and description
- Description of local groundwater quality, quantity, uses, and potential impacts.
- Prevailing noise ordinance at the site and expected sound level (A-weighted) at full load at the site boundary.
- Proposed noise levels and description of noise baffles and stack silencing equipment.
- Proposed site plans, layouts, elevations and other aspects of the facility.
- Types of transportation access required.
- Characterization of the area surrounding the site, including a description of local zoning, flood plain information (100 yr. & 500 yr.), existing land use and setting (woodlands, grasslands, agriculture, etc.).
- Information of fish, wildlife and vegetation inhabiting the area of the Project.
- Proximity to nearest endangered or threatened species which could be potentially impacted.
- Proximity to nearest historical or archaeological resources and all nearby historical or archaeological resources which could potentially be impacted.
- Location and distance to population centers which could be impacted.
- Expected site ambient temperature extremes and verification that freeze protection will be provided as necessary.

Fuel Transportation Route Information – To the extent applicable, the Bidder should clarify any relevant information with respect to fuel transportation route information for any proposed site:

- Proposed new fuel transportation route(s).
- Estimated impact on wetlands (e.g., length of route through wetland).
- Describe land use impacts.
- Descriptions of stream crossings.
- Characterization of the area encompassing the fuel transportation route, including a description of existing land use and setting.

Proposal Format – As mentioned above, Bidders are being asked to submit a “blinded” bid in such a format that the identity of the Bidder is not apparent. In doing so, PacifiCorp is requesting that Bidders confirm to the following format for presenting their bid information:

Section 1 – Executive Summary of Proposal – The Executive Summary section should provide an overall description of the proposal and its key benefits and advantages to PacifiCorp. It should include a general description of the technology, location, and business arrangement for the bid. Bidder shall state the period under which the terms and conditions of their Proposal will remain effective.

Section 2 – Resource Description – This section should include a description of the resource, including:

- Type of generation equipment and description
- Manufacturers of major equipment
- Model number, serial number and age of any previously owned/operated, or “grey market” equipment
- Type of heat rejection equipment (cooling towers, ponds, Air-Cooled Condenser, etc.)
- Source of process and/or cooling water
- Wastewater disposal plan
- Water Balance
- Description of financing plan
- Description of operation and maintenance plan
- Plan for site control
- Site layout description
- Description of technology and configuration
- Net Capacity ratings and net heat rates at ambient conditions as specified in Table C-1.1.
- Primary fuel supply and backup alternatives
- Electrical interconnection (location, transmission provider, and control area)
- Description of emission control technology, including manufacturer
- Any limits on hours of operation in a particular mode (i.e., combined cycle, duct firing, power augmentation, or combination thereof)
- Any limits on emissions
- Project schedule, listing tasks and milestones with estimated completion dates. Bidders shall also complete Exhibit 1 to document technical aspects of their Proposal
- Startup Time for Cold, Warm and Hot Starts. A Cold Start is defined as a shutdown of the generating equipment for 48 hours or longer. A Warm Start is defined as a startup within 48 hours of a shutdown. A Hot Start is defined as a start within 8 hours of a shutdown. Bidder should provide its own definitions if different. For this information Startup Times requested may be

for the time to minimum sustainable load and time to full load, without duct firing or power augmentation.

- Guarantee and expected degradation curves (kW and heat rate)
- Guaranteed availability and reliability
- Long Term Outage Plan
- Anticipated on-site gas compression, if applicable.
- Size and levels of redundancy for all major process equipment and material handling facilities (i.e. major pumps, fans, compressors, storage tanks, mills)
- Design basis for the resource
- Material Balance
- Solid waste disposals.

Section 3 – Pricing Proposal – Describe in detail the pricing proposal, including the use of any index, escalation factors, or other costs to PacifiCorp. Proposed dates, amounts, and detailed milestone descriptions justifying payments are required.

Section 4 – Transmission – Each Proposal must include a description of the location of its proposed transmission facilities, including proposed delivery points, and must specify the transmission provider and all applicable costs.

Section 5 – Environmental and Siting – The Bidder is exclusively and entirely responsible for meeting and satisfying all federal, state, and local permits, licenses, approvals and/or variances that are required to assure physical delivery of capacity and associated energy in accordance with any PPA or Tolling transaction. Bidder must furnish applicable detailed project site, electric transmission, and fuel transportation information, a description of all required permits, and a project timeline so PacifiCorp can assess site suitability, schedule risk and project viability. The proposed site(s) shall clearly be shown on a United States Geological Survey (USGS) 7.5-minute series map.

Section 6 – Other Information

Fuel – Bidders should describe their fuel supply plan and the extent to which they desire to provide fuel and transportation and other fuel-related services, including fuel price management (hedging) or a tolling fee in which PacifiCorp will be responsible for all the fuel and fuel-related costs. PacifiCorp's preference is for proposals that address its need for reliability, management of price risk, and meeting the ~~flexibility of completely dispatchable~~ operations. If the energy cost portion of the Bidder's terms includes a fuel cost component, the Bidder shall explain its proposed fuel supply program.

Dispatchability – Describe any constraints and/or limitations on PacifiCorp's ability to dispatch the generation and any ability of PacifiCorp to utilize the resource for operating reserves.

Technical Data – Technical data as requested in Exhibit 1 of this Appendix.

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Draft RFP 2012
Responses due January, 2007

Section 7 – Contract Terms – Bidder shall provide a comprehensive listing/description of all contract terms in the PacifiCorp PPA or TSA, including appendices, that the Bidder would seek to modify during contract negotiations. Bidder to identify any and all PacifiCorp obligations not specifically outlineds in the referenced agreements.

EXHIBIT 1

TECHNICAL DATA

Site Location _____

Net Capacity at 95°F, 20% Relative Humidity, and at Site Conditions is _____ MW

Site Elevation: _____ Feet

Maximum water consumption is _____ gallons per minute.

Expected water consumption is _____ acre-feet per year.

Minimum Sustainable Load at above conditions _____ MW

Automatic Generation Control (AGC) capable Yes _____ No _____. If yes ~~than~~ then the AGC range at above conditions is _____ MW to _____ MW.

Maximum number of starts per day is _____, per month _____, per year _____.

Maximum continuous period that the facility can operate steam-for-power-augmentation at full load without depleting the demineralized water system is _____ hours. This assumes the demineralized water system is operating at rated capacity.

Weighted Average Raw Water Consumption is _____ gallons per minute.

Time to bring the facility on line, in minutes (specify if this is to synchronization or sustainable minimum load) (Bidder to define "cold", "warm", and "hot starts", if not as stated above)

	Min/Sust.	Full Load
For Cold Start:	_____	_____
For Warm Start:	_____	_____
For Hot Start:	_____	_____

Minimum time on-line (hours from start initiation to stop initiation) _____

Minimum time off-line (hours from stop initiation to start initiation) _____

Normal Ramp Rate within operating range: (MW/Min.) Increase: _____ Decrease: _____

Emergency Ramp Rate: (MW/Minute) Increase: _____ Decrease: _____

Time to transfer from combined cycle to duct firing _____ min.

Duct Firing Ramp Rate: (MW/Min.) Increase: _____ Decrease: _____

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Draft RFP 2012
Responses due January, 2007

Time to transfer from combined cycle to power augmentation _____ min.

Power Augmentation Ramp Rate: (MW/Min.) Increase: _____ Decrease: _____

Anticipates Number of Starts per CT to reach Commercial Operation (CO): _____

Anticipated quantity of natural gas consumed through CO: _____ dth.

Additional Information

Bidder to provide partial load performance curves, including minimum load, showing heat rate and load at varying temperatures.

To the extent that pricing and/or availability vary based on specific characteristics of the facility and/or ambient conditions, the Bidder shall clearly identify that relationship in tabular form, including the relationship between temperature and capacity over the local ambient range inclusive of -10°F to 105°F. Bidder to fill out Table C-1.1 below:

Table C-1.1

Temp in °F	% RH	Evap or Chiller	Duct Burners	Power Aug.	Heat Rate	Net Output	Min. Load
-10	100						
-10	100		On				NA
0	100						
10	100						
15	84						
20	86						
20	86		On				NA
20	86			On			NA
20	86		On	On			NA
30	75						
40	55						
50	49						
52	46						
52	46	On					
60	40	On					
60	40		On				NA
60	40			On			NA
60	40		On	On			NA
70	33	On					
75	29	On					
75	29		On				NA
75	29			On			NA
75	29		On	On			NA
80	25	On					
90	16	On					
95	15	On					
95	15		On				NA
95	15			On			NA
95	15		On	On			NA
105	11						
105	11	On	On	On			NA

Appendix C-2, BOT Contract (APSA) Bids

Information Required in Bid Proposals

In general, PacifiCorp expects Bidders to provide any information that could impact the cost, reliability, dispatch frequency, or output capability of a resource. PacifiCorp believes these resources attributes largely consist of, but may not be limited to, the following information categories:

Impact of Temperature on Output – If Project output will vary with ambient conditions, capacity, and any associated performance impact, should be stated in terms of conditions expected during a summer day, with ambient air conditions of 95°F and 20% relative humidity, and a winter day with ambient conditions of 20°F and 75% relative humidity. The Bidder will complete Table C-2.1 showing output at specific ambient conditions, with and without duct firing and/or power augmentation. To the extent pricing, capacity and/or availability vary based on specific characteristics of the facility, the Bidder shall clearly identify those relationships in tabular form.

Impact of Other Factors on Output – PacifiCorp prefers generation facilities designed, permitted, and operated so that, to the extent practicable, the proposed capacity and any related energy provided to PacifiCorp is not restricted by:

- Environmental permits or other environmental limitation or environmental forfeitures
- Hours of operation
- Any other factor relevant to the technology (noise, agreements with neighbors, etc.
- Bidders shall describe in detail any such limitations in their Proposal
- Ability to provide additional capacity over the net capable rating
- Non-environmental or technology factors that could encumber the facility
- Water availability

Build Own Transfer (BOT) Option – Bidders may propose a fixed-price, lump-sum sale of new generation assets to PacifiCorp, either at an existing PacifiCorp site or propose other sites. Such proposals must include the following information in addition to any technical information:

- Markup of Asset Purchase and Sale Agreement (APSA), including appendices. Quantity and impact of proposed changes are a nonprice factor in selecting Bidders for further discussions.
- Amounts and dates of milestone-based payments, including descriptions, required of PacifiCorp.
- Information regarding location and transmission availability.
- Information regarding fuel and transportation availability.

- Capacity on summer design day in compliance with all regulatory requirements.
- Efficiency (Heat Rate) in compliance with all regulatory requirements.
- Proposed facilities will only contain “OEM-certified new major equipment”. This being defined as OEM equipment that has not been previously installed or operated and has the same warranties and guarantees as equipment delivered directly from the OEM’s production line, and all reliability and design TILS and/or Service Bulletins have been implemented.

Siting – Bidders are responsible for all construction and coordination with the applicable service provider(s) for any new electrical transmission and fuel transportation facilities required in response to this RFP. Bidders are responsible for satisfying all zoning and environmental requirements.

Facility Information – To the extent applicable, the Bidder should clarify the following information with respect to any proposed facility:

- Proposed air emissions (all criteria pollutants and air toxics), description of emission controls, description of plan to acquire any required emission offsets, and description of criteria used to determine requirement.
- List of required environmental, construction, and other regulatory permits and timeline for acquisition.
- Proposed water usage quantity, quality and source.
- Proposed water discharge quantity and quality, plus description of water discharge plan.
- Receiving water body identity and description
- Description of local groundwater quality, quantity, uses, and potential impacts.
- Prevailing noise ordinance at the site and expected sound level (A-weighted) at full load at the site boundary.
- Proposed noise levels and description of noise baffles and stack silencing equipment.
- Proposed site plans, layouts, elevations and other aspects of the facility.
- Types of transportation access required.
- Characterization of the area surrounding the site, including a description of local zoning, flood plain information (100 yr. & 500 yr.), existing land use and setting (woodlands, grasslands, agriculture, etc.).
- Information ~~of~~ regarding fish, wildlife and vegetation inhabiting the area of the Project.
- Proximity to nearest endangered or threatened species which could be potentially impacted.
- Proximity to nearest historical or archaeological resources and all nearby historical or archaeological resources which could potentially be impacted.

- Location and distance to population centers which could be impacted.
- Expected site ambient temperature extremes and verification that freeze protection will be provided as necessary.

Fuel Transportation Route Information – To the extent applicable, the Bidder should clarify any relevant information with respect to fuel transportation route information for any proposed site:

- Proposed new fuel transportation route(s).
- Estimated impact on any wetlands (e.g., length of route through wetlands or other sensitive lands).
- Describe land use impacts.
- Descriptions of stream crossings.
- Characterization of the area encompassing the fuel transportation route, including a description of existing land use and setting.

Proposal Format – As mentioned above, Bidders are being asked to submit a “blinded” bid in such a format that the identity of the Bidder is not apparent. In doing so, PacifiCorp is requesting that Bidders confirm to the following format for presenting their bid information:

Section 1 – Executive Summary of Proposal – The Executive Summary section should provide an overall description of the proposal and its key benefits and advantages to PacifiCorp. It should include a general description of the technology, location, and business arrangement for the bid. Bidder shall state the period under which the terms and conditions of their Proposal will remain effective.

Section 2 – Resource Description – This section should include a description of the resource, including:

- Type of generation equipment and description
- Manufacturers of major equipment
- Type of heat rejection equipment (cooling towers, ponds, ACC, etc.)
- Source of process and/or cooling water
- Wastewater disposal plan
- Description of financing plan
- Description of operation and maintenance plan
- Plan for site control
- Site layout description
- Description of technology and configuration
- Net Capacity ratings and net heat rates at ambient conditions as specified in Table C-2.1.
- Primary fuel supply and backup alternatives
- Electrical interconnection (location, transmission provider, and control area)

- Description of emission control technology, including manufacturer
 - Project schedule, listing tasks and milestones with estimated completion dates. Bidders shall also complete Exhibit 1 to document some of the technical aspects of their Proposal
 - Startup Time for Cold, Warm and Hot Starts. A Cold Start is defined as a shutdown of the generating equipment for 48 hours or longer. A Warm Start is defined as a startup within 48 hours of a shutdown. A Hot Start is defined as a start within 8 hours of a shutdown. Bidder should provide its own definitions if different. For this information Startup Times requested may be for the time to minimum sustainable load and time to full load, without duct firing or power augmentation.
- Size and levels of redundancy for all major process equipment and material handling facilities (i.e. major pumps, fans, compressors, storage tanks, mills)
 - Design basis for the resource
 - Material Balance
 - Solid waste disposals.

Section 3 – Pricing Proposal – Describe in detail the pricing proposal, including the use of any index, escalation factors, or other costs to PacifiCorp. Proposed dates, amounts, and detailed milestone descriptions justifying payments are required.

Section 4 – Transmission – Each Proposal must include a description of the location of its proposed transmission facilities, including proposed delivery points, and must specify the transmission provider and all applicable costs.

Section 5 – Environmental and Siting – The Bidder is exclusively and entirely responsible for meeting and satisfying all federal, state, and local permits, licenses, approvals and/or variances that are required to assure physical delivery of capacity and associated energy in accordance with any BOT transaction. Bidder must furnish applicable detailed project site, electric transmission, and fuel transportation information, a description of all required permits, and a project timeline so PacifiCorp can assess site suitability, schedule risk and project viability. The proposed site(s) shall clearly be shown on a United States Geological Survey (USGS) 7.5-minute series map.

Section 6 – Other Information –

Fuel – Bidders should describe their fuel supply plan and the extent to which they desire to provide fuel and transportation and other fuel-related services, including fuel price management (hedging) or a tolling fee in which PacifiCorp will be responsible for all the fuel and fuel-related costs. PacifiCorp's preference is for proposals that address its need for reliability, management of price risk, and meeting the ~~flexibility of completely dispatchable~~ **Base Load** operations. If the energy cost portion of the Bidder's terms includes a fuel cost component, the Bidder shall explain its proposed fuel supply program.

Dispatchability – Describe any constraints and/or limitations on PacifiCorp’s ability to dispatch the generation and any ability of PacifiCorp to utilize the resource for operating reserves.

Technical Data – Technical data as requested in Exhibit 1 of this Appendix.

Section 7 – Contract Terms – The Bidder will provide a comprehensive listing/description of all modifications to the APSA terms and conditions, including the appendices, which the Bidder would seek during contract negotiations.

These may include, but are not limited to:

- Items to be provided by the Owner, including a schedule of timing for the provision of these items and impact on Bidder of any delays.
- Land requirements for construction of the facility, including laydown areas
- Laydown plan for construction.
- Commissioning & Startup Plan with Owner’s requirements.

EXHIBIT 1

TECHNICAL DATA

Site Location _____

Net Capacity at 95°F, 20% Relative Humidity, and at Site Conditions is _____ MW

Site Elevation: _____ Feet

Maximum water consumption is _____ gallons per minute.

Expected water consumption is _____ acre-feet per year.

Minimum Sustainable Load at above conditions _____ MW

Automatic Generation Control (AGC) capable Yes _____ No _____. If yes, the AGC range at above conditions is _____ MW to _____ MW.

Maximum number of starts per day is _____, per month _____, per year _____.

Maximum continuous period that the facility can operate steam-for-power-augmentation at full load without depleting the demineralized water system is _____ hours. This assumes the demineralized water system is operating at rated capacity.

Weighted Average Raw Water Consumption is _____ gallons per minute.

Time to bring the facility on line, in minutes (specify if this is to synchronization or sustainable minimum load) (Bidder to define "cold", "warm", and "hot starts", if not as stated above)

	Min/Sust.	Full Load
For Cold Start:	_____	_____
For Warm Start:	_____	_____
For Hot Start:	_____	_____

Minimum time on-line (hours from start initiation to stop initiation) _____

Minimum time off-line (hours from stop initiation to start initiation) _____

Normal Ramp Rate within operating range: (MW/Min.) Increase: _____ Decrease: _____

Emergency Ramp Rate: (MW/Minute) Increase: _____ Decrease: _____

Time to transfer from combined cycle to duct firing _____ min.

Duct Firing Ramp Rate: (MW/Min.) Increase: _____ Decrease: _____

PacifiCorp
Draft RFP 2012
Responses due January, 2007

Time to transfer from combined cycle to power augmentation _____ min.

Power Augmentation Ramp Rate: (MW/Min.) Increase: _____ Decrease: _____

Anticipates Number of Starts per CT to reach Commercial Operation (CO): _____

Anticipated quantity of natural gas consumed through CO: _____ dth.

Additional Information

Bidder to provide partial load performance curves, including minimum load, showing heat rate and load at varying temperatures.

To the extent that pricing and/or availability vary based on specific characteristics of the facility and/or ambient conditions, the Bidder shall clearly identify that relationship in tabular form, including the relationship between temperature and capacity over the local ambient range inclusive of -10°F to 105°F. Bidder to fill out Table C-2.1 below:

Table C-2.1

Temp in °F	% RH	Evap or Chiller	Duct Burners	Power Aug.	Heat Rate	Net Output	Min. Load
-10	100						
-10	100		On				NA
0	100						
10	100						
15	84						
20*	86						
20	86		On				NA
20	86			On			NA
20*	86		On	On			NA
30	75						
40	55						
50	49						
52	46						
52	46	On					
60	40	On					
60	40		On				NA
60	40			On			NA
60	40		On	On			NA
70	33	On					
75*	29	On					
75	29		On				NA
75	29			On			NA
75*	29		On	On			NA
80	25	On					
90	16	On					
95*	15	On					
95	15		On				NA
95	15			On			NA
95*	15		On	On			NA
105	11						
105	11	On	On	On			NA

- Indicates Water Balance Sheet Required

Appendix C-3, Engineer Procure Construct (EPC) Contract Bids

Information Required in Bid Proposals

PacifiCorp will only entertain EPC contract bids on the two sites being offered as part of the RFP. In general, PacifiCorp expects Bidders to provide any information that could impact the cost, reliability, dispatch frequency, or output capability of a resource.

PacifiCorp believes these resources attributes largely consist of, but may not be limited to, the following information categories:

Impact of Temperature on Output – If Project output will vary with ambient conditions, capacity, and any associated performance impact, should be stated in terms of conditions expected during a summer day, with ambient air conditions of 95°F and 20% relative humidity, and a winter day with ambient conditions of 20°F and 75% relative humidity. The Bidder will complete Table C-3.1 showing output at specific ambient conditions, with and without duct firing and/or power augmentation. To the extent pricing, capacity and/or availability vary based on specific characteristics of the facility, the Bidder shall clearly identify those relationships in tabular form.

Impact of Other Factors on Output – PacifiCorp prefers generation facilities designed, permitted, and operated so that, to the extent practicable, the proposed capacity and any related energy provided to PacifiCorp is not restricted by:

- Environmental permits or other environmental limitation or environmental forfeitures
- Hours of operation
- Any other factor relevant to the technology (noise, agreements with neighbors, etc.
- Bidders shall describe in detail any such limitations in their Proposal
- Ability to provide additional capacity over the net capable rating
- Non-environmental or technology factors that could encumber the facility
- Water availability

Engineer Procure Construct (EPC) Contract Option – Bidders may propose a fixed-price, lump-sum EPC contract option, but only for the two PacifiCorp sites currently being offered. Such proposals must include the following information in addition to any technical information:

- Markup of Asset Purchase and Sale Agreement (APSA), including appendices. Quantity and impact of proposed changes are a nonprice factor in selecting Bidders for further discussions.
- Amounts and dates of **milestone-based** payments, including milestone descriptions, required of PacifiCorp.
- Proposed facilities will only contain OEM-certified “OEM-certified new major equipment”. This being defined as OEM equipment that has not

been previously installed or operated and has the same warranties and guarantees as equipment delivered directly from the OEM's production line, and all reliability and design TILS and/or Service Bulletins have been implemented.

Siting – Bidders are responsible for all construction and coordination with the applicable service provider(s) for any new electrical transmission and fuel transportation facilities required in response to this RFP.

Facility Information – To the extent applicable, the Bidder should clarify the following information with respect to any proposed facility:

- Proposed air emissions (all criteria pollutants and air toxics), description of emission controls, description of plan to acquire any required emission offsets, and description of criteria used to determine requirement.
- Proposed site plans, layouts, elevations and other aspects of the facility.
- Types of transportation access required.

Proposal Format – As mentioned above, Bidders are being asked to submit a “blinded” bid in such a format that the identity of the Bidder is not apparent. In doing so, PacifiCorp is requesting that Bidders confirm to the following format for presenting their bid information:

Section 1 – Executive Summary of Proposal – The Executive Summary section should provide an overall description of the proposal and its key benefits and advantages to PacifiCorp. It should include a general description of the technology, location, and business arrangement for the bid. Bidder shall state the period under which the terms and conditions of their Proposal will remain effective.

Section 2 – Resource Description – This section should include a description of the resource, including:

- Type of generation equipment and description
- Manufacturers of major equipment
- Type of heat rejection equipment (cooling towers, ponds, ACC, etc.)
- Source of process and/or cooling water
- Wastewater disposal plan
- Description of financing plan
- Plan for site control
- Site layout description
- Description of technology and configuration
- Net Capacity ratings and net heat rates at ambient conditions as specified in Table C-3.1.
- Description of emission control technology, including manufacturer

- Project schedule based on latest Notice to Proceed Date necessary for a June 1, 2012 Substantial Completion Date, listing latest, tasks and milestones with estimated completion dates. Bidders shall also complete Exhibit 1 to document some of the technical aspects of their Proposal.
- Startup Time for Cold, Warm and Hot Starts. A Cold Start is defined as a shutdown of the generating equipment for 48 hours or longer. A Warm Start is defined as a startup within 48 hours of a shutdown. A Hot Start is defined as a start within 8 hours of a shutdown. Bidder should provide its own definitions if different. For this information Startup Times requested may be for the time to minimum sustainable load and time to full load, without duct firing or power augmentation.
- Size and levels of redundancy for all major process equipment and material handling facilities (i.e. major pumps, fans, compressors, storage tanks, mills)
- Design basis for the resource
- Material Balance
- Solid waste disposals.

Section 3 – Pricing Proposal – Describe in detail the pricing proposal, including the use of any index, escalation factors, or other costs to PacifiCorp. Proposed dates, amounts, and detailed milestone descriptions justifying payments are required.

Section 4 – Transmission – Not Applicable to this Appendix.

Section 5 – Environmental and Siting – Under the EPC proposal, PacifiCorp is exclusively and entirely responsible for meeting and satisfying all federal, state, and local permits, licenses, approvals and/or variances that are required to physical construction and operation of the Facility in accordance with any EPC transaction.

Section 6 – Other Information –

Fuel – Not Applicable to this Appendix

Dispatchability – Not Applicable to this Appendix.

Technical Data – Technical data as requested Exhibit 1 of this Appendix.

Section 7 – Contract Terms – Bidder shall provide a comprehensive listing/description of all modifications to the APSA terms and conditions, including the appendices, which the Bidder would seek during contract negotiations.

These may include, but are not limited to:

PacifiCorp
Draft RFP 2012
Responses due January, 2007

- Descriptions of items to be provided by the Owner, including a schedule of timing for the provision of these items and impact on Bidder of any delays.
- Land requirements for construction of the facility, including laydown areas
- Laydown plan for construction.
- Commissioning & Startup Plan with Owner's requirements.

EXHIBIT 1

TECHNICAL DATA

Site Location _____

Net Capacity at 95°F, 20% Relative Humidity, and at Site Conditions is _____ MW

Site Elevation: _____ Feet

Maximum water consumption is _____ gallons per minute.

Expected water consumption is _____ acre-feet per year.

Minimum Sustainable Load at above conditions _____ MW

Automatic Generation Control (AGC) capable Yes _____ No _____. If yes then the AGC range at above conditions is _____ MW to _____ MW.

Maximum number of starts per day is _____, per month _____, per year _____.

Maximum continuous period that the facility can operate steam-for-power-augmentation at full load without depleting the demineralized water system is _____ hours. This assumes the demineralized water system is operating at rated capacity.

Weighted Average Raw Water Consumption is _____ gallons per minute.

Time to bring the facility on line, in minutes (specify if this is to synchronization or sustainable minimum load) (Bidder to define "cold", "warm", and "hot starts", if not as stated above)

	Min/Sust.	Full Load
For Cold Start:	_____	_____
For Warm Start:	_____	_____
For Hot Start:	_____	_____

Minimum time on-line (hours from start initiation to stop initiation) _____

Minimum time off-line (hours from stop initiation to start initiation) _____

Normal Ramp Rate within operating range: (MW/Min.) Increase: _____ Decrease: _____

Emergency Ramp Rate: (MW/Minute) Increase: _____ Decrease: _____

Time to transfer from combined cycle to duct firing _____ min.

Duct Firing Ramp Rate: (MW/Min.) Increase: _____ Decrease: _____

PacifiCorp
Draft RFP 2012
Responses due January, 2007

Time to transfer from combined cycle to power augmentation _____ min.

Power Augmentation Ramp Rate: (MW/Min.) Increase: _____ Decrease: _____

Anticipates Number of Starts per CT to reach Commercial Operation (CO): _____

Anticipated quantity of natural gas consumed through CO: _____ dth.

Additional Information

Bidder to provide partial load performance curves, including minimum load, showing heat rate and load at varying temperatures.

To the extent that pricing and/or availability vary based on specific characteristics of the facility and/or ambient conditions, the Bidder shall clearly identify that relationship in tabular form, including the relationship between temperature and capacity over the local ambient range inclusive of -10°F to 105°F. Bidder to fill out Table B-3.1 below:

Table C-3.1

Temp in °F	% RH	Evap or Chiller	Duct Burners	Power Aug.	Heat Rate	Net Output	Min. Load
-10	100						
-10	100		On				NA
0	100						
10	100						
15	84						
20*	86						
20	86		On				NA
20	86			On			NA
20*	86		On	On			NA
30	75						
40	55						
50	49						
52	46						
52	46	On					
60	40	On					
60	40		On				NA
60	40			On			NA
60	40		On	On			NA
70	33	On					
75*	29	On					
75	29		On				NA
75	29			On			NA
75*	29		On	On			NA
80	25	On					
90	16	On					
95*	15	On					
95	15		On				NA
95	15			On			NA
95*	15		On	On			NA
105	11						
105	11	On	On	On			NA

- Indicates Water Balance Sheet Required

Appendix C-4, Existing Asset Purchase (in whole or in part)

Information Required in Bid Proposals

If the Bidder's Proposal is for an interest in an existing facility where PacifiCorp holds an interest, or operates the facility, any information requested under this RFP that would reasonably be expected to already be in the possession of PacifiCorp, may be so stated in the Bidder's response package. If the Bidder's asset is not currently involved with PacifiCorp, the below requirements are to be met as outlined.

In general, PacifiCorp expects Bidders to provide any information that could impact the cost, reliability, dispatch frequency, output capability or performance of a resource. PacifiCorp believes these resources attributes largely consist, but may not be limited to, the following information categories:

Impact of Temperature on Output – If Project output will vary with ambient conditions, capacity, and any associated performance impact, should be stated in terms of conditions expected during a summer day, with ambient air conditions of 95°F and 20% relative humidity, and a winter day with ambient conditions of 20°F and 75% relative humidity. The Bidder will complete Table C-4.1 showing output at specific ambient conditions, with and without duct firing and/or power augmentation. To the extent pricing, capacity and/or availability vary based on specific characteristics of the facility, the Bidder shall clearly identify those relationships in tabular form.

Impact of Other Factors on Output – PacifiCorp prefers generation facilities designed, permitted, and operated so that, to the extent practicable, the proposed capacity and any related energy provided to PacifiCorp is not restricted by:

- Environmental permits or other environmental limitation or environmental forfeitures
- Hours of operation
- Sales of capacity or energy to other parties
- Interruption of primary fuel supply
- Sale of thermal energy
- Any other factor relevant to the technology (noise, agreements with neighbors, etc.
- Bidders shall describe in detail any such limitations in their Proposal
- Ability to provide additional capacity over the net capable rating
- Non-environmental or technology factors that could encumber the facility
- Water availability

Ownership Purchase Option – Bidders may propose a sale, either whole or in part, of existing generation assets to PacifiCorp. Such proposals must include the following information in addition to any technical information:

- Ownership percentage and whether a divided or undivided interest
- Amounts and dates of payments required of PacifiCorp.
- Current and projected annual fixed and variable O&M costs associated with the generation facility.
- Any long term service or maintenance agreements, including scope and costs that are in excess of \$25,000 in annual costs. (i.e. CTs, water, O&M, parts, inspections, ash disposal, CEMs)
- Startup costs (i.e., the period of time from when a start is initiated to the time the unit reaches minimum sustainable load)
- Operating Limits – Any limits imposed on the number of startups that may be performed per year or per unit of time. Any limits on the number of hours that a unit may per operated per year or per unit of time. Any annual limits on the number of hours of duct firing or power augmentation.
- Emissions (air, liquid and solid wastes) in pounds per hour per pollutant and/or waste product at 100% load and tons per year of pollutant and/or waste product at a specified capacity factor as selected by the Bidder.
- Annual unit availability and any guaranteed minimum annual availability.
- Information regarding location and transmission.
- Information regarding fuel and transportation.
- Capacity on summer design day in compliance with all regulatory requirements.
- Efficiency (Heat Rate) in compliance with all regulatory requirements.
- Terms of remaining warranties and/or guarantees on major equipment.
- Costs to incorporate into PacifiCorp Fleet (Future capital or maintenance).

Significant due diligence may be necessary prior to finalizing any acquisition by PacifiCorp. A list of due diligence items will be provided to a Bidder should they be short-listed.

Siting – Not Applicable to this Appendix.

Facility Information – To the extent applicable, the Bidder should clarify the following information with respect to the facility:

- Air emissions (all criteria pollutants and air toxics), description of emission controls and existing emission offsets
- List of environmental and other regulatory permits
- Water usage quantity, quality and source(s).
- Water discharge quantity and quality, plus water discharge plan.
- Receiving water body identity and description
- Description of local groundwater quality, quantity and uses.
- Site plans, layouts, elevations and other aspects of the facility.

Fuel Transportation Route Information – To the extent applicable, the Bidder should clarify any relevant information with respect to fuel transportation route information for the site.

Proposal Format – As mentioned above, Bidders are being asked to submit a “blinded” bid in such a format that the identity of the Bidder is not apparent. In doing so, PacifiCorp is requesting that Bidders confirm to the following format for presenting their bid information:

Section 1 – Executive Summary of Proposal – The Executive Summary section should provide an overall description of the proposal and its key benefits and advantages to PacifiCorp. It should include a general description of the technology, location, and business arrangement for the bid. Bidder shall state the period under which the terms and conditions of their Proposal will remain effective.

Section 2 – Resource Description – This section should include a description of the resource, including:

- Type of generation equipment and description
- Manufacturers of major equipment
- Model number, serial number and age of any previously owned/operated equipment
- Type of heat rejection equipment (cooling towers, ponds, ACC, etc.)
- Source of process and/or cooling water
- Wastewater disposal plan
- Description of financing plan
- Description of operation and maintenance plan
- Plan for site control
- Site layout description
- Description of technology and configuration
- Net Capacity ratings and net heat rates at ambient conditions as specified in Table C-4.1.
- Primary fuel supply and backup alternatives
- Electrical interconnection (location, transmission provider, and control area)
- Description of emission control technology, including manufacturer
- Any limits on hours of operation in a particular mode (i.e., combined cycle, duct firing, power augmentation, or combination thereof)
- Any limits on emissions
- Project schedule, listing tasks and milestones with estimated completion dates. Bidders shall also complete Exhibit 1 to document some of the technical aspects of their Proposal.
- Startup Time for Cold, Warm and Hot Starts. A Cold Start is defined as a shutdown of the generating equipment for 48 hours or longer. A Warm Start is defined as a startup within 48 hours of a shutdown. A Hot Start is defined as a start within 8 hours of a shutdown. Bidder should provide its own definitions if different. For this information Startup Times requested may be for the time to minimum sustainable load and time to full load, without duct firing or power augmentation.
- Size and levels of redundancy for all major process equipment and material handling facilities (i.e. major pumps, fans, compressors, storage tanks, mills)
- Design basis for the resource

- Material Balance
- Solid waste disposals.

Section 3 – Pricing Proposal – Describe in detail the pricing proposal, including the use of any index, escalation factors, or other costs to PacifiCorp. Also required is a detailed accounting of ownership interest, whether divided or undivided, in the facility, inventory, spare parts, ongoing agreements, or any continuing obligations resulting from PacifiCorp’s ownership, or acquisition of an interest in the asset. Proposed dates, amounts, and detailed milestone descriptions justifying payments are required.

Section 4 – Transmission – Each Proposal must include a description of the location of its transmission facilities, including delivery points, and must specify the transmission provider and all applicable costs.

Section 5 – Environmental and Siting –Bidder must furnish applicable detailed project site, electric transmission, and fuel transportation information, and a description of all permits, so PacifiCorp can assess site suitability and project viability. The site shall clearly be shown on a United States Geological Survey (USGS) 7.5-minute series map.

Section 6 – Other Information –

Dispatchability – Describe any constraints and/or limitations on PacifiCorp’s ability to dispatch the generation and any ability of PacifiCorp to utilize the resource for operating reserves.

Technical Data – Technical data as requested Exhibit 1 of this Appendix.

Section 7 – Contract Terms – Bidder shall provide a sample purchase and sale agreement outlining the terms and conditions of the proposed acquisition.

EXHIBIT 1

TECHNICAL DATA

Site Location _____

Net Capacity at 95°F, 20% Relative Humidity, and at Site Conditions is _____ MW

Site Elevation: _____ Feet

Maximum water consumption is _____ gallons per minute.

Expected water consumption is _____ acre-feet per year.

Minimum Sustainable Load at above conditions _____ MW

Automatic Generation Control (AGC) capable Yes _____ No _____. If yes then the AGC range at above conditions is _____ MW to _____ MW.

Maximum number of starts per day is _____, per month _____, per year _____.

Maximum continuous period that the facility can operate steam-for-power-augmentation at full load without depleting the demineralized water system is _____ hours. This assumes the demineralized water system is operating at rated capacity.

Weighted Average Raw Water Consumption is _____ gallons per minute.

Time to bring the facility on line, in minutes (specify if this is to synchronization or sustainable minimum load) (Bidder to define "cold", "warm", and "hot starts", if not as stated above)

	Min/Sust.	Full Load
For Cold Start:	_____	_____
For Warm Start:	_____	_____
For Hot Start:	_____	_____

Minimum time on-line (hours from start initiation to stop initiation) _____

Minimum time off-line (hours from stop initiation to start initiation) _____

Normal Ramp Rate within operating range: (MW/Min.) Increase: _____ Decrease: _____

Emergency Ramp Rate: (MW/Minute) Increase: _____ Decrease: _____

Time to transfer from combined cycle to duct firing _____ min.

Duct Firing Ramp Rate: (MW/Min.) Increase: _____ Decrease: _____

Time to transfer from combined cycle to power augmentation _____ min.

Power Augmentation Ramp Rate: (MW/Min.) Increase: _____ Decrease: _____

Anticipates Number of Starts per CT to reach Commercial Operation (CO): _____

Anticipated quantity of natural gas consumed through CO: _____ dth.

Additional Information

Bidder to provide partial load performance curves, including minimum load, showing heat rate and load at varying temperatures.

To the extent that pricing and/or availability vary based on specific characteristics of the facility and/or ambient conditions, the Bidder shall clearly identify that relationship in tabular form, including the relationship between temperature and capacity over the local ambient range inclusive of -10°F to 105°F. Bidder to fill out Table B-4.1 below:

Table C-4.1

Temp in °F	% RH	Evap or Chiller	Duct Burners	Power Aug.	Heat Rate	Net Output	Min. Load
-10	100						
-10	100		On				NA
0	100						
10	100						
15	84						
20*	86						
20	86		On				NA
20	86			On			NA
20*	86		On	On			NA
30	75						
40	55						
50	49						
52	46						
52	46	On					
60	40	On					
60	40		On				NA
60	40			On			NA
60	40		On	On			NA
70	33	On					
75*	29	On					
75	29		On				NA
75	29			On			NA
75*	29		On	On			NA
80	25	On					
90	16	On					
95*	15	On					
95	15		On				NA
95	15			On			NA
95*	15		On	On			NA
105	11						
105	11	On	On	On			NA

- Indicates Water Balance Sheet Required

2012 RFP
Appendix D
Natural Gas & Fuel Supply Form

Appendix D
RFP 2012
Natural Gas and Fuel Supply Form

Site Location _____

Primary Source of Fuel _____

Secondary Source of Fuel (if any) _____

Supplier of Primary Fuel _____

Firm Supply Contract Anticipated? (Yes) (No) Term _____ years

Supplier of Secondary Fuel (if any) _____

Supply Contract Anticipated? (Yes) (No) Term _____ years

Contemplated Natural Gas Transportation:

LDC (if necessary) _____ Firm Transport? (Yes) (No)
Quantity _____ dekatherms (mmBtu) Term _____

Pipeline 1 _____ Firm Transport? (Yes) (No)
Quantity _____ dekatherms (mmBtu) Term _____

Pipeline 2 _____ Firm Transport? (Yes) (No)
Quantity _____ dekatherms (mmBtu) Term _____

If transportation is not firm, please clarify the contemplated terms for transport.

Copy of Coal contract supply Attached (Yes) (No)

If (No) indicate what the Coal contract strategy will be in you proposal

Coal Quality _____

Lime and/or Limestone for Air Quality Control System provided. (Yes) (No)

Rail/Truck Transport Coal/Oil

Firm 1 _____
Firm 2 _____

PacifiCorp
Draft RFP 2012
Responses due January, 2007

| Provide all relevant Information on the projects.

RFP 2012
APPENDIX E
Officer Certification Form

-Officer Certification Form- Appendix E

The undersigned Bidder executes and submits this form with each Proposal it submits in PacifiCorp's RFP 2012, and hereby certifies in each instance that all of the statements and representations made by it in its proposal are true to the best of the Bidder's knowledge, and agrees to be bound by the representations, terms, and conditions contained in the 2012 RFP. The Bidder accepts the contract attached to the 2012 RFP and indicated therein as applicable to its Proposal, except as specifically noted in writing by Bidder. This proposal is firm and will remain in effect until the later of December 10, 2007 ~~X, March 27, 2006~~2007, or that date which is 300 days after the proposal due date provided in the RFP, as such due date may be extended from time to time by PacifiCorp.

Submitted by: _____
(Exact legal name of the entity submitting Proposal)

Signature of an authorized officer: _____

Print or type name of officer: _____

Title: _____

Date signed: _____

RFP 2012
APPENDIX F
SFAS No. 13 Form

This is an example of the SFAS No. 13 Form.

Each Bidder is required to fill in **only** the cells that are highlighted in yellow for each Eligible Resource. When you type in the yellow cells it will prompt you for a password, the password is RFP2012. Each Bidder is required to copy the excel spreadsheet and resave it with their bid number and submit it on a CD or Diskette. Appendix F can be downloaded from either PacifiCorp website and or the IE website for Bidders to save on a CD or Diskette. (www.pacificorp.com)

*YELLOW CELLS REQUIRE USER INPUT.

**Please note, the conclusion in cell B28 assumes that the contract has been deemed a lease by EITF 01-08.

***Protected cell(s) password: RFP2009

CAPITAL LEASE IF:							
FAIL	The lease transfers ownership to the lessee by the end of the lease term. "Fail" equates to "No". "Pass" equates to "Yes".						
FAIL	The lease contains a bargain purchase option. "Fail" equates to "No". "Pass" equates to "Yes".						
FAIL	The lease term is equal to 75% or more of the estimated economic life of the leased property, and the beginning of the lease term does not fall within the last 25% of the total economic life of the leased property.						
	Original Economic Plant Life (yrs)	Years into Economic Plant Life	Remaining Economic Plant Life (yrs)	Term of Deal (yrs)	% of Life	Trigger	Test
	35	0	35	20	57%	75%	FAIL
	Beginning of Plant	Ending of Plant	Life (yrs)	Last 25% Date	Beginning of Lease		Test
	6/1/2009	5/31/2044	35	9/1/2035	6/1/2009		FAIL
FAIL	The present value of the minimum lease payments at the beginning of the lease term is 90% or more of the fair value to the lessor less any investment credit retained by the lessor. This requirement cannot be used if the lease's inception is in the last 25% of the useful economic life of the leased asset. The interest rate, used to compute the PV, is the incremental borrowing rate of the lessee unless the implicit rate is available and lower.						
	Percentage of Capacity PMT that is Executory Costs (%)	Cost to Build \$/KW	MW	FMV	\$ PV Minimum Lease Pmts (Non-Executory Costs)	Trigger (90% of FMV)	Test
	25%	\$700	420	\$294,000,000	\$209,583,165	\$264,600,000	FAIL
Designation:							
OPERATING LEASE							

RFP 2012
APPENDIX G
Bidder Site Control Form

Appendix G
RFP 2012
Bidder Site Control Form

Project Name: _____

Site Location: _____

Street Address or Nearest Intersection: _____

Acres: _____

Distance to ~~Natural Gas~~Fuel Supply: _____

Transportation _____

Railway _____

Distance to Water Supply (if not using ACC): _____

Check items that are applicable:

Property is owned by Bidder.

Property is leased by Bidder, with an Option to buy.

▪ Lease/Option Expires: _____

Property is Optioned by Bidder through (date): _____

▪ Option is Exclusive _____ or Non-Exclusive _____

▪ Option is to Purchase _____ or Lease _____

Site is selected, but not formally secured.

Site will require zoning change as part of permitting process.

APPENDIX G

Bidder Site Control Form Submittals

Bidder shall submit to Buyer drawings, plans, specifications, and other documents necessary to document the design engineering and construction of the Plant and the content of the Work, including but not limited to those items herein listed below. Additionally, Bidder shall submit to the Buyer those drawings, plans, specifications, and other documents as required by the State of Utah or any other regulatory body or agency having authority over the Plant.

Ninety (90) days after the Notice To Proceed, the Bidder shall provide to Buyer a schedule for submittal of such documents, which schedule shall (1) be consistent with the schedule for the Project and (2) provide Buyer with the greatest practicable opportunity to review such documents and make comments thereon within fourteen (14) days from the transmittal date or as mutually agreed upon provided that the comment period does not unduly affect the progress of the Work. Submittals shall be in duplicate.

Engineering Lists

- Equipment List

Engineering Specifications and Drawings

- Plot/Site Plan
- Switchyard Single Line, Three Line and Metering and Protection Design

Construction

- Site Utilization Plan, including laydown;

Commissioning and Startup

- System Descriptions
- Performance and Emissions Test Procedures
- Performance Test Results
- Reports Required for Regulatory Compliance

Plans, Manuals, & Reports

- Level 2 Schedule
- Commissioning Schedule
- Monthly Progress Reports

All specifications and drawings for the Project and submitted by Bidder or Subcontractor to Bidder hereunder shall include the following data:

Name:	PacifiCorp
Project Name:	Buyer's Power Plant
Spec. or drawing number, if applicable:	Bidder or Subcontractor to Provide
Bidder or Subcontractor's name:	Bidder or Subcontractor
Revision Number and Date	_____ Bidder or Subcontractor to Provide

Buyer shall have the right to reasonably request other information and Bidder shall use reasonable efforts to supply this information.

Documents submitted to Buyer are provided for information only. However, if Buyer identifies discrepancies or areas of non-conformance with the Agreement requirements, Buyer has the right to notify Bidder of the discrepancy/non-conformance and require that the document be revised and resubmitted.

Monthly Progress Report

The Monthly Progress Report shall address all aspects of the Plant through the Commercial Operation and shall include, but not be limited to the following:

- (a) An "Executive Summary" containing:
 - A written summary of events and progress accomplished during the previous reporting period.
 - Unresolved Changes.
 - Critical Concerns and Intended Actions.

- (b) A "Schedule Section":
 - Will be updated on a monthly basis and will consider the aforementioned item b. An updated Level 2-time schedule will be provided (paper/electronic). Critical path analysis will also be provided.

- (c) A list of the status of Bidder permits

RFP 2012
APPENDIX H
Construction Coordination Agreement

CONSTRUCTION COORDINATION AGREEMENT
BETWEEN
PACIFICORP
AND
BIDDER

CONSTRUCTION COORDINATION AGREEMENT

This Construction Coordination Agreement (the “Agreement”) is made and entered into as of the Effective Date (as defined below), by and between PacifiCorp, an Oregon corporation (“PacifiCorp”), and _____, a _____ [limited liability company] (“[NAME]”) (PacifiCorp and [NAME] are individually referred to herein as a “Party” and collectively as the “Parties”).

RECITALS

WHEREAS, PacifiCorp is an investor owned electric utility company subject to regulation by the Public Service Commission of Utah;

WHEREAS, PacifiCorp owns, operates and maintains Unit 1 at its generation facility located in _____, Utah.

WHEREAS, [NAME] desires to construct Unit 2, to be located adjacent to Unit 1 at the Facility;

WHEREAS, PacifiCorp and [NAME] have entered into a [Power Purchase Agreement (“PPA”) / Tolling Services Agreement (“TSA”)] providing for the purchase by PacifiCorp of certain of the energy and capacity generated by Unit 2 following Unit 2’s reaching Commercial Operation;

WHEREAS, there is a need to coordinate the activities of [NAME] and its contractor(s) and subcontractors during construction, testing and commissioning of Unit 2 to avoid potential interference with the operation of Unit 1;

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Party, the Parties hereto agree as follows:

ARTICLE I Definitions; Headings

1.1 Definitions

Unless the context shall otherwise require, capitalized terms used in this Agreement shall have the meanings assigned to them in the Glossary of Defined Terms attached hereto as Exhibit “A”, which also contains rules as to usage that shall be applicable herein.

ARTICLE II Term and Governing Provisions

2.1 Term.

The Term of this Agreement shall become effective on the Effective Date and, unless earlier terminated pursuant to provisions hereof, shall continue in effect until PacifiCorp has accepted the [PPA/TSA] or has achieved Commercial Operation. _Date.

2.2 Governing Provisions.

As a matter of general priority, in the event of any conflict between the provisions of this Agreement or the [PPA/TSA], the provisions of this Agreement shall govern. Disputes related to the matters to be performed pursuant to this Agreement and not involving the [PPA/TSA] or work performed by or at the direction of the [PPA/TSA], shall nonetheless be governed by Section 15 (“Disagreements”) in the [PPA/TSA].

ARTICLE III Construction Interfaces

3.1 Construction Control.

[NAME] and its contractors shall be responsible for and have sole control over the construction of Unit 2, except for interconnections with the Common Facilities. [NAME] shall coordinate with PacifiCorp all activities to be performed in connection with the construction, testing and commissioning of Unit 2 pursuant to this Agreement, particularly if such activities may require taking Unit 1 off-line or have a substantial possibility of causing an outage at Unit 1.

[NAME] shall be responsible for erecting a temporary and movable construction fence (the “Construction Fence”) on the Site for the purpose of separating the Unit 2 construction area (the “Construction Area”), which is initially depicted by the cross-hatched area on Exhibit “C” attached hereto, from the rest of the Facility, including Unit 1, the switchyard and the Common Facilities. The Construction Fence may be moved and relocated as necessary with the prior written consent of PacifiCorp following the completion of certain phases of construction for the purpose of accessing other areas of the Facility, all as set out in the Project Schedule. During the Term, [NAME] will be in control of the Construction Area and will maintain a separate gate for access to the Construction Area. Prior to the Commercial Operation Date, the Construction Area will be reduced to [NAME]’s staging and laydown area and separate gate, and shall not include any Facilities necessary for operation of Unit 1, Unit 2 or the Common Facilities. Following the Commercial Operation Date [NAME] shall, and shall cause its contractors and subcontractors to, promptly remove all construction materials and equipment from the staging and laydown area, to remove the Construction Fence, and to erect suitable permanent fencing and related access roads to separate PacifiCorp’s facilities from [NAME]’s facilities, all as approved in writing by PacifiCorp.

[NAME] shall at all times utilize and cause its contractors, subcontractors, personnel and other persons allowed at any part of the Facility by [NAME] to utilize only [NAME]’s separate gate to the Construction Area.

3.2 [NAME]’s Access to PacifiCorp’s Area.

[NAME] shall provide PacifiCorp with reasonable notice of its need to access PacifiCorp’s Area for performance of work activities associated with the Common

Facilities. [NAME] and PacifiCorp shall agree on a schedule for the performance of all work activities in PacifiCorp's Area consistent with the Project Schedule. PacifiCorp shall arrange for any safety instruction and workplace policy training deemed appropriate by PacifiCorp for [NAME]'s personnel prior to [NAME]'s personnel being allowed in PacifiCorp's Area. PacifiCorp shall arrange for escorts for [NAME]'s personnel accessing PacifiCorp's Area to the extent PacifiCorp reasonably deems such escorts necessary. In the event [NAME] needs to work on a system that could be used by PacifiCorp for the operation of Unit 1, [NAME] shall provide PacifiCorp with written notice and receive authorization from PacifiCorp that the system has been deactivated before commencing work on the system and [NAME] shall notify PacifiCorp once it completes work on the system so PacifiCorp can inspect and reactivate the system in accordance with PacifiCorp's Tagging and Safety Program.

3.3 PacifiCorp Access to the Construction Area.

At all times prior to the Commercial Operation Date [NAME] shall provide PacifiCorp and PacifiCorp's personnel access to the Construction Area upon PacifiCorp's request. [NAME] and PacifiCorp shall agree on a schedule for the performance of work activities by PacifiCorp's personnel in the Construction Area. PacifiCorp's personnel shall comply with [NAME]'s published safety program requirements while in the Construction Area. [NAME] may arrange for escorts for any PacifiCorp personnel accessing the Construction Area to the extent [NAME] reasonably deems such escorts necessary. The above notwithstanding, PacifiCorp may access the Construction Area without notice for the purpose of carrying out activities required for the operation of Unit 1 or responding to an Emergency.

3.4 Project Schedule and Coordination of PacifiCorp Support.

[NAME] shall (a) schedule all activities that will require or may result in the shutdown of or inability to dispatch Unit 1, and all work activities performed on or affecting the Common Facilities in accordance with the Project Schedule, (b) notify PacifiCorp in writing of such schedule(s) at the earliest practicable time, and (c) update such schedules in writing as necessary. [NAME] shall not undertake the foregoing Work activities until PacifiCorp has agreed in writing with such schedule and plan for performing the identified work.

3.5 Unit 1 and PacifiCorp's Area Control.

PacifiCorp shall have sole control over the operation of Unit 1 and the remainder of PacifiCorp's Area at all times.

3.6 Restrictions During Construction.

- (a) Except as otherwise provided in this Agreement, [NAME] shall perform or cause to be performed all construction activities with respect

to Unit 2 in a manner that will avoid interference with PacifiCorp's operation of Unit 1.

- (b) [NAME] shall restrict construction workers and other personnel not employed by PacifiCorp from access to PacifiCorp's Area except as authorized in advance by PacifiCorp's Representative. Upon the reasonable request of [NAME], PacifiCorp shall authorize access to PacifiCorp's Area for the purpose of undertaking activities necessary to integrate Unit 2 into the Common Facilities, and after the Substantial Completion Date to perform any work activities required under the [PPA/TSA], in accordance with the Project Schedule and the work plan required under Section 3.4 above.

3.7 Transportation Routes and Lay-Down Areas.

[NAME] shall designate adequate transportation routes and lay-down areas for the construction work and materials for Unit 2, and, prior to commencing construction obtain PacifiCorp's written approval of all such proposed routes and laydown areas. In granting its approval PacifiCorp shall not be deemed to have recommended or confirmed the adequacy or suitability of such routes and laydown areas, and shall have no liability with respect to [NAME]'s selection of, use of or inability to use such routes and laydown areas.

3.8 Employee Discipline.

[NAME] shall adopt and enforce policies for disciplining construction employees if the employees' actions affect or are likely to affect Unit 1 or the Common Facilities other than as provided in the work plan and in Section 3.4 above. Any construction employee found to have violated PacifiCorp's security requirements regarding escorting and physical access to certain PacifiCorp's Areas described in the attached Exhibit "D" shall, at the request of PacifiCorp be assigned to work outside PacifiCorp's Area and shall be disciplined to the full extent permissible under [NAME]'s project labor agreement (if any), including without limitation terminated at PacifiCorp's request.

3.9 Security and Safety Requirements.

In addition to the requirements of [PPA/TSA] [NAME] shall, consistent with good and generally accepted construction practices and Prudent Industry Practice, undertake all commercially reasonable efforts to protect any and all parallel, converging and intersecting electric lines and poles, telephone lines and poles, highways, waterways, railroads, sewer lines, natural gas pipelines, drainage ditches, culverts, Unit 1 facilities and any and all property of others related to the Facility, and shall indemnify PacifiCorp from any and all Claims with respect to [NAME]'s actions or failures to act in connection with such facilities and property in connection with the Work.

3.8 Transition from Construction to Operation.

PacifiCorp shall provide oversight and consent of activities necessary for the connection of the Unit 2 systems with the Common Facilities. – PacifiCorp shall provide [NAME] and its employees and contractors with reasonable controlled access to all Common Facilities, to enable [NAME] and its contractors to interconnect Unit 2 with the Common Facilities, all in accordance with the Project Schedule provided pursuant to Section 3.4 above, and upon receipt of notice from [NAME].

ARTICLE IV Construction Damage

4.1 Construction Damage.

In the event any activities undertaken in connection with the development, construction, commissioning or testing of Unit 2 cause any physical damage (“Construction Damage”) to Unit 1, to the Common Facilities or to any portion of PacifiCorp’s Area:

- (a) [NAME] shall be responsible for the full cost of rebuilding, restoring and/or repairing all Construction Damage.
- (b) [NAME] shall promptly, and in any event no later than one (1) day after the date on which the Construction Damage occurred, consult with PacifiCorp regarding the extent of the Construction Damage and possible approaches to remedying the Construction Damage.
- (c) [NAME] shall promptly, and in any event no later than five (5) days after the date on which the Construction Damage occurred, submit to PacifiCorp a detailed written proposal for rebuilding, restoring or replacing, at [NAME]’s expense, such Construction Damage.
- (d) PacifiCorp shall promptly evaluate any proposal submitted by [NAME] for, rebuilding, restoring or replacing, at [NAME]’s expense, such Construction Damage.
- (e) If PacifiCorp determines that [NAME] possesses the demonstrated qualifications and capability to timely perform the remedial actions set out in the proposal, PacifiCorp will cooperate with [NAME] to promptly undertake the rebuilding, restoration or replacement of the Construction Damage set out in the proposal to PacifiCorp’s satisfaction, subject to such terms, conditions and restrictions as PacifiCorp may deem appropriate to ensure that the proposed activities comply with PacifiCorp’s safety programs and practices and that the remedial actions will not result in further damage or loss of generation with respect to Unit 1 operations.

(f) If PacifiCorp concludes that [NAME] lacks the demonstrated qualifications and capability or otherwise is not in a position to timely perform the remedial actions set out in the proposal, if [NAME] does not agree with PacifiCorp's terms, conditions and restrictions described in paragraph (d) above, or if [NAME] does not promptly undertake such remedial actions, then PacifiCorp shall be entitled to promptly commence repairs to any Construction Damage to Unit 1, the Common Facilities or other portion of the PacifiCorp Area at [NAME]'s sole expense.

(g) In the event that [NAME] does not reimburse PacifiCorp for any cost of rebuilding, restoration or replacement activities related to the Construction Damage incurred by PacifiCorp (including without limitation the reasonable cost of PacifiCorp's consultants and internal personnel and resources) within thirty (30) days of PacifiCorp's invoice for the same, then PacifiCorp may set off any amounts owing to PacifiCorp from [NAME] from any payments owed by PacifiCorp to [NAME] under the [PPA/TSA];

(h) Nothing in this Article IV is intended to be nor shall operate as a limitation on PacifiCorp's right or ability to recover damages from [NAME] pursuant to the [PPA/TSA], this Agreement or otherwise at law or in equity.

ARTICLE V

Shutdowns

5.1 Scheduled Shutdowns of Unit 1.

The Parties recognize that Unit 1 must be temporarily shut down for interconnection of Unit 2 to the Common Facilities and for other defined construction-related activities as identified in the Project Schedule. All scheduled shutdowns shall be scheduled, to the extent possible, during weekends and holiday periods.

IN NO EVENT SHALL ANY SCHEDULED SHUTDOWNS BE SCHEDULED DURING THE MONTHS OF JUNE, JULY, AUGUST OR SEPTEMBER, except and to the extent that Unit 1 has scheduled maintenance outages scheduled during such period.

[NAME] shall schedule and provide to PacifiCorp, at least 7 days prior to any necessary shutdown, written notice of the next upcoming outage and of any proposed changes to the outage periods set out in the Project Schedule.

[NAME] shall coordinate with PacifiCorp to balance the need to reduce these shutdown periods and to utilize other times of economic shutdown of Unit 1 to perform the required work under the [PPA/TSA] with the need to utilize these shutdown periods to perform work activities that have a reasonable probability of causing an unplanned shutdown of Unit 1.

If the Scheduled Shutdown of Unit 1 occurs at a time when Unit 1 is not otherwise scheduled by PacifiCorp to be shutdown and non-dispatchable, then [NAME] shall pay to PacifiCorp Replacement Power Costs calculated in the same manner as set forth in Section 5.2(c) as though the Scheduled Shutdown were an Unscheduled Shutdown.

5.2 Unscheduled Shutdowns of Unit 1.

(a) [NAME] shall be responsible for conducting its development, construction, commissioning, testing and startup activities in a manner that minimizes the impact of Unit 2 construction on the operation of Unit 1.

(b) In the event activities performed by [NAME] or its contractors causes Unit 1 to experience an unscheduled shutdown or loss of power generation capability (each an "Unscheduled Shutdown"), [NAME] shall be liable to PacifiCorp for all damages incurred by PacifiCorp in connection with such Unscheduled Shutdown. - Damages associated with an Unscheduled Shutdown shall include, without limitation, (i) \$12,000, multiplied by the Unit 1 OEM's equivalent start ratio for the affected unit(s) per Unscheduled Shutdown occurrence, (ii) the cost of all physical damage to any Unit 1 equipment that is demonstrated to have occurred due to the Unscheduled Shutdown, and (iii) the cost of replacement power ("Replacement Power Costs") for the period of the Unscheduled Shutdown.

(c) Replacement Power Costs shall be calculated as follows, and shall be payable whether or not PacifiCorp actually purchases replacement power for the applicable period as liquidated damages for the lost generation portion of damages only:

(i) If an Unscheduled Shutdown occurs during work scheduled pursuant to Section 5.2(e)(i) while Unit 1 is operating, replacement power costs shall be calculated as the product of **(1) the Dow Jones SP15 Daily Firm On-Peak Index for the day of delivery, expressed in \$/MWh, multiplied by (2) the provided Hourly Scalar for each hour, multiplied by (3) the loss factor of 1.112, plus (4) the basis of \$13/MWh** during each hour or portion of hour of the Unscheduled Shutdown, **minus (5) Unit 1's incremental cost of generating power (i.e., the product of a given plant's then effective net heat rate multiplied by midpoint of the Kern River, Opal Plant Platt's Daily Gas Index at the time of the Unscheduled Shutdown expressed in units of \$/mmBtu)**

_____ = Market Price – Incremental Cost

Replacement Power = (1x2x3+4)-5

(d) After an Unscheduled Shutdown of Unit 1, any such future work that is to be performed by [NAME] or its contractors of the same or similar nature to that which caused the Unscheduled Shutdown shall proceed as follows:

(i) PacifiCorp and [NAME] shall develop a plan designed to accomplish the necessary work in a manner that will avoid reoccurrence of the Unscheduled Shutdown.

(ii) Such work plan shall provide that such work may, at PacifiCorp's election:

(1) be rescheduled to begin within, and end not less than five (5) hours before the end of, a subsequent Off-Peak Hourly Periods, during which Unit 1 may continue to operate; or

(2) PacifiCorp may elect to schedule a shutdown of Unit 1 during any subsequent Off-Peak Hourly Periods and such work may be performed during such shutdown beginning within, and ending no less than two (2) hours before the end of, such Off-Peak Hourly Periods.

(e) PacifiCorp shall provide [NAME] with not less than eight (8) hours' advance notice (to be confirmed in writing) of any election to schedule a shutdown of Unit 1 pursuant to Section 5.2(d)(ii)(2).

(f) Nothing in this Article V is intended to be nor shall operate as a limitation on PacifiCorp's right or ability to recover damages from [NAME] pursuant to the [PPA/TSA], this Agreement or otherwise at law or in equity.

5.3 Testing and Initial Firing of Combustion Turbines.

[NAME] shall conduct testing and initial firing of the Unit 2 combustion turbine generator during Off-Peak Hourly Periods.

ARTICLE VI
Notices and Miscellaneous Provisions

6.1 Notices, Consents and Approvals

Contact information for notices, requests, demands and other communications required or permitted hereunder is as follows:

if to [NAME], to:

with copies to:

or to such other person or address as [NAME] shall furnish to PacifiCorp;

if to PacifiCorp, to:

PacifiCorp
825 NE Multnomah, Suite 600
Portland, Oregon 97232-2315
Attn: _____

Tel: _____

Fax: _____

with copies, in connection with default notices, to:

or to such other person(s) or address(es) as PacifiCorp furnishes to [NAME] from time to time.

All notices, including, acceptances, consents, approvals, agreements, deliveries of information, designations, requests, demands and other communications required or permitted hereunder shall be in writing, properly addressed as provided in paragraph (a) above, and given by (i) hand delivery, (ii) a national overnight courier service, (iii) confirmed facsimile transmission, followed by a hard copy, or (iv) certified or registered mail, return receipt requested, and postage prepaid. Any such notice or other communication shall be deemed to have been duly given as of the date delivered if by hand delivery, national overnight courier service or confirmed facsimile

transmission (provided a hard copy promptly follows by other means provided herein), or five (5) calendar days after mailing if by certified or registered mail.

6.2 Entire Agreement

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

6.3 Amendment; Waiver

No amendment or other modification of any provision of this Agreement shall be valid or binding unless it is signed by each of the Parties. No waiver of any provision of this Agreement shall be valid or binding unless it signed by the Party waiving compliance with such provision. No delay on the part of either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver or any partial exercise of any such right, power or privilege preclude any further exercise thereof or the exercise of any other such right, power or privilege. No waiver of any breach, term or condition of this Agreement by any Party shall constitute a subsequent waiver of the same or any other breach, term or condition.

6.4 Successors and Assigns

Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the Parties hereto and, to the extent permitted by this Agreement, their respective successors and assigns.

6.5 Third Party Beneficiaries

The provisions of this Agreement shall only be for the benefit of, and enforceable by, the Parties hereto and shall not inure to the benefit of or be enforceable by any third party.

6.6 Severability

In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

6.7 Further Assurances

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

6.8 Publicity

Except as required by law, [NAME] agrees that they will not issue or release for external publication any press release, article, advertising or other publicity matter in any form (including print, electronic, or interview) relating to the Project, or to this Agreement without first consulting with and obtaining the prior consent of PacifiCorp, which consent shall not be unreasonably withheld or delayed. Except as required by law, PacifiCorp agrees that it will not issue or release for external publication any press release, article, advertising or other publicity matter in any form (including print, electronic, or interview) relating to this Agreement without first consulting with and obtaining the prior consent of [NAME], which consent shall not be unreasonably withheld or delayed. To the extent reasonably possible, the releasing Party will accommodate the concerns of the other Party. This requirement does not, however, restrict [NAME] from identifying its involvement in the Project in its marketing of products and services to others.

6.9 Independent Contractor

[NAME] is an independent contractor with respect to the Work, and each part thereof, and in respect of all work to be performed hereunder. Neither [NAME], the contractor, nor any subcontractor, the employees of any of such entities, employed in connection with the work shall be deemed to be agents, representatives, joint ventures, employees or servants of PacifiCorp by reason of their performance hereunder or in any manner dealt with herein. Neither Party shall perform any act or make any representation to any Person to the effect that [NAME], or any of its agents, representatives, the contractor or subcontractors, is the agent of PacifiCorp.

6.10 Survival

The provisions of Article 4 (“Construction Damage”), Article 5 (“Shutdowns”), and Sections 2.2 (“Governing Provisions”), 3.1 (“Construction Control”), 3.3 (“PacifiCorp Access to the Construction Area”), 3.9 (“Security and Safety Requirements”), 6.9 (“Independent Contractor”) and 6.11 (“Governing Law; Waiver of Jury Trial”) of this Agreement shall survive the expiration or earlier termination of this Agreement indefinitely, provided that the foregoing enumeration shall not be interpreted to bar survival of any other provision hereof which would otherwise be deemed to survive by operation of law.

6.11 Governing Law; Waiver of Jury Trial

THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH (WITHOUT GIVING EFFECT TO THE PRINCIPLES THEREOF RELATING TO CONFLICTS OF LAW).

EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT OR ANY MATTER ARISING HEREUNDER OR THEREUNDER. 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 TRANSACTION DOCUMENT OR ANY MATTER ARISING HEREUNDER OR THEREUNDER IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

6.12 Counterparts

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

6.13 Captions

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

6.14 Costs and Expenses.

All Parties have jointly drafted this Agreement. Presumptions regarding the interpretation of documents against the persons drafting same shall not apply to this Agreement. Each Party hereto will pay all costs and expenses incident to its negotiation and preparation of this Agreement and, except as set forth herein, to its performance and compliance with all agreements and conditions contained herein on its part to be performed or complied with, including the fees, expenses and disbursements of its counsel and accountants. In the event of default hereunder, the Parties agree that the defaulting Party shall pay the fees, expenses and disbursements of counsel for the non-defaulting Party in enforcing this Agreement.

6.14 No Waiver.

Except as otherwise provided herein, no provision of this Agreement may be waived except in writing. No failure by either Party to exercise, and no delay in exercising, any right, power, or remedy under this Agreement shall operate as a waiver thereof. Any waiver at any time by a Party of its right with respect to default under this Agreement, or the respect to other

matter arising in connection therewith, shall not be deemed a waiver with respect to any subsequent default or matter.

6.15 Liquidated Damages.

TO THE EXTENT ANY PAYMENT REQUIRED TO BE MADE UNDER THIS AGREEMENT IS AGREED BY THE PARTIES TO CONSTITUTE LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THAT SUCH PAYMENT CONSTITUTES A REASONABLE APPROXIMATION OF SUCH DAMAGES, AND NOT A PENALTY.

6.16 Limitation of Liability.

I. BUYER SHALL NOT BE LIABLE TO SELLER 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 UNDER OR IN CONNECTION WITH THIS AGREEMENT.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

By [NAME]:

Title:

By:

Title:

EXHIBIT A TO CONSTRUCTION COORDINATION AGREEMENT Glossary of Defined Terms

Except as otherwise defined in the body of this Agreement, of which this Exhibit is a part, capitalized terms shall have the meanings set forth below:

- (1) “Action” shall mean any lawsuit, action, proceeding, investigation or complaint before any Governmental Authority, mediator or arbitrator.
- (2) “Agreement” shall have the meaning given to it in the Recitals of this Agreement.
- (3) “[PPA/TSA]” shall have the meaning set forth in the Recitals.
- (4) “PacifiCorp’s Area” means the entirety of the Site that is not included in the Construction Area, as the same may exist from time to time.
- (5) “Claims” means any liabilities, fines, penalties or assessments other damages at law or in equity for the payment of money or for specific performance by or on behalf of PacifiCorp, including without limitation claims for injury or death to persons or damage to property, together with costs and attorneys fees associated therewith. -
- (6) “Commercial Operation Date” shall have the meaning set forth in the [PPA/TSA].
- (7) “Common Facilities” means those tangible assets, contracts, and permits owned by PacifiCorp in connection with Unit 1 and utilized in common by PacifiCorp and [NAME] for the construction, startup, commissioning and operation of Unit 2, identified on Exhibit “B”.
- (8) “Construction Area” shall have the meaning given to it in Section 3.2 of this Agreement
- (9) “Construction Damage” shall have the meaning given to it in Section 4.1 of this Agreement.
- (10) “Construction Fence” shall have the meaning given to it in Section 3.2 of this Agreement.
- (11) “Effective Date” has the meaning set forth in the [APSA / EPC Contract]
- (12) “Emergency” means any situation which is likely to impose an immediate threat of injury to any Person or of material property damage or material economic loss to all or any part of the Facility.
- (13) “Facility” or “Facilities” shall mean Unit 1, Unit 2 and the Common Facilities, and all energy producing equipment and auxiliary equipment, fuel storage and handling facilities and equipment, electrical transformers, interconnection facilities and metering facilities,

associated with Unit 1 or Unit 2 as may be required for receipt of fuel and for delivery of electricity, and all other improvements related solely to the Units and located on the Site.

- (14) "Governmental Authority" means any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States, any foreign country or any domestic or foreign state, county or other political subdivision.
- (15) "NERC" shall mean the North American Electric Reliability Council, and any successor entity.
- (16) "Off-Peak Hourly Period" means those periods of time measured by hours ending 0100 through 0600 and hours ending 2300 through 2400 Monday through Saturday, and all hours on Sunday and NERC Holidays.
- (17) "PacifiCorp" shall have the meaning set forth in the Recitals.
- (18) "PacifiCorp's Area" shall have the meaning given to it in Section 3.2 of this Agreement.
- (19) "Party" shall have the meaning given to it in the Recitals of this Agreement.
- (20) "Performance Testing" shall have the meaning given to it in the [PPA/TSA].
- (21) "Person" means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization or Governmental Authority.
- (22) "Prudent Industry Practice" shall have the meaning given to it in the [PPA/TSA].
- (23) "Project Schedule" shall mean a detailed schedule setting forth milestones for key stages of the construction, testing and commissioning of Unit 2, including without limitation provisions regarding necessary interfaces with the Common Facilities, provided by [NAME] to PacifiCorp and updated to reflect material changes in such schedule from time to time.
- (24) "Replacement Power Costs" shall have the meaning given to it in Section 5.2(b) of this Agreement.
- (25) "Shutdown Periods" shall have the meaning given to it in Section 6.1 of this Agreement.
- (26) "Site" means the real property on which the Facilities are located.
- (27) "Tagging and Safety Program" shall mean that tagging and safety program in effect and maintained by PacifiCorp at the Facility from time to time and provided to [NAME].
- (28) "Term" shall have the meaning given to it in Section 2.1 of this Agreement.
- (29) "Unit" shall mean an individual generating facility consisting of the gas turbine, heat recovery system generator, steam turbine, auxiliary boilers and other associated facilities

and equipment owned by individually by PacifiCorp or [NAME] not included as Common Facility.

- (30) “Unit 1” means the power plant located in _____, Utah, owned by PacifiCorp and the related facilities, real property and property rights related thereto including all necessary permits and licenses, but excluding the Common Facilities.
- (31) ”Unit 2” means the proposed power plant to be located in _____ under development by [NAME] adjacent to Unit 1 and the related facilities, real property and property rights related thereto including all necessary permits and licenses, but excluding the Common Facilities.
- (32) “Unscheduled Shutdown” shall have the meaning given to it in Section 6.2(b) of this Agreement.

Rules as to Usage

1. The terms defined above have the meanings set forth above for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined.
 - (i) The singular includes the plural and vice versa;
 - (ii) Reference to any Person includes such Person’s successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement;
 - (iii) Reference to a Person in a particular capacity excludes such Person in any other capacity;
 - (iv) Any gender reference includes the other gender;
 - (v) Reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof;
 - (vi) References used in any Article, Section, Schedule, Exhibit or clause refer to this agreement;
 - (vii) “Hereunder,” “hereof,” “hereto,” “herein,” and words of similar import are references to this Agreement as a whole not any particular part of provision hereof or thereof;
 - (viii) “Including” (“include”) means including without limiting the generality of any description preceding such term;

- | (ix) Relative to any period of time, “from” means “from and including,” “to” means “to but not including,” and “through” means “through and including;” and

- | (x) Reference to any law (including statutes and ordinances) means such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated there under.

**EXHIBIT B TO
CONSTRUCTION COORDINATION AGREEMENT**

Common Facilities

EXHIBIT C
CONSTRUCTION COORDINATION AGREEMENT

Site Plan Designation of Construction Area

EXHIBIT D
CONSTRUCTION COORDINATION AGREEMENT
Security Requirement

RFP 2012
ATTACHMENT 1
COMPANY BENCHMARK ~~BASE~~
~~LOAD~~BASE LOAD RESOURCE BY
YEAR OVER THE TERM

2012 COMPANY BENCHMARK
~~BASE LOAD~~BASE LOAD
RESOURCE
Hunter 4 and
Intermountain Power Plant 3

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ATTACHEMENT 1

PacifiCorp Energy 2012 Benchmark

2012 Company Benchmark 600MW at Hunter Unit 4

PacifiCorp Energy's planned 2012 benchmark is the addition of a 4th Unit at the Hunter Plant with a nominal net rating of 600 MW. The primary fuel will be pulverized coal with light oil used for startup and boiler stabilization.

Hunter Unit 4 will employ supercritical boiler-steam turbine technology with main steam conditions of 3600 psig and a nominal steam temperatures of 1050°F (main steam) and 1100°F (reheat steam). The boiler itself will be either tangentially-fired or wall-fired. The boiler combustion system will use low-NOx burners combined with state-of-the-art over-fire air systems to minimize the formation of nitrogen oxides (NOx) in the furnace. The boiler will be equipped with an integral selective catalytic reduction (SCR) system for additional removal of NOx using aqueous ammonia. The boiler construction will be outdoor with at least 75% sided. The steam turbine will consist of a multi-casing design consisting of HP/IP and multiple LP casings. The steam turbine cycle will be based on eight stages of feedwater heaters in a Heater above Reheat Point (HARP) cycle. The condenser and feedwater heater tubing shall be titanium and stainless steel, respectively.

The unit will be equipped with a state-of-the air quality control system (AQCS) that will include a lime-based wet flue gas desulfurization (FGD) system that will remove a minimum of 95% of the sulfur oxides (SO₂) from the boiler flue gas. The ACQS will also consist of a pulse-jet fabric filter (baghouse) for the removal of ash. The Unit 4 stack will be designed and constructed to good engineering practices with a stack height of no less than the height of the existing stacks (600').

Hunter Unit 4 will be located at the Hunter Plant. The Hunter Plant is a three unit coal-fired power plant located in Emery County, Utah. The facility is located on State Highway 10 approximately 3 miles south of Castle Dale, Utah. The site consists of about 1000 acres at an elevation of 5644 feet above sea level. The nearest railroad access is the Utah Railway Company which is 20 miles from the plant by paved road. The design outdoor temperature range is -10F to 100F with a design 64F wet bulb temperature.

Hunter Unit 4 will burn predominantly local Utah bituminous coals but will have the capability to also burn Wyoming coals. Coal storage and handling facilities will be added to provide for up to 45 days of storage and coal blending. The existing fuel oil storage tanks will be used for startup and stabilization fuel.

A cross-flow or counter-flow cooling tower will provide cooling for the unit. Raw water for Unit 4 will be pumped from the existing raw basin southeast of the plant site. This basin receives makeup water from a surface reservoir and pipeline system. Water treatment equipment will be installed to process the raw water to meet the needs of the various process needs of the boiler and cooling systems. The Unit 4 demineralized water tie in

point will be at the existing Unit 3 demineralized water tank. The boiler will be equipped with an on-line condensate polisher to meet the high quality water standards necessary for a supercritical boiler. The Unit 4 potable water will be tied into the existing Unit 3 potable water tank. Potable water is piped from the city of Castle Dale.

The existing fire protection system will be extended and modified. Some fire protection piping will be demolished and replaced with new fire protection piping where it interferes with the construction of Unit 4.

The Hunter Plant is a zero liquid discharge (ZLD) plant. Cooling tower blowdown will be used as makeup to the FGD system and ash handling systems. The balance of the water is evaporated from a pond or used for irrigation of hay crops. Plant sewage is treated and discharged to the evaporation pond. Bottom ash and fly ash will be land-filled on the plant site.

Site upgrades will include new warehouse facilities, plant roads, site lighting, fencing, security, and communications equipment.

Power from Hunter Unit 4 will connect into existing 345 kV transmission lines that connect to the Camp Williams substation, Huntington substation, and the Sigurd substation. An evaluation is in process to determine the need to add transmission lines to avoid generator tripping in the event of multiple transmission line outages.

PacifiCorp Energy 2012 Benchmark 2012 -340MW Intermountain Power Project Unit 3

PacifiCorp Energy is participating as a development partner in the construction of the Intermountain Power Project (IPP) Unit 3. IPP Unit 3 has a planned commercial operation date in the summer of 2012. IPP Unit 3 will have a nominal net rating of 900 MW. PacifiCorp Energy has 340 MW (or 37.8%) share of the unit's output. The primary fuel will be pulverized coal with light oil used for startup and boiler stabilization.

IPP Unit 3 is currently permitted as a hybrid subcritical boiler with expected main steam conditions of 2520 psig and nominal steam temperatures of 1050°F (main steam) and 1050°F (reheat steam). The participants are currently evaluating the use of supercritical boiler design. If the studies confirm that a supercritical design is cost effective and that a change can be made administratively, then the participants will pursue construction on a supercritical design. The boiler will be either tangentially-fired or wall-fired. The boiler combustion system will use low-NOx burners combined with state-of-the-art over-fire air systems to minimize the formation of nitrogen oxides (NOx) in the furnace. The boiler will be equipped with an integral selective catalytic reduction (SCR) system for additional NOx reduction using anhydrous ammonia. Unit 3 will meet a NOx emission limit of 0.07 lb/mmBtu on a 24 hour average basis. The boiler will be totally enclosed.

The steam turbine will be a tandem-compound six-flow machine consisting of HP/IP and multiple LP casings. The steam turbine cycle will be based on eight stages of feedwater heaters in a Heater above Reheat Point (HARP) cycle. The condenser and feedwater heater tubing shall be titanium and stainless steel, respectively.

The unit will be equipped with a state-of-the-art air quality control system (AQCS) that will include a wet limestone forced-oxidation flue gas desulfurization (FGD) system that will remove approximately 95% of the sulfur oxides (SO₂) from the boiler flue gas to comply with the air permit allowable emission level of 0.09 lb/mmBtu SO₂ on a 24-hour average basis. The AQCS will also consist of a reverse-air fabric filter (baghouse) for the removal of particulate. The Unit 3 stack will have a minimum height of 712' and will be designed for wet operation.

IPP Unit 3 will be located on the site of the existing Intermountain Power Agency's Intermountain Generating Station that consists of two 900 MW (net) units. Unit 3 will be located next to Unit 2. The Intermountain Generating Station is located in Millard County, Utah. The facility is located approximately 10 miles west of Lynddyl, Utah, off Utah State Highway 132. The site consists of approximately 4,600 acres at an elevation of 4,670 feet above sea level. The plant site has both rail and road access for deliveries of coal. Deliveries by rail are provided by Union Pacific. The design outdoor temperature range is 0°F to 100°F with a design wet bulb temperature of 65°F wet bulb temperature.

IPP Unit 3 will burn predominantly local Utah bituminous coals but will have the capability to burn sub-bituminous coals. Modifications will be made to the existing coal storage piles to facilitate coal blending. Upgrades to the existing coal conveyors and conveyor motor drives will be made to improve fuel loading the units. A new transfer tower and conveyor will be installed for Unit 3. The existing fuel oil storage tanks will be used for startup and stabilization fuel. Additional limestone storage and transfer equipment will be provided for Unit 3.

A mechanical draft cooling tower will provide cooling for Unit 3. Raw water for Unit 3 will be pumped from the existing plant raw water reservoir. The plant reservoir receives makeup water from the DMAD surface reservoir and pipeline system. Additional pumps will be installed at the DMAD reservoir to meet the water requirements of the additional unit. No modifications to the pipeline are expected since the makeup water supply system was sized for 3,000 MW of generation at the site. The existing water treatment equipment will be used to process the additional raw water to meet the needs of the service and cooling water systems. Demineralized water will be provided by the existing demineralized water system. The boiler will be equipped with an on-line condensate polisher. The potable water needs of Unit 3 will be provided by extending the existing potable water system.

The existing fire protection system will be extended and modified to meet the needs of Unit 3.

The Intermountain Power Project is a zero liquid discharge (ZLD) facility. Cooling tower blowdown will be used as makeup to the FGD system and boiler seals. Excess waste water will be treated with a brine concentrator. High quality effluent from the brine concentrator will be used as makeup to the demineralizer system. Plant sewage is treated in a tile field. Fly ash will be marketed to the extent possible. Bottom ash and unsold fly ash will be land-filled on the plant site.

Site upgrades will include plant roads, site lighting, fencing, security, controls, and communications equipment. Unit 3 will use existing warehouses and shop facilities.

Power from IPP Unit 3 will connect the 345kV IPP AC switchyard. Power from the AC switchyard is connected to IPA's existing 345 kV Northern Transmission System which connects directly to PacifiCorp's Mona substation.

2013 COMPANY BENCHMARK
~~BASE LOAD~~BASE LOAD
RESOURCE
BRIDGER 5

PacifiCorp Energy 2013 Benchmark 2013 Benchmark 750MW at Jim Bridger Unit 5

PacifiCorp Energy's planned 2013 benchmark is the addition of a 5th Unit at the Jim Bridger Plant with a nominal net rating of approximately 750MW. The primary fuel will be pulverized coal with light oil used for startup and boiler stabilization.

Jim Bridger Unit 5 will employ supercritical boiler-steam turbine technology with main steam conditions of 3600 psig and nominal steam temperatures of 1050°F (main steam) and 1100°F (reheat steam). The boiler itself will be either tangentially-fired or wall-fired. The boiler combustion system will use low-NOx burners combined with a state-of-the-art over-fire air system to minimize the formation of nitrogen oxides (NOx) in the furnace. The boiler will be equipped with an integral selective catalytic reduction (SCR) system for additional removal of NOx using anhydrous ammonia. The boiler construction will be outdoor with at least 75% sided. The steam turbine will consist of a multi-casing design consisting of high pressure/intermediate pressure and multiple low pressure casings. The steam turbine cycle will be based on eight stages of feedwater heaters in a Heater above Reheat Point (HARP) cycle. The condenser and feedwater heater tubing shall be titanium and stainless steel, respectively.

The unit will be equipped with a state-of-the-art air quality control system (AQCS) that will include a wet or dry flue gas desulfurization (FGD) system that will remove a minimum of 90% of the sulfur oxides (SO₂) from the boiler flue gas. Limestone will be FGD reagent if a wet system is selected. A dry FGD system will use lime. The AQCS will also consist of a pulse-jet fabric filter (bathhouse) for the removal of particulate. The Unit 5 stack will be designed and constructed to good engineering practices with a stack height of no less than the height of the existing stacks (500').

Jim Bridger Unit 5 will be located at the Jim Bridger Plant; the existing plant consists of four 530 MW (net) units. The Jim Bridger Plant is located in Sweetwater County, Wyoming. The facility is located on Sweetwater County Road 4-15 approximately 8 miles north of Point of Rocks. Point of Rocks is on Interstate 80 which is 24 miles east of the city of Rock Springs. The site consists of about 1000 acres at an elevation of 6,670 feet above sea level. Rail access to the plant is from Union Pacific rail lines. The design outdoor temperature range is -40°F to 100°F with a 62°F wet bulb temperature.

Jim Bridger Unit 5 will burn predominantly local sub-bituminous coals but will be designed to also burn Powder River Basin (PRB) coals. Coal storage and handling facilities will be added to provide for up to 45 days of storage and coal blending. The existing fuel oil storage tanks will be used for startup and stabilization fuel.

A cross-flow or counter-flow cooling tower will provide cooling for the unit. Makeup water for the cooling tower and other plant processes will be drawn from the plant's surge pond. Water for plant use is pumped into the surge pond from the pumping station

located on at Green River which is located 42 miles west of the plant site. Modifications to the Green River pumping station, pipeline, and surge pond will be required to meet the increased water needs of the plant. Water treatment equipment will be installed to process the raw water to meet the needs of the various process needs of the boiler and cooling systems. Jim Bridger Unit 5 will be equipped with a new treated and demineralized water storage tanks. The boiler will be equipped with an on-line condensate polisher to meet the high quality water standards necessary for a supercritical boiler. The requirements of potable water will be met by the existing potable water system. The existing fire protection system will be extended and modified.

The Jim Bridger Plant is a zero liquid discharge (ZLD) plant. Cooling tower blowdown will be used as makeup to the FGD system and ash handling systems. Handling of the balance of any remaining wastewater is currently under review but may include use of the existing evaporation pond system, deep well injection, a brine concentrator, or a combination of these options. Plant sewage is treated and discharged to the evaporation pond. A new storm water pond will be constructed.

Site upgrades will include new warehouse/machine shop facilities, plant roads, site lighting, fencing, security, and communications equipment.

PacifiCorp Transmission is currently evaluating transmission options and paths for power delivery from the new unit. Power will be transmitted from the plant via a new high voltage transmission line operating at either 345 kV or 500 kV. The new line will most likely parallel the existing 345kV Jim Bridger-Kinport transmission lines.

2014 COMPANY BENCHMARK
~~BASE LOAD~~BASE LOAD
RESOURCE
IGCC PROJECT

PacifiCorp Energy 2014 Benchmark IGCC Benchmark

PacifiCorp Energy's 2014 IGCC benchmark is a coal gasification facility together with its associated auxiliaries necessary to provide syn-gas to fuel a "2 x1" combined cycle configuration using either General Electric's 7FB or Siemens Power SGT-5000F gas turbines. The 2014 IGCC benchmark may consist of up to three gasifiers as necessary to provide 90% availability on coal alone. The primary fuel will be pulverized coal with either natural gas or light oil for startup.

Potential gasifier technologies would include Conoco-Philips, General Electric, and Shell. Potentially, Siemens' newly acquired Sustec gasifier technology may also be considered as potential gasifier technology supplier provided adequate scale-up and target availability levels are demonstrated. Since the designs of the gasifiers and the associated reference plants are unique, specific details on the selected benchmark design will depend on future project specific scoping studies and Front End Engineering Design (FEED) studies. The designs are also dependent on coal composition and location, as a general guideline, the benchmark IGCC plant will be based on the standard reference plant configuration as supplied by the selected technology suppliers consistent with fuel specific requirements. The benchmark design requirements would also be supplemented as necessary by the findings and recommendations of Electric Power Research Institute's (EPRI) Coal fleet IGCC User Design Basis Specification.

The design basis for environmental performance for the 2014 IGCC benchmark is the EPRI Coal fleet IGCC User Design Basis Specification Environmental Design Level II. In order to achieve NO_x emissions levels associated with Coal Fleet's Environmental Design Level II, a Selective Catalytic Reduction (SCR) system would be required. As a consequence of using an SCR additional H₂S would need to be removed from the syngas in order to reduce the potential of fouling of the SCR catalyst. A refrigerated amine, Selexol™, or similar high-efficiency system would be used to reduce the H₂S levels to the necessary levels. The 2014 benchmark would not incorporate an oxidation catalyst.

The 2014 IGCC plant benchmark would be designed and constructed to allow for future CO₂ capture equipment in that sufficient space and interconnections would be provided to allow for future installation of CO₂ capture equipment. The CO₂ capture equipment, such as humidification towers, shift reactors, CO₂ absorbers/strippers, and compressors would not be installed as part of the original design. Depending on the results of further study, it is possible the IGCC benchmark would include a mitigation provision for future CO₂ capture by over-sizing certain components as part of the original design. This will minimize the performance impacts associated with any later installation of CO₂ capture equipment. Installation of CO₂ capture equipment for enhanced oil recovery would be a site specific consideration.

The air separation unit of 2014 IGCC benchmark would need to have a guaranteed availability level of 98% or better. Sufficient on-site nitrogen storage would be required to meet purge gas requirements. The need for liquid or gaseous oxygen storage would be evaluated depending on the expected duration and frequency of unexpected outages of the vendor's proposed air separation system. The 2014 IGCC benchmark would be designed such that the air separation unit would receive a portion of the air supply requirement from the gas turbine compressor. An auxiliary air separation unit compressor would provide the remaining compressed air requirement. The degree of integration would be a parameter to be determined during the FEED study.

The location of the 2014 IGCC benchmark will be identified prior to the Independent Evaluator locking down the 2014 benchmark. The ~~company~~Company has examined the feasibility of IGCC resources at both its Hunter and Jim Bridger sites; these sites may be candidate locations. In addition the Company is now considering other potential brown-field sites include the Naughton and the Dave Johnston plants. Site specific considerations would dictate the balance of plant requirements which includes water supply needs, water supply improvements, water treatment systems, coal storage and handling, and waste water and waste disposal facilities.

Project Characteristics

Characteristics of how the Proxy is modeled in the 2006 RFP

	Hunter 4 Supercritical	Bridger 5 Supercritical	Inter Mountain Power Project 3 Supercritical	Integrated Gasification Combined Cycle Resource Utah Wyoming	
Starts per Day	Base Load	Base Load	Unit not expected to cycle on & off on a daily basis		
Start Up Cost (2006\$)	\$15,907 / Start	\$19,884 / Start	\$15,907 / Start	\$13,380 / Start	\$13,380 / Start
Variable O&M (2006\$)	\$2.41 / MWh	\$2.08 / MWh	\$2.41 / MWh	\$1.10 / MWh	\$1.08 / MWh
Minimum Up Time	16 Hours	16 Hours	16 Hours	16 Hours	16 Hours
Minimum Down Time	12 Hours	12 Hours	12 Hours	30 Hours	30 Hours
Ramp Rate (warm start)	30 MW / minute	30 MW / minute	30 MW / minute	12.5 MW / minute	12.5 MW / minute
Run-Up Rate (cold start)	212 MW / Hour	212 MW / Hour	212 MW / Hour	48 MW / Hour	48 MW / Hour

RFP 2012
ATTACHMENT 2
QF BIDDER INFORMATION



ELECTRIC SERVICE SCHEDULE NO. 38 - Continued

II. B. Procedures (continued)

Generally, the interconnection process involves (1) initiating a request for interconnection, (2) completion of studies to determine the system impacts associated with the interconnection and the design, cost, and schedules for constructing any necessary interconnection facilities, (3) execution of an Interconnection Facilities Agreement to address facility construction, testing and acceptance and (4) execution of an Interconnection Operation and Maintenance Agreement to address ownership and operation and maintenance issues.

Consistent with PURPA, the owner is responsible for all interconnection costs assessed by the Company on a nondiscriminatory basis.

ELECTRIC SERVICE SCHEDULE NO. 38 - Continued

II. Process for Negotiating Interconnection Agreements (continued)

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 power delivery function.

A. Communications

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

Utah Power & Light Company
Manager-QF Contracts
825 NE Multnomah St, Suite 600
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 power delivery

function that 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

The Company will follow the procedures for generation interconnection described in Part IV of the Company's Open Access Transmission Tariff (Tariff) on file with the Federal Regulatory Commission. A copy of the Tariff is available on-line at <http://www.oasis.pacificorp.com>

ELECTRIC SERVICE SCHEDULE NO. 38 - Continued

B. Procedures

1. The Company's proposed generic power purchase agreement may be obtained from the Company's website at 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.~~To obtain an indicative pricing proposal with respect to a proposed

2. project, the owner must provide in writing to the Company, general project information reasonably required for the development of indicative pricing, including, but not limited to:

- a) generation technology and other related technology applicable to the site
- b) design capacity (MW), station service requirements, and net amount of power to be delivered to the Company's electric system
- c) quantity and timing of monthly power deliveries (including project ability to respond to dispatch orders from the Company)
- d) proposed site location and electrical interconnection point
- e) proposed on-line date and outstanding permitting requirements
- f) demonstration of ability to obtain QF status
- g) fuel type (s) and source (s)
- h) plans for fuel and transportation agreements
- i) proposed contract term and pricing provisions (i.e., fixed, escalating, indexed)

j) status of interconnection arrangements

~~3.~~ The Company shall not be obligated to provide an indicative pricing proposal until all information described in Paragraph 2 has been received in writing from the QF owner. Within 30 days following receipt of all information required in Paragraph 2, the Company will ~~3.~~ provide the owner with an indicative pricing proposal, which may

4.

~~5.~~

~~6.~~ **ELECTRIC SERVICE SCHEDULE NO. 38 - Continued**

~~7.~~

~~8.~~ **B.**

Procedures (continued)

~~9.~~

~~10.~~

~~1.~~ include other indicative terms and conditions, tailored to the individual characteristics of the proposed project. Such proposal may be used by the owner to make determinations regarding project planning, financing and feasibility. However, such prices are merely indicative and are not final and binding. Prices and other terms and conditions are only final and binding to the extent contained in a power purchase agreement executed by both parties and approved by the Commission. The Company will provide with the indicative prices a description of the methodology used to develop the prices.

~~4.~~ If the owner desires to proceed forward with the project after reviewing the Company's indicative proposal, it may request in writing that the Company prepare a draft power purchase agreement to serve as the basis for negotiations between the parties. In connection with such request, the owner must provide the Company with any additional project information that the Company reasonably determines to be necessary for the preparation of a draft power purchase agreement, which may include, but shall not be limited to:

- a) updated information of the categories described in Paragraph B.2,
- b) evidence of adequate control of proposed site
- c) identification of, and timelines for obtaining any necessary governmental permits, approvals or authorizations

ELECTRIC SERVICE SCHEDULE NO. 38 - Continued

B. Procedures (continued)

- d) assurance of fuel supply or motive force
- e) anticipated timelines for completion of key project milestones
- f) evidence that any necessary interconnection studies have been completed and assurance that the necessary interconnection arrangements are being made in accordance with Part II.

5. The ~~company~~Company shall not be obligated to provide the owner with a draft power purchase agreement until all information required pursuant to Paragraph 4 has been received by the Company in writing. Within 30 days following receipt of all information required pursuant to paragraph 4, the Company shall provide the owner with a draft power purchase agreement containing a comprehensive set of proposed terms and conditions, including a specific pricing proposal for purchases from the project. Such draft shall serve as the basis for subsequent negotiations between the parties and, unless clearly indicated, shall not be construed as a binding proposal by the Company

~~6.~~ 6. After reviewing the draft power purchase agreement, the owner may prepare an initial set of written comments and proposals regarding the draft power purchase agreement and forward such comments and proposals to the Company. The Company shall not be obligated to commence negotiations with a QF owner until the Company has received an initial set of written comments and proposals from the QF owner. Following

the Company's receipt of such comments and proposals, the owner may contact the Company to schedule contract negotiations at such times and places as are mutually agreeable to the parties. In connection with such negotiations, the Company:

_____a) will not unreasonably delay negotiations and will respond in good faith to any additions, deletions or modifications to the draft power purchase agreement that are proposed by the owner

ELECTRIC SERVICE SCHEDULE NO. 38 - Continued

B. Procedures (continued)

_____b) may request to visit the site of the proposed project if such a visit has not previously occurred

_____c) will update its pricing proposals at appropriate intervals to accommodate any changes to the Company's avoided-cost calculations, the proposed project or proposed terms of the draft power purchase agreement

e) may request any additional information from the owner necessary to finalize the terms of the power purchase agreement and satisfy the Company's due diligence with respect to the Project.

~~7.~~ When both parties are in full agreement as to all terms and conditions

~~7.~~ of the draft power purchase agreement, the Company will prepare and forward to the owner a final, executable version of the agreement. The Company reserves the right to condition execution of the power purchase agreement upon simultaneous execution of an interconnection agreement between the owner and the Company's power delivery function, as discussed in Part II. 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 and approved by the Commission.

II. Process for Negotiating Interconnection Agreements

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 all necessary interconnection arrangements being consummated.

It is recommended that the owner initiate its request for interconnection as early in the planning process as possible, to ensure that necessary interconnection arrangements proceed in a timely manner on a parallel track with negotiation of the power purchase agreement.

ELECTRIC SERVICE SCHEDULE NO. 38 - Continued

II. Process for Negotiating Interconnection Agreements (continued)

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 power delivery function.

A. Communications

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

Utah Power & Light Company
Manager-QF Contracts
825 NE Multnomah St, Suite 600
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 power delivery function that 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

The Company will follow the procedures for generation interconnection described in Part IV of the Company's Open Access Transmission Tariff

(Tariff) on file with the Federal Regulatory Commission. A copy of the Tariff is available on-line at <http://www.oasis.pacificorp.com>

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RFP 2012
ATTACHMENT 3
POWER PURCHASE CONTRACT

RFP 2012

ATTACHMENT 4

**ROLE AND FUNCTION OF THE INDEPENDENT
EVALUATOR AND THE PROTOCOLS AND
COMMUNICATIONS BETWEEN THE BENCHMARK
TEAM, THE EVALUATION TEAM, THE BIDDERS AND
THE INDEPENDENT EVALUATOR**

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1) The role and function of the Independent Evaluator is outlined below:

- a. Facilitate and monitor communications between the Soliciting Utility and Bidders.
- b. Review and validate the assumptions and calculations of any Benchmark Option.
- c. Analyze the Benchmark Option for reasonableness and consistency with the Solicitation Process.
- d. —Analyze, operate and validate all important models, modeling techniques, assumptions and inputs utilized by the Soliciting Utility in the Solicitation Process, including the evaluation of Bids.
- e. Receive and “blind” Bid responses.
- f. Provide input to the Soliciting Utility on:
 - i. the development of screening and evaluation criteria, ranking factors and evaluation methodologies that are reasonably designed to ensure that the Solicitation Process is fair, reasonable and in the public interest in preparing a Solicitation and in evaluating Bids;
 - ii. the development of initial screening and evaluation criteria that take into consideration the assumptions included in the Soliciting Utility’s most recent IRP, any recently filed IRP Update, any Commission order on the IRP or IRP Update and in its Benchmark Option.
 - iii. whether a ~~bidder~~Bidder has met the criteria specified in any RFQ and whether to reject or accept non-conforming RFQ responses;
 - iv. whether and when data and information should be distributed to Bidders because it is necessary to facilitate a fair and reasonable competitive Bidding process or has been reasonably requested by Bidders;
 - v. whether to reject non-conforming bids or accept conforming changes.
- g. Ensure that all Bids are treated in a fair and non-discriminatory manner.
- h. Monitor, observe, validate and offer feedback to the Soliciting Utility and the Regulators on all aspects of the Solicitation and Solicitation Process, including:
 - i. content of the Solicitation;
 - ii. evaluation and ranking of Bid responses;

- iii. creation of a short list(s) of Bidders for more detailed analysis and negotiation;
- iv. Post-Bid discussions and negotiations with, and evaluations of, short list Bidders; and
- v. negotiation of proposed contracts with successful Bidders.

i. The IE will independently evaluate the **uSoliciting Utility's Benchmark Resources and a sample of the bids to determine whether the selections for the initial and final short lists are reasonable.**

j. The IE will evaluate the unique risks and advantages associated with Benchmark Resources, including the regulatory treatment of costs or benefits related to actual constructions cost and plant operation differing from what was projected for the RFP.

k. Once the competing bids and **bBenchmark Resources** have been evaluated by the **uSoliciting Utility** and the IE the two should compare results.

l.

il. Offer feedback to the Soliciting Utility on possible adjustments to the scope or nature of the Solicitation or requested resources in light of Bid responses;

mj. Solicit additional information on Bids necessary for screening and evaluation purposes.

nk. Advise the Commission at all stages of the process of any unresolved disputes or other issues or concerns that could affect the integrity or outcome of the Solicitation Process.

ol. —Analyze and attempt to mediate disputes that arise in the Solicitation Process with the Soliciting Utility and/or Bidders, and present recommendations for resolution of unresolved disputes to the Commission.

pm. —Participate in and testify at Commission hearings on approval of the Solicitation and Solicitation Process and/or approval of a Significant Energy Resource Decision.

qn. —Coordinate as appropriate and as directed by the Commission with staff or evaluators designated by regulatory authorities from other states served by the Soliciting Utility.

or. Perform such other evaluations and tasks as the Commission may direct.

2). The Communications between the Independent Evaluator, the Company and the Bidders shall be conducted in the following manner:-

| a. –Communications between a Soliciting Utility and potential or actual Bidders shall be conducted only through or in the presence of the Evaluator. Bidder questions and Soliciting Utility or Evaluator responses shall be posted on an appropriate website. The Evaluator shall protect or redact competitively sensitive information from such questions or responses to the extent necessary.

| b. –The Soliciting Utility may not communicate with any Bidder regarding the Solicitation Process, the content of the Solicitation or Solicitation documents, or the substance of any potential response by a Bidder to the Solicitation, except through or in the presence of the Evaluator.

| c. –The Soliciting Utility shall provide timely and accurate responses to any request from the Evaluator, including requests from Bidders submitted by the Evaluator, for information regarding any aspect of the Solicitation or the Solicitation Process.

| **3) The Independent Evaluator will provide the following Reports.:**

The Evaluator shall prepare at least the following confidential reports and provide them to the Regulators and the Soliciting Utility:

| i. –Monthly progress reports on all aspects of the Solicitation Process as it progresses;

ii. Final Reports as soon as possible following the completion of the Solicitation Process. Final reports shall include analyses of the Solicitation, the Solicitation Process, the Soliciting Utility’s evaluation and selection of Bids and resources, the final results and whether the selected resources are in the public interest.

4) Communication between the Evaluation Team and the Benchmark Team:

a. The Evaluation Team, including Non-blinded Personnel, may not be members of the Benchmark Team, nor communicate with members of the Benchmark Team during the Solicitation Process about any aspect of the Solicitation Process, except as authorized herein.

b. The names and titles of each member of the Benchmark Team, the Non-blinded Personnel and Evaluation Team shall be provided in writing to the Evaluator.

c.– The Evaluation Team may solicit written comments on matters of technical expertise from the members of the Benchmark Team. All such communications to or from the Benchmark Team must be in writing. The Evaluator must participate in all such communications between members of the Benchmark Team and Evaluation Team and must retain a copy of all such correspondence to be made available in future Commission proceedings. The Evaluator must also make available to the Bidder about whose bid the Benchmark Team’s technical expertise was sought a written copy of the correspondence between the Evaluation and Benchmark Teams. Any response to such correspondence from the Bidder must be in writing to the Evaluator and must be conveyed to the Evaluation Team. The Evaluator must provide its own or third party verification of the reasonableness of any technical information solicited from the Benchmark Team or Bidder before it may be used in any evaluation.

d. There shall be no communications regarding blinded Bid information, either directly or indirectly, between the Nonblinded Personnel and other Evaluation Team members until the final ~~shortlist~~short list is determined except as authorized herein, which communications shall be done in the presence of the Evaluator. The Non-blinded Personnel must not reveal to other Evaluation Team members, either directly or indirectly in any form, any blinded information regarding the identity of any of the Bidders.

e.– The Evaluation Team shall have no direct or indirect contact or communication with any Bidder other than through the Evaluator until such time as a final ~~shortlist~~short list is selected by the Soliciting Utility.

f. —Should any Bidder or a member of the Benchmark Team, attempt to contact a member of the Evaluation Team, such Bidder or member of the Benchmark Team shall be directed to the Evaluator for all information and such communication shall **promptly** be reported to the Evaluator by the Evaluation Team.

RFP 2012
ATTACHMENT 5
TOLLING SERVICE AGREEMENT
CONTRACT

RFP 2012
ATTACHMENT 6
ASSET PURCHASE AND SALE
AGREEMENT (APSA) WITH
APPENDICES

RFP 2012
ATTACHMENT 7
LAKE SIDE APSA
RIGHTS AND FACILITIES

ATTACHMENT 7 LAKE SIDE RIGHTS AND FACILITIES PPA AND TSA BIDDERS ONLY

Easements

PacifiCorp will grant a non-exclusive easement on PacifiCorp's property between Bidder's switchyard to the new 345kV substation serving Bidder's Facility. Easement will be determined based on Bidder's routing of Bidder's cable.

PacifiCorp will grant a non-exclusive easement to allow for the connection of Bidder's Facility to a natural gas supply line located on PacifiCorp property, if required. As an alternative, PacifiCorp, in its sole discretion, may convey such property as required for Bidder's natural gas pipeline and metering station to Bidder as part of the Site Purchase Agreement for Lake Side shown as Attachment 19 to this RFP. Specific details of the interconnection are provided in Appendix B to the APSA.

Water Rights

PacifiCorp does not hold any Water Rights that can be acquired by the Bidder. Bidder will be responsible for acquiring such rights.

Emission Reduction Credits (ERCs)

PacifiCorp has ERCs that can be acquired by the Bidder. Pricing is shown in the Site Purchase Agreement for Lake Side. The available Utah County ERCs are (in tons):

PM-10	46.8
SO ₂	4.6
NO _x	22.4

Bidder is responsible for obtaining all ERCs necessary for the operation of the Project.

Facilities Interconnections

Bidder will be entitled to connect, at its own expense with PacifiCorp's raw water connection as specified in Appendix B to the APSA. Supply is limited to water used for construction purposes.

Bidder will acquire, under the Site Purchase Agreement for Lake Side (Attachment 16), rights to one half of the currently available capacity contracted for by PacifiCorp from Questar. Terms of this contract are to be found in the Site Purchase Agreement.

RFP 2012
ATTACHMENT 8
CURRENT CREEK APSA
RIGHTS AND FACILITIES

ATTACHMENT 8 CURRANT CREEK RIGHTS AND FACILITIES PPA AND TSA BIDDERS ONLY

Easements

PacifiCorp will grant a non-exclusive easement on PacifiCorp's property between Bidder's switchyard to the 345kV substation serving Bidder's Facility. Easement will be determined based on Bidder's routing of Bidder's cable.

PacifiCorp will grant a non-exclusive easement to allow for the connection of Bidder's Facility to a natural gas supply line located on PacifiCorp property, if required. As an alternative, PacifiCorp, in its sole discretion, may convey such property as required for Bidder's natural gas pipeline and metering station to Bidder as part of the Site Purchase Agreement for Currant Creek shown as Attachment 17 to this RFP. Specific details of the interconnection are provided in Appendix B to the APSA.

Water Rights

PacifiCorp has Water Rights that can be acquired by the Bidder. Quantities and pricing are shown in the Site Purchase Agreement for Currant Creek shown as Attachment 21 to this RFP.

Emission Reduction Credits (ERCs)

PacifiCorp does not believe that ERCs will be required for this project at this time.
~~Bidder to confirm.~~ Bidder shall be required to perform air quality analysis and permitting to determine need for ERS. If ERCs are required, Bidder shall be responsible to obtain ERCs.

Facilities Interconnections

Bidder will be entitled to connect, at its own expense with PacifiCorp's raw water connection as specified in Appendix B to the APSA.

Bidder will acquire, under the Site Purchase Agreement for Currant Creek (Attachment 17), rights to one half of the currently available capacity contracted for by PacifiCorp from Questar. Terms of this contract are to be found in the Site Purchase Agreement.

RFP 2012
ATTACHMENT 9
OWNER'S COSTS UNDER
APSA AND EPC

ATTACHMENT 9 OWNER'S COST ASSUMPTIONS UNDER AN APSA ¹

Costs for both Lakeside and Currant Creek:

ESTIMATED OWNER COSTS	CURRANT CREEK	LAKE SIDE
Project Management	\$ 1,000,000	\$ 1,000,000
Plant Labor	\$ 682,500	\$ 682,500
Misc. Consultants	\$ 100,000	\$ 100,000
Owners Legal Counsel	\$ 100,000	\$ 100,000
Regulation, PR & Communication	\$ 100,000	\$ 200,000
C&T Charges for PSC Hearings	\$ 20,000	\$ 20,000
Legal Costs for PSC Hearings	\$ 200,000	\$ 200,000
Computer Hardware	\$ 150,000	\$ 150,000
Permitting & License Fees	\$ 200,000	\$ 200,000
Startup / Fuel and Testing ¹	\$ 965,400	\$ 965,400
Site Surveys/Studies	\$ 50,000	\$ 50,000
Site Security	\$ 250,000	\$ 250,000
Operating Spare Parts	\$ 6,600,000	\$ 6,600,000
Permanent Plant Equipment, Tools, & Furnishings	\$ 300,000	\$ 300,000
Builders All Risk Insurance	TBD	TBD
Training	\$ 250,000	\$ 250,000
Escalation Owner's Costs	TBD	TBD
Sales Tax & Duties ²	Bidder to Supply	Bidder to Supply
Owner Contingency ³	TBD	TBD
Capital Surcharge	\$ 500,000	\$ 500,000
Capitalized Property Taxes ⁴	TBD	TBD
Interest During Construction (AFUDC ⁵) (Based on payment schedule)	TBD	TBD
PROJECT TOTALS	\$ 11,346,900	\$ 11,517,456,900

The above cost figures were developed by PacifiCorp as estimates to be used by PacifiCorp for its own purposes, including but not limited to evaluation of proposals submitted pursuant to the RFP. In no event shall PacifiCorp be responsible for errors or omissions in the above figures or any cost estimates developed by respondents to the RFP.

Notes:

¹ Actual costs will depend on then current fuel costs and startup and commissioning schedule.

⁺² Costs over and above those stated in Attachment 7 and 8 "Owner's Development Costs"

- 23 Bidder shall divide proposal into taxable and non-taxable items.
- 34 Owner's Contingency will be the same on both sites.
- 45 Current Effective Rate for Currant Creek is 0.86%, for Lake Side, 1.10%. Both are subject to change.
- 56 The Current Effect Rate for AFUDC is 7.5%. This is subject to change.

RFP Analysis Guidelines for AFUDC and Capitalized Property Tax

For purposes of analyzing resource RFP responses which require PacifiCorp to assume a progress payment obligation during the construction phase for a resource that will be transferred to and owned by PacifiCorp, the total capitalized cost shall include:

- (1) a capitalized financing cost as applied through the application of Allowance for Funds Used During Construction (AFUDC), pursuant to Regulatory Commissions' guidelines, and
- (2) an amount for capitalized property taxes, pursuant to PacifiCorp's property tax capitalization policy.

AFUDC

Monthly AFUDC shall be calculated by multiplying the average balance of Construction Work in Progress (CWIP) by the applicable projected AFUDC rate in use by PacifiCorp. CWIP shall include all applicable construction overheads, AFUDC from prior months, and capitalized property taxes that are associated with the final capitalized cost of such resource until such resource is projected to be placed in service.

This rate is currently 7.5% annually. The actual rate in effect at the time of the bid evaluation will be the one used.

Property Tax

If the projected CWIP balance is greater than \$50 million as of the first day of each calendar year, the amount of capitalized property taxes that will be added to CWIP will be equal to each year's beginning CWIP balance multiplied by an estimated property tax rate applicable for the resource under consideration.

The standard (non-site specific) rate for PacifiCorp is currently 1.2% of the CWIP balance. The actual rate in effect when the final RFP is issued in September, will be the one used.

RFP 2012
ATTACHMENT 10
OWNER'S DEVELOPMENT COST
ASSUMPTIONS

ATTACHMENT 10 OWNER'S DEVELOPMENT COST ASSUMPTIONS

Lake Side Development Costs:

Permitting and License Fees	\$200,000
Regulation, PR and Communications	\$200,000
Owner's Legal Counsel	\$100,000
Surveys/Studies	\$50,000
Water Rights ¹	\$12,048,000
ERCs ¹	\$1,065,169
Miscellaneous Consultants	\$125,000
Total	\$13,288,169

Currant Creek Development Costs

Permitting and License Fees	\$200,000
Regulation, PR and Communications	\$200,000
Owner's Legal Counsel	\$100,000
Surveys/Studies	\$50,000
Water Rights ^{2,3}	Obtained with Block 1
ERCs ²⁴	Obtained with Block 1
Miscellaneous Consultants	\$125,000
Total	\$675,000

The above development cost figures were developed by PacifiCorp as estimates to be used by PacifiCorp for its own purposes, including but not limited to evaluation of proposals submitted pursuant to the RFP. Each entity responding to the RFP shall not rely on these figures, and each respondent shall be solely responsible for developing its own estimates of development costs. In no event shall PacifiCorp be responsible for errors or omissions in the above figures or any development cost estimates developed by respondents to the RFP.

Notes:

¹ See Site Purchase Agreement for Lake Side for specific acreages and quantities

² See Site Purchase Agreement for Currant Creek for specific acreages and quantities

³ Currant Creek's design utilizes an Air-Cooled Condenser (ACC)

4. Currently assumed that no ERCs will be required; Air Quality modeling will be revised to determine RC requirements, if any.

RFP 2012
ATTACHMENT 11
FORM OF LETTER OF CREDIT

Attachment 11 to RFP 2012
Requirements for a Letter of Credit

A 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~~there under, which letter(s) of credit:

(1) is issued by a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a net worth of at least \$1,000,000,000 and a credit rating on its senior unsecured debt of:

(a) “A2” or higher from Moody’s; or

(b) “A” or higher from S&P;

(2) on the terms provided in the letter(s) of credit, permits PacifiCorp to draw up to the face amount thereof for the purpose of paying any and all amounts owing by Seller hereunder.

(3) if a letter of credit is issued by a foreign bank with a U.S. branch, permits PacifiCorp to draw upon the U.S. branch;

(4) permits PacifiCorp to draw the entire amount available ~~thereunder~~there under if such letter of credit is not renewed or replaced at least thirty (30) Business Days prior to its stated expiration date;

(5) permits PacifiCorp to draw the entire amount available ~~thereunder~~there under if such letter(s) of credit are not increased, replaced or replenished as and when provided where applicable;

(6) is transferable by PacifiCorp to any party to which PacifiCorp may assign;

(7) shall remain in effect for at least ninety (90) days after the end of the Term.

RFP 2012
ATTACHMENT 12
STANDARD AND POOR'S
INFERRED DEBT
METHODOLOGY ARTICLE

RFP 2012
ATTACHMENT 13
PACIFICORP COSTS ASSOCIATED
WITH INTEGRATION

Preliminary Assessment of Transmission Impacts Associated with RFP Points of Delivery

1. Overview of Points of Delivery

PacifiCorp is interested in resources that are capable of delivery into or in a portion of the Company's network transmission system in PACE. Specifically, the point(s) of delivery of primary interest to PacifiCorp are:

- Salt Lake Valley
- PacifiCorp Sites
 - Currant Creek
 - Lake Side
- Mona 345 kV
- Glen Canyon 230 kV
- Nevada/Utah Border:
 - Gonder-Pavant 230 kV line known as "Gonder 230 kV"
 - Sigurd – Harry Allen 345 line known as "NUB" or Red Butte 345 kV
 - Crystal 500 kV
- West of Naughton

The Company is generally not interested in resources delivered to the following areas:

- ~~Four Corners~~
- Wyoming, unless the resource(s) electrically reside south of the Naughton-Monument 230 kV line and the cost of the upgrade is included.
- Borah, Brady or Kinport unless such resource is interconnected to the Company's Southeast Idaho electrical system near the Goshen area.

2. Transmission Assumptions Associated with the Points of Delivery

PacifiCorp may need to increase transmission import capability and upgrade its network system capacity in order to integrate a resource delivered to the preferred points of delivery. The table below indicates what possible additions might be necessary and the indicative cost associated with the upgrade⁺. These indicative costs are based on assessments done by the PacifiCorp Transmission group for RFP 2003B, the 2004 Integrated Resource Plan and System Impact Studies. These cost estimates will be used for the purpose of evaluating bids and may be refined if better estimates are received prior to issuance of the RFP.

⁺ ~~Transmission studies have been requested to clarify incremental transmission costs, and will be included in final RFP if available prior to issuance.~~

Point of Delivery	Description of Possible Transmission Additions / Upgrades ¹	Path(s) to Upgrade and Voltage Support	Estimated Cost of Upgrades
Salt Lake Valley <u>138 kV</u> <u>600 MW</u>	Upgrades to existing lines	Unknown <u>location</u>	\$10—20 <u>30</u> M
Lake Side <u>345 kV</u> <u>600 MW</u>	Transmission line, substation, SVC	Lake Side to Salt Lake Valley	\$77 <u>60</u> M
Mona 345 kV / Currant Creek <u>345 kV</u> <u>600 MW</u>	Transmission line, substation, SVC	Mona to PACE	\$69 <u>70</u> M
Glen Canyon <u>230</u> <u>345</u> kV <u>600 MW</u>	Transmission line(s), substation, SVC <u>phase shifter</u>	Glen Canyon to Sigurd and Mona to PACE	\$TBA ² <u>220</u> M (Glen Canyon) + <u>\$69</u> M (Mona)
Gonder <u>230</u> <u>345</u> kV over 200 <u>600</u> MW ³	Transmission line(s), substation, SVC	Gonder/Nevada Border to Sigurd and Mona to PACE	\$TBA <u>210</u> M (Gonder) + <u>\$69</u> M (Mona)
NUB (Harry Allen 345 kV) <u>600 MW</u>	Transmission line, substation, SVC <u>phase shifter</u>	NUB <u>H. Allen</u> to West Cedar and RButte + <u>RButte-Sigurd</u> + Mona to PACE	\$TBA (NUB) + <u>\$69</u> <u>310</u> M (Mona)
Crystal <u>345 kV</u> <u>600 MW</u>	Transmission line(s), substation, SVC , transformer, <u>phase shifter</u>	Crystal to Red Butte and RButte + <u>RButte-Sigurd</u> + Mona to PACE	\$119 <u>330</u> M (Crystal) + <u>\$69</u> M (Mona)
West of Naughton <u>230 kV</u> <u>600 MW</u>	New line, substation	Naughton to Evanston ⁴ + Evanston to Salt Lake Valley	\$19 <u>180</u> M (Naughton) + <u>\$120</u> M (Evanston)
Path C ⁵ up to <u>150 MW</u> Four Corners <u>345 kV</u> <u>600 MW</u>	Substation, upgrade to existing line <u>New line, terminations, phase shifter</u>	F. Corners to Mona + Mona to PACE	\$45 <u>360</u> M
Path C up to <u>300</u> <u>600</u> MW	Substation, upgrade of existing line, line extension, series capacitors <u>New line, substation</u>	<u>Populus to Terminal</u>	\$65 <u>160</u> M
Four Corners <u>345 kV</u>	TBA	TBA	TBA

¹ Two SVCs are needed for imports from any location. Cost is not included in any POD.

² To be assessed (TBA)

³ Resources under 200 MW won't require upgrades from the Nevada border to Sigurd.

⁴ Naughton to Evanston portion may not be needed depending on location.

⁵ Path C—Although Path C was not a preferred path for delivery, it has been included for evaluation purposes.

Path C up to 600 MW	All the upgrades associated with increasing capacity to 300 MW and a new line	Treasureton to Ben Lomond	\$ 85 M + \$65M
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Two SVCs are needed for imports from any location. Cost is not included in any POD.

RFP 2012
ATTACHMENT 14
CONFIDENTIALITY AGREEMENT

CONFIDENTIALITY AGREEMENT

This CONFIDENTIALITY AGREEMENT (this "Agreement") is entered into as of the ____ day of _____, 2005, by and between PacifiCorp, an Oregon corporation ("PPW"), and _____ (collectively with all its subsidiaries, officers, directors, members, managers, employees, agents, accountants and attorneys, "Recipient"); with reference to the following:

WHEREAS, PPW and Recipient are discussing a potential transaction relating to PPW's Request for Proposals 2012, and in connection therewith Recipient wishes to receive certain Confidential Information (as hereinafter defined), but requires as a condition precedent Recipient's execution of this Agreement;

NOW, THEREFORE, in consideration of the above and the mutual promises herein contained, the parties hereto agree as follows:

1. Confidential Information. "Confidential Information" means any oral or written information which is made available to Recipient by PPW or any of its corporate affiliates or its or their officers, directors, employees, agents, accountants or attorneys (a "Disclosing Party") before or after the date hereof, regardless of the manner furnished, and includes without limitation: (i) compilations and analyses prepared by Recipient; (ii) names of current and potential manufacturers, suppliers, customers and marketing relationships of any Disclosing Party, (iii) the nature, terms, conditions or other facts respecting any discussions between PPW and Recipient (including their existence and status). Confidential Information does not include information which at the time of disclosure is generally available to the public (other than as a result of disclosure by Recipient) or was available to Recipient on a nonconfidential basis from a source other than a Disclosing Party not under a duty of confidentiality to a Disclosing Party.

2. Confidentiality; Disclosure. The Confidential Information will be kept confidential by each Recipient and will not be used for any purpose by its Recipient other than for the purpose set forth above. Recipient will be responsible for any breach of this Agreement by any of its officers, directors, employees, agents, accountants and attorneys. Recipient shall restrict the dissemination of the Confidential Information to its employees who have a need to see it, and shall cause any agent, accountant or other non-employee to whom it wishes to show the Confidential Information sign an agreement in the form hereof in advance thereof. Recipient will keep confidential any Confidential Information contained in any analyses, compilations, studies or other documents prepared by Recipient that contain or reflect any Confidential Information. Upon request from PPW, Recipient promptly will return all copies of the Confidential Information.

3. Protective Order. If Recipient becomes legally compelled to disclose any Confidential Information, it shall provide PPW with prompt prior written notice so that PPW may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained, Recipient shall (i) furnish only that portion of the Confidential Information which, in accordance with the advice of its own counsel, is

legally required to be furnished, and (ii) exercise reasonable efforts to obtain assurances that confidential treatment will be accorded the Confidential Information so furnished.

4. No Representation or Warranty. Recipient acknowledges that no Disclosing Party is making any representation or warranty as to the accuracy or completeness of any information furnished (except specifically to the extent and only to such extent as shall be expressly set forth in an executed and delivered definitive agreement). No Disclosing Party or any of its officers, directors, employees, agents or controlling persons (including, without limitation, parent and subsidiary companies) shall have any liability to a Recipient or any other person relating to or arising from the use of the Confidential Information provided by a Disclosing Party.

5. Conduct of Process. Except for any confidentiality agreements, none of PPW or any Disclosing Party is under any obligation to Recipient, and PPW is free to elect not to consummate an agreement or to furnish or receive information. Nothing contained in this Agreement shall prevent PPW from negotiating with or entering into a definitive agreement with any other person or entity without prior notice to Recipient. Until PPW and Recipient enter into a definitive agreement, no contract or agreement or other investment or relationship shall be deemed to exist between any Disclosing Party or any Recipient as a result of this Agreement, the issuance of a term sheet, the issuance, receipt, review or analysis of information, the negotiation of definitive documentation, or otherwise, and none of the foregoing shall be relied upon as the basis for an implied contract or a contract by estoppel.

6. Intellectual Property Rights. Nothing contained herein grants any rights respecting any intellectual property (whether or not trademarked, copyrighted or patented) or uses thereof.

7. Costs and Expenses. Except as otherwise provided in any other written agreement between the parties, the parties shall bear their own costs and expenses, including without limitation fees of counsel, accountants and other consultants and advisors.

8. Remedies. PPW shall be entitled to equitable relief, including injunction and specific performance, in the event of any breach hereof, in addition to all other remedies available to PPW at law or in equity. No failure or delay by PPW in exercising any right, power or privilege hereunder will operate as a waiver, nor will any single or partial exercise or waiver of a right, power or privilege preclude any other or further exercise thereof.

9. Venue and Choice of Law. This Agreement **is governed by the laws of the State of Oregon.** Any suit, action or proceeding arising out of the subject matter hereof, or the interpretation, performance or breach hereof, shall be instituted in any State or Federal Court in Multnomah County, Oregon (the "Acceptable Forums"). Each party agrees that the Acceptable Forums are convenient to it, and each party irrevocably submits to the jurisdiction of the Acceptable Forums, and waives any and all objections to jurisdiction or venue that it may have any such suit, action or proceeding.

10. Miscellaneous. This Agreement constitutes the entire agreement of the parties relating to its subject matter, and supersedes all prior communications, representations, or agreements, verbal or written. This Agreement may only be waived or amended in writing. Notices hereunder shall be in writing and be effective when actually delivered. This Agreement may be executed in counterparts, each of which, when taken together, shall constitute one and the same original instrument. Neither party may assign or otherwise transfer its rights or delegate its duties hereunder without prior written consent, and any attempt to do so is void.

IN WITNESS WHEREOF, the undersigned parties have executed this Confidentiality Agreement as of the date first written above.

PACIFICORP
an Oregon corporation

a _____

By: _____
Its: _____

By: _____
Its: _____

RFP 2012
ATTACHMENT 15
NON-RELIANCE LETTER

Date

[Name]
[Address]

Re: RFP 2012

Dear [_____]:

This letter clarifies PacifiCorp's rights relating to its further evaluation and discussion of your possible involvement with _____ ("Counterparty") proposal submitted in response to PacifiCorp's Request for Proposals (RFP) 2012 (collectively with Counterparty's proposal and all matters relating thereto, the "Project") and any subsequent negotiations regarding the terms of any agreement or agreements entered into with you or any other party in connection with the Project. PacifiCorp will agree to enter into further discussions with you only upon your prior acknowledgement of these rights. "You" and similar words (whether or not capitalized) refer to the addressee of this letter, Counterparty, and any Project development entity or other affiliate of the addressee in any way involved in the Project.

PacifiCorp is committed to following a fair process in selecting the winning proposal. However, PacifiCorp reserves the right, in its sole discretion, to terminate the consideration of the Project and any discussions with you or any other parties (such as your lenders) relating to the Project at any time and for any reason without incurring any liability for costs or expenses incurred by you in the course of, or as a result of, your participation in the bidding process or negotiations respecting the Project, including but not limited to any costs or expenses related to or arising from the preparation or submission of your proposal, your legal fees, transmission or environmental studies or reviews, expenses of any third party incurred at your behest, your participation in discussions with PacifiCorp, the Project, or any development costs incurred by you in connection with this process. The submission of a proposal by [Counterparty] and PacifiCorp's decision to engage in further discussions with you does not constitute acceptance of the Project, and shall not obligate PacifiCorp to accept or to proceed further with the Project. The acceptance of any proposal and the commencement of the Project are contingent on a number of factors, including but not limited to financial and creditworthiness considerations, strategic decisions, resource planning, regulatory approvals, and the approval of PacifiCorp's board of directors and/or shareholders.

PacifiCorp makes no representation as to the likelihood of [Counterparty]'s proposal being accepted or of the Project being commenced and, if PacifiCorp decides not to accept [Counterparty]'s proposal or the Project, you hereby fully and forever release and discharge PacifiCorp of all liability whatsoever, whether arising from your alleged reliance on PacifiCorp's acceptance of the Project or any part thereof or whether based upon any other action or claim in tort, contract, promissory estoppel, equity, negligence or intentional conduct, and PacifiCorp shall not be liable for any amount of liability or damages, including but not limited to any amounts for incidental, special, consequential or punitive damages.

| PacifiCorp reserves the right to engage in discussions with multiple parties simultaneously with respect to RFP 2012 or any other matter, and to accept or reject any type of proposal of any party in its sole discretion. PacifiCorp also reserves the rights to reject all proposals relating to RFP 2012, and to pursue any other course it deems appropriate, including without limitation the development of a cost-base self build alternative.

| PacifiCorp shall have no obligations to you with respect to the Project unless and until the execution by all applicable parties of one or more definitive written agreements (the "Definitive Agreements") in form and substance satisfactory to the parties entering into such Definitive Agreements and then only to the extent stated therein. No contract will nor will be deemed to exist, whether by estoppel or otherwise, in any other way than execution and delivery (if ever) of the Definitive Agreements. The execution (if any) of any Definitive Agreements would be subject, among other things, to the satisfactory completion of due diligence by such parties as well as the satisfaction of applicable financial, environmental and other regulatory requirements as determined by PacifiCorp. If PacifiCorp selects the Project, then except as specifically set forth in the Definitive Agreements, PacifiCorp shall have no obligations to you in the event that the Project or any part thereof is discontinued, cancelled, stopped, or terminated for any reason whatsoever, including without limitation financial or creditworthiness considerations concerning you or any contemplated source of Project-related funds, third-party delay or failure (with PacifiCorp's transmission function constituting a third party for purposes hereof), regulatory restrictions, gas or transmission infrastructure restrictions, environmental or community challenges, or the Project is embargoed, restrained, subject to labor strike or lockout, destroyed, subject to terrorist attack or any other force beyond your control, is incapable of receiving required gas or electricity transmission or network service, or is otherwise rendered impossible to complete by the times set forth in the Definitive Agreements for any other reason, whether your fault or not.

| Whether or not the Project is commenced and Definitive Agreements executed, you will be responsible to pay your own fees and expenses, including without limitation legal fees and expenses, incurred in connection with the preparation, discussion and negotiation of the Project as well as the preparation, negotiation, execution and delivery of the Definitive Agreements and any other agreements or documents contemplated thereby, and PacifiCorp will not be responsible for any of those fees and expenses.

| If the foregoing is acceptable, please indicate so by executing and dating both originals of this letter in the space indicated below, returning one original to the undersigned within three days of the date hereof and retaining the other original for your files.

Sincerely,

PacifiCorp

By: _____

Name: _____

Title: _____

Date: _____

ACCEPTED AND AGREED:

[Insert Name of Party]

By: _____

Name: _____

Title: _____

Date: _____

RFP 2012
ATTACHMENT 16
SITE PURCHASE AGREEMENT
FOR LAKE SIDE

**AGREEMENT FOR SALE AND PURCHASE
OF REAL PROPERTY**

This Agreement for Sale and Purchase of Real Estate (the “Agreement”) is entered into as of the ___ day of _____, 20 ____, by and between _____ (“Buyer”) and PacifiCorp, an Oregon corporation (“Seller”).

RECITALS

A. Seller is the owner of approximately _____ acres of real property situated within Utah County, _____ and more particularly described on the attached Exhibit “A” (the “Property”).

B. Buyer wishes to purchase the Property for;

C. Seller is willing to sell the Property on the terms and conditions stated herein.

NOW, THEREFORE, in consideration of the amounts to be paid and the mutual promises contained herein, Buyer and Seller agree as follows:

**ARTICLE I
AGREEMENT TO PURCHASE AND SELL; PURCHASE PRICE**

1.1 Purchase and Sale. Upon the terms and conditions set forth in this Agreement, Seller agrees to convey to Buyer, and Buyer agrees to purchase and take from Seller, fee title interest in and to that certain parcel of real property, as more particularly described on Exhibit “A”, attached hereto and by this reference made part of this Agreement, together with all appurtenances, rights, privileges and easements belonging thereto (collectively referred to herein as the “Property”), unless otherwise expressly stated in this Agreement.

(a) The description of the Property contained in Exhibit “A” is approximate. The exact acreage of the Property will be determined by a survey (the “Survey”) to be prepared by Seller, at its sole cost, and provided to Buyer no later than ninety (90) days after the date of this Agreement. The Survey shall be attached to this Agreement as Exhibit “B” upon its completion.

(b) Any water rights associated with the Property are not included as part of this Agreement.

(c) Emissions Reduction Credits associated with the Property are included as part of this Agreement. Details of the Credits are provided in Exhibit “C”.

(d) An assignment and transfer from Seller to Buyer, and the acceptance and assumption by Buyer, of fifty percent (50%) of Seller's rights and obligations under that certain Agreement for Firm Transportation to PacifiCorp – Lakeside Generation Facilities dated February 4, 2005, as amended May 3, 2005 between Seller and Questar Gas Company is being entered into in connection with this Agreement. The terms of such assignment, transfer and assumption are included in a separate Assignment and Assumption Agreement between Seller and Buyer of even date herewith, and the effectiveness of such agreement constitutes an express condition for the effectiveness of this Agreement.

1.2 Purchase Price. The purchase price for the Property (the "Purchase Price") shall be _____ (\$ _____).

1.3 Payment of Purchase Price. Buyer shall pay the Purchase Price to Seller in cash, by cashier's check, or other immediately available funds on the Closing Date, as adjusted for prorations on the Closing Date as provided herein.

ARTICLE II TITLE INSURANCE

2.1 Commitment of Title Insurance.

(a) Within thirty (30) days after the date of this Agreement, Seller shall deliver to Buyer a commitment for title insurance covering the Property (the "Commitment"), issued by the Title Company and dated on or after the date of this Agreement.

(b) Buyer shall have ten (10) days following receipt of the Commitment to provide any written objections to any matter set forth on Schedule B of the Commitment. If Buyer does not timely deliver written notice of objection to Seller, Buyer shall be deemed to have approved of all matters set forth in the Commitment. Matters which Seller has agreed to discharge pursuant to Section 2.1 (c) and any encumbrances or other title exceptions to which Buyer does not object shall be deemed to be "Permitted Exceptions" and shall not be considered objections to any matter contained in the Commitment.

(c) If Buyer provides a written notice of objections in accordance with Section 2.1 (b), then Seller shall have the option to: (i) cure such objections at Seller's sole cost; or (ii) terminate this Agreement.

(d) Buyer's sole remedy for Seller's inability to convey title subject only to the Permitted Exceptions or to cure Buyer's objections in accordance with Section 2.1 (c) shall be to terminate this Agreement. In that case, Seller shall have no other obligation to Buyer in connection with this Agreement or the Property.

2.2 Delivery of Title Insurance. Except as otherwise stated in Section 2.1, Seller shall obtain and deliver to Buyer within ten (10) days after the Closing Date an ALTA Standard Owner's Policy of title insurance in the amount of the Purchase Price, effective as of the Closing Date and containing no exceptions other than the Permitted Exceptions.

ARTICLE III REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of Seller. Seller makes the following representations and warranties to Buyer, as of the date of this Agreement and as of the Closing Date, each of which representations and warranties shall extend beyond the Closing Date and delivery of the Special Warranty Deed.

(a) Seller has and on the Closing Date will have good and marketable fee simple title to the Property to be conveyed, free and clear of all encumbrances, liens, claims, or reservations, except as specifically approved by Buyer under this Agreement.

(b) Seller has the right, power and authority to execute, deliver, and perform this Agreement and the execution, delivery, and performance of this Agreement have been duly authorized by all necessary corporate action on the part of Seller, and upon execution and delivery this Agreement shall constitute valid and binding obligations of Seller enforceable against Seller in accordance with its terms and except as enforceability may be limited by bankruptcy, insolvency, and other similar laws affecting claims and rights generally or be general equitable principles.

(c) Seller has not received written notice of any judgment, suit, claim, action, arbitration, Legal, administrative, or other proceeding or governmental investigation pending or threatened with respect to any of the Property that would materially adversely affect the Property, and no activities or events have occurred on or in connection with the Property that could give rise to any such claims or proceedings.

(d) Seller has not received any written notices, demands or deficiency statements from any mortgagee of the Property or from any state, municipal or county government or agency or any insurer relating to the Property and which have not been cured or remedied except property valuation and tax notices issued by Utah County.

(e) Except as otherwise expressly disclosed in the Commitment, the Property is not subject to any proposed special assessment or to any existing special assessment lien arising as a result of any works or improvements completed, installed or contemplated at or before the Closing Date.

(f) Seller has paid and shall pay all liens, charges, taxes and assessments for the Property arising prior to the Closing Date.

(g) No person, broker or entity, whether or not affiliated with Seller, is entitled to a commission, finder's fee or other compensation arising from this Agreement, as regarding Seller. Seller shall indemnify defend and hold Buyer harmless from and against any and all claims, loss or damage relating to or arising out of any claim for compensation by any broker, person or entity claiming by or through Seller.

3.2 Representations and Warranties of Buyer. Buyer makes the following representations and warranties to Seller, as of the date of this Agreement and as of the Closing Date, each of which representations and warranties shall survive the Closing and delivery of the Special Warranty Deed.

(a) Buyer has the right, power and authority to execute, deliver and perform this Agreement.

(b) No person, broker or entity, whether or not affiliated with Buyer, is entitled to a commission, finder's fee or other compensation arising from this Agreement as regarding Buyer. Buyer shall indemnify, defend and hold Seller harmless form and against any and all claims, loss or damage relating to or arising out of any claim for compensation by any broker, person or entity claiming by or through Buyer.

3.3 Acknowledgment by Buyer Regarding Seller's Representations and Warranties. Except as expressly set forth in other portions of this agreement, Buyer hereby affirms that neither Seller nor its agents, employees or attorneys have made, nor has Buyer relied upon any representation, warranty, or promise (either express or implied) with respect to the Property or any other subject matter of this Agreement including, without limitation:

(a) the general plan designation, zoning, value, use, tax status or physical condition of any part of the Property or the improvements to the Property;

(b) the flood elevations, drainage patterns and soil and subsoils composition and compaction levels and other conditions at the Property;

(c) the existence or nonexistence of any hazardous or toxic substance, waste or material (as defined or regulated by any federal, state or local law or regulation);

(d) the accuracy of any soils reports or any other plans or reports regarding the Property;

(e) the suitability of the Property for Buyer's intended purpose; or

(f) the status, suitability or sufficiency of any Emissions Reduction Credits associated with the Property.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING AND EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER ACCEPTS THE PROPERTY FROM THE SELLER “AS IS”, SUBJECT TO “ALL FAULTS” INCLUDING, BUT NOT LIMITED TO, BOTH LATENT AND PATENT DEFECTS, AND THE ENVIRONMENTAL CONDITION OR DEFECTS THEREOF. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER HEREBY WAIVES ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE CONDITIONS AND THE USE OF THE SUBJECT PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE IV USE OF PROPERTY

4.1 Seller’s Use of the Property Prior to Closing Date. From and after Seller’s execution of this Agreement and except in the ordinary course of administering its general mortgage, Seller shall not grant or convey any easement, lease, license, permit or any other legal or beneficial interest in or to the Property or engage in any contract with any party other than Buyer regarding the purchase or sale of the Property, without the prior written consent of Buyer. Further, except as otherwise provided for herein, Seller agrees to pay, as and when the same are due, all payments on any encumbrances presently affecting the Property and any and all taxes, assessments and levies in respect of the Property through the Closing Date.

4.2 Buyer’s Right to Enter Property Prior to the Closing Date. Buyer or its employees or agents may enter the Property at any time prior to the Closing Date upon twenty-four (24) hours notice to Seller to inspect the Property and perform surveys or tests as Buyer may elect; provided, however, that such entry shall not unreasonably interfere with the activities of Seller on the Property, and Buyer shall indemnify and hold Seller harmless from, all liabilities and all consequences of any interruption of Seller’s operation of Seller’s generation facilities located adjacent to the Property associated with Buyer’s activities on the Property.

ARTICLE V EASEMENTS

5.1 Seller’s Use of the Property After the Closing Date. Seller reserves the right to continue to use those portions of the Property identified in Attachment A for the purpose of owning, operating and maintaining electrical distribution and transmission lines and related facilities, including communications and other facilities, whether above or underground, and also for access to Seller’s existing substation located adjacent to the Property. On or before the Closing Date, Buyer shall grant to Seller one or more easements, in a form acceptable to Seller, which will allow for such continued use and access or future related uses and access by Seller.

5.2 Existing Easements. Buyer purchases the Property subject to all existing easements identified as Permitted Exceptions under Section 2 above.

5.3 New Easements. On or before the Closing Date, Seller shall grant to Buyer one or more easements for access to Seller's existing, or future, electrical and/or natural gas interconnection points (to be) located near the Property, which will allow for such continued use and access or future related uses and access by Buyer.

ARTICLE VI CLOSING

6.1 Time and Place of Closing. The Purchase and sale transaction contemplated by this Agreement shall be consummated through a closing conference (the "Closing") which shall be held at the Title Company on or before _____, (the "Closing Date"), or at such earlier time and place as the parties may mutually agree in writing.

6.2 Actions at Closing. At the Closing, the following events shall occur and each being declared to have occurred simultaneously with the other:

(a) All documents to be recorded and funds to be delivered hereunder shall be delivered to the Title Company in escrow, to hold, deliver, record and disburse in accordance with supplemental escrow instructions, the form and content of which shall be agreed to by the parties prior to Closing.

(b) At the Closing or sooner as otherwise stated in the escrow instructions, the following shall occur:

(i) Seller shall deliver or cause to be delivered in accordance with the escrow instructions:

(1) Special Warranty Deed conveying the Property to Buyer, duly executed and acknowledged by Seller and in proper form generally for recording in _____; and

(2) All other documents required to be executed by Seller pursuant to the terms of this Agreement.

(ii) Buyer shall deliver or cause to be delivered in accordance with the escrow instructions:

(1) The Purchase Price to be; and

(2) All other documents required to be executed by Buyer pursuant to the terms so this Agreement.

(c) Buyer and Seller shall each deliver to the other, two executed copies of the Buyer's and Seller's Statement of Settlement setting forth all prorations, credits provided in this Agreement, disbursements of the purchase price, and expenses of the Closing.

(d) Seller shall bear any and all Closing or escrow charges of the Title Company.

6.3 Seller's Remedies. In the event this transaction fails to close due to Buyer's fault or inability to close, Seller may elect either to seek specific performance of this Agreement by suit in equity, to seek damages from Buyer.

6.4 Buyer's Remedies. In the event this transaction fails to close due to Seller's fault, this Agreement shall be declared void and of no effect.

ARTICLE VII PRORATIONS

7.1 Prorations Between Seller and Buyer. The following prorations shall be made between Seller and Buyer as of the Closing Date:

(a) Real property taxes and assessments on the Property for the year of Closing shall be prorated between Seller and Buyer based on the number of days each owned the Property. In the event the Property constitutes some portion of a larger tract of land, such proration shall be based upon the average of the Property as a percentage of the acreage of the entire tract. If, as of the Closing Date, the actual tax bills for the year or years in question are not available and the amount of taxes to be prorated cannot be ascertained, then the most recent known rates, millages and assessed valuations (which amounts shall relate to the same tax year) shall be used, and such proration shall be repeated when the final tax bill is available and either Buyer and Seller, as the case may be, shall promptly pay to the other the net amount owing as a result of such redetermination.

(b) Other Closing costs shall be apportioned between the parties in accordance with the normal and customary practice of commercial real estate transactions in Utah County, Utah.

ARTICLE VIII RELEASE, ASSUMPTION AND INDEMNITY

8.1 Seller shall indemnify, hold harmless and defend Buyer against all claims, suits, losses and damages made against or incurred by Buyer relating to the condition of the Property prior to the Closing Date or any activity in connection with the Property which occurred prior to the Closing Date. Buyer shall indemnify, hold harmless and defend Seller against all claims, suits, losses and damages incurred by Seller relating to the condition of the Property after the Closing Date or any activity in connection with the Property which occurs after the Closing Date.

ARTICLE IX MISCELLANEOUS

9.1 Entire Agreement. This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements, which

written or oral, between the parties respecting such matters. Any amendments or modifications hereto in order to be effective shall be in writing and executed by the parties hereto. Notwithstanding the foregoing, Buyer's use and occupancy of this Agreement shall be subject at all times to the terms and conditions of that certain Construction Coordination Agreement dated [DATE] between Seller and Buyer.

9.2 Amendments. This Agreement may be amended or modified only by mutual written agreement.

9.3 Survival. All warranties, representations, covenants and agreements contained in this Agreement shall survive the execution and delivery of this Agreement and all documents delivered in connection with this Agreement and shall survive the Closing of the transactions contemplated by this Agreement and all performances in accordance with this Agreement.

9.4 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, administrators, and assigns; provided, however, that notwithstanding the foregoing, neither party's interest under this Agreement may be assigned, encumbered, or otherwise transferred, whether voluntarily, involuntarily, by operation of law or otherwise.

9.5 Notices. Any notice, demand or document which any party is required or any party desires to give or deliver to or make upon any other party shall be in writing, and may be personally delivered or given or made by recognized overnight courier service or by United States registered or certified mail, return receipt requested, with postage prepaid, addressed as follows:

To Seller:

To Buyer:

Any party may designate a different address for itself by notice similarly given. Unless provided herein, any such notice, demand or document so given shall be effective upon delivery of the same to the proper address of the party or parties to whom the same is to be given.

9.6 Time of Essence. Time is of the essence in the performance of each and every term, condition, and covenant of this Agreement.

9.7 Counterparts. This Agreement may be executed in any number of counterparts which together shall constitute the contract of the parties.

9.8 Paragraph Headings. The paragraph headings herein contained are for purposes of identification only and shall not be considered in construing this Agreement.

9.9 Attorneys' Fees. The prevailing party in any legal proceeding brought to enforce rights hereunder shall recover from the other party its reasonable attorneys' fees and costs. As used herein in the term "prevailing party" means the party entitled to recover

the costs in any suit, whether or not brought to judgment, and whether or not incurred before or after the filing of suit.

9.10 Waiver. Except as herein expressly provided, no waiver by a party of any breach of this Agreement or any warranty or representation under this Agreement by another party shall be deemed to be a waiver of any other breach of any kind or nature (whether preceding or succeeding and whether or not of the same or similar nature) and no acceptance of payment or performance by a party after any such breach by another party shall be deemed to be a waiver of any further breach of this Agreement or of any representation or warranty by such other party whether or not the first party knows of such a breach at the time it accepts such payment or performance. No failure on the part of a party to exercise any right it may have by the terms of this Agreement or by law upon the default of another party, and no delay in the exercise of any such right by the first party at any time when such other party may be in default, shall operate as a waiver of any default, or as a modification in any respect of the provision of this Agreement.

9.11 Exhibits. Any and all exhibits attached or to be attached hereto are hereby incorporated and made a party of this Agreement by reference.

9.12 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Utah.

9.13 No Recording. This Agreement shall not be recorded in the real property records.

9.14 Further Instruments. Each party hereto shall from time to time execute and deliver such further documents or instruments as the other party, its counsel or the Title ~~company~~Company may reasonably request to effectuate the intent of this Agreement, including without limitation documents necessary for compliance with the laws, ordinances, rules and regulations of any applicable governmental authorities.

9.15 Confidentiality. The purchase price and terms of this Agreement are intended by both parties to be confidential. Therefore, except as directed by a court, administrative authority or required by subpoena, neither party shall disclose the purchase price or terms of this Agreement or any other non-public information related thereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date and year first above written.

PACIFICORP

By: _____

Its: _____

Date Signed:

[BUYER]

|
|
|

____By: _____

____Its: _____

____Date Signed:

EXHIBIT A

**PROPERTY DESCRIPTION TO BE COMPLETED
PRIOR TO CLOSING**

EXHIBIT B
SURVEY TO BE ATTACHED

EXHIBIT C

EMISSIONS REDUCTION CREDITS

Buyer shall receive the following credits (in tons) as part of the transaction:

- PM-10 46.8
- SO₂ 4.6
- NO_x 22.4

RFP 2012
ATTACHMENT 17
SITE PURCHASE AGREEMENT
FOR CURRANT CREEK

**AGREEMENT FOR SALE AND PURCHASE
OF REAL PROPERTY**

This Agreement for Sale and Purchase of Real Estate (the “Agreement”) is entered into as of the ___ day of _____, 20____, by and between _____ (“Buyer”) and PacifiCorp, an Oregon corporation (“Seller”).

RECITALS

- A. Seller is the owner of approximately _____ acres of real property situated within Juab County, _____ and more particularly described on the attached Exhibit “A” (the “Property”).

- B. Buyer wishes to purchase the Property for;

- C. Seller is willing to sell the Property on the terms and conditions stated herein.

NOW, THEREFORE, in consideration of the amounts to be paid and the mutual promises contained herein, Buyer and Seller agree as follows:

**ARTICLE I
AGREEMENT TO PURCHASE AND SELL; PURCHASE PRICE**

1.1 Purchase and Sale. Upon the terms and conditions set forth in this Agreement, Seller agrees to convey to Buyer, and Buyer agrees to purchase and take from Seller, fee title interest in and to that certain parcel of real property, as more particularly described on Exhibit “A”, attached hereto and by this reference made part of this Agreement, together with all appurtenances, rights, privileges and easements belonging thereto (collectively referred to herein as the “Property”), unless otherwise expressly stated in this Agreement.

(a) The description of the Property contained in Exhibit “A” is approximate. The exact acreage of the Property will be determined by a survey (the “Survey”) to be prepared by Seller, at its sole cost, and provided to Buyer no later than ninety (90) days after the date of this Agreement. The Survey shall be attached to this Agreement as Exhibit “B” upon its completion.

(b) Water rights associated with the Property are included as part of this Agreement. These rights are defined in Exhibit “C” to this agreement.

(c) An assignment and transfer from Seller to Buyer, and the acceptance and assumption by Buyer, of fifty percent (50%) of Seller’s rights and obligations under that certain Firm Transportation Contract—Rate Schedule

T-1 dated March 31, 2005, between Seller and Questar Pipeline Company is being entered into in connection with this Agreement. The terms of such assignment, transfer and assumption are included in a separate Assignment and Assumption Agreement between Seller and Buyer of even date herewith, and the effectiveness of such agreement constitutes an express condition for the effectiveness of this Agreement.

1.2 Purchase Price. The purchase price for the Property (the "Purchase Price") shall be _____ (\$_____).

1.3 Payment of Purchase Price. Buyer shall pay the Purchase Price to Seller in cash, by cashier's check, or other immediately available funds on the Closing Date, as adjusted for prorations on the Closing Date as provided herein.

ARTICLE II TITLE INSURANCE

2.1 Commitment of Title Insurance.

(a) Within thirty (30) days after the date of this Agreement, Seller shall deliver to Buyer a commitment for title insurance covering the Property (the "Commitment"), issued by the Title Company and dated on or after the date of this Agreement.

(b) Buyer shall have ten (10) days following receipt of the Commitment to provide any written objections to any matter set forth on Schedule B of the Commitment. If Buyer does not timely deliver written notice of objection to Seller, Buyer shall be deemed to have approved of all matters set forth in the Commitment. Matters which Seller has agreed to discharge pursuant to Section 2.1 (c) and any encumbrances or other title exceptions to which Buyer does not object shall be deemed to be "Permitted Exceptions" and shall not be considered objections to any matter contained in the Commitment.

(c) If Buyer provides a written notice of objections in accordance with Section 2.1 (b), then Seller shall have the option to: (i) cure such objections at Seller's sole cost; or (ii) terminate this Agreement.

(d) Buyer's sole remedy for Seller's inability to convey title subject only to the Permitted Exceptions or to cure Buyer's objections in accordance with Section 2.1 (c) shall be to terminate this Agreement. In that case, Seller shall have no other obligation to Buyer in connection with this Agreement or the Property.

2.2 Delivery of Title Insurance. Except as otherwise stated in Section 2.1, Seller shall obtain and deliver to Buyer within ten (10) days after the Closing Date an ALTA Standard Owner's Policy of title insurance in the amount of the Purchase Price, effective as of the Closing Date and containing no exceptions other than the Permitted Exceptions.

**ARTICLE III
REPRESENTATIONS AND WARRANTIES**

3.1 Representations and Warranties of Seller. Seller makes the following representations and warranties to Buyer, as of the date of this Agreement and as of the Closing Date, each of which representations and warranties shall extend beyond the Closing Date and delivery of the Special Warranty Deed.

(a) Seller has and on the Closing Date will have good and marketable fee simple title to the Property to be conveyed, free and clear of all encumbrances, liens, claims, or reservations, except as specifically approved by Buyer under this Agreement.

(b) Seller has the right, power and authority to execute, deliver, and perform this Agreement and the execution, delivery, and performance of this Agreement have been duly authorized by all necessary corporate action on the part of Seller, and upon execution and delivery this Agreement shall constitute valid and binding obligations of Seller enforceable against Seller in accordance with its terms and except as enforceability may be limited by bankruptcy, insolvency, and other similar laws affecting claims and rights generally or be general equitable principles.

(c) Seller has not received written notice of any judgment, suit, claim, action, arbitration, legal, administrative, or other proceeding or governmental investigation pending or threatened with respect to any of the Property that would materially adversely affect the Property, and no activities or events have occurred on or in connection with the Property that could give rise to any such claims or proceedings.

(d) Seller has not received any written notices, demands or deficiency statements from any mortgagee of the Property or from any state, municipal or county government or agency or any insurer relating to the Property and which have not been cured or remedied except property valuation and tax notices issued by Utah County.

(e) Except as otherwise expressly disclosed in the Commitment, the Property is not subject to any proposed special assessment or to any existing special assessment lien arising as a result of any works or improvements completed, installed or contemplated at or before the Closing Date.

(f) Seller has paid and shall pay all liens, charges, taxes and assessments for the Property arising prior to the Closing Date.

(g) No person, broker or entity, whether or not affiliated with Seller, is entitled to a commission, finder's fee or other compensation arising from this Agreement, as regarding Seller. Seller shall indemnify defend and hold Buyer harmless from and against any and all claims, loss or damage relating to or arising out of any claim for compensation by any broker, person or entity claiming by or through Seller.

3.2 Representations and Warranties of Buyer. Buyer makes the following representations and warranties to Seller, as of the date of this Agreement and as of the Closing Date, each of which representations and warranties shall survive the Closing and delivery of the Special Warranty Deed.

(a) Buyer has the right, power and authority to execute, deliver and perform this Agreement.

(b) No person, broker or entity, whether or not affiliated with Buyer, is entitled to a commission, finder's fee or other compensation arising from this Agreement as regarding Buyer. Buyer shall indemnify, defend and hold Seller harmless from and against any and all claims, loss or damage relating to or arising out of any claim for compensation by any broker, person or entity claiming by or through Buyer.

3.3 Acknowledgment by Buyer Regarding Seller's Representations and Warranties. Except as expressly set forth in other portions of this agreement, Buyer hereby affirms that neither Seller nor its agents, employees or attorneys have made, nor has Buyer relied upon any representation, warranty, or promise (either express or implied) with respect to the Property or any other subject matter of this Agreement including, without limitation:

(a) the general plan designation, zoning, value, use, tax status or physical condition of any part of the Property or the improvements to the Property;

(b) the flood elevations, drainage patterns and soil and subsoils composition and compaction levels and other conditions at the Property;

(c) the existence or nonexistence of any hazardous or toxic substance, waste or material (as defined or regulated by any federal, state or local law or regulation);

(d) the accuracy of any soils reports or any other plans or reports regarding the Property;

(e) the suitability of the Property for Buyer's intended purpose; or

(f) the status, suitability or sufficiency of any water rights associated with the Property.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING AND EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER ACCEPTS THE PROPERTY FROM THE SELLER "AS IS", SUBJECT TO "ALL FAULTS" INCLUDING, BUT NOT LIMITED TO, BOTH LATENT AND PATENT DEFECTS, AND THE ENVIRONMENTAL CONDITION OR DEFECTS THEREOF. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER HEREBY WAIVES ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE CONDITIONS

AND THE USE OF THE SUBJECT PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE IV USE OF PROPERTY

4.1 Seller's Use of the Property Prior to Closing Date. From and after Seller's execution of this Agreement and except in the ordinary course of administering its general mortgage, Seller shall not grant or convey any easement, lease, license, permit or any other legal or beneficial interest in or to the Property or engage in any contract with any party other than Buyer regarding the purchase or sale of the Property, without the prior written consent of Buyer. Further, except as otherwise provided for herein, Seller agrees to pay, as and when the same are due, all payments on any encumbrances presently affecting the Property and any and all taxes, assessments and levies in respect of the Property through the Closing Date.

4.2 Buyer's Right to Enter Property Prior to the Closing Date. Buyer or its employees or agents may enter the Property at any time prior to the Closing Date upon twenty-four (24) hours notice to Seller to inspect the Property and perform surveys or tests as Buyer may elect; provided, however, that such entry shall not unreasonably interfere with the activities of Seller on the Property, and Buyer shall indemnify and hold Seller harmless from, all liabilities and all consequences of any interruption of Seller's operation of Seller's generation facilities located adjacent to the Property associated with Buyer's activities on the Property.

ARTICLE V EASEMENTS

5.1 Seller's Use of the Property After the Closing Date. Seller reserves the right to continue to use those portions of the Property identified in Attachment A for the purpose of owning, operating and maintaining electrical distribution and transmission lines and related facilities, including communications and other facilities, whether above or underground, and also for access to Seller's existing substation located adjacent to the Property. On or before the Closing Date, Buyer shall grant to Seller one or more easements, in a form acceptable to Seller, which will allow for such continued use and access or future related uses and access by Seller.

5.2 Existing Easements. Buyer purchases the Property subject to all existing easements identified as Permitted Exceptions under Section 2 above.

5.3 New Easements. On or before the Closing Date, Seller shall grant to Buyer one or more easements for access to Seller's existing, or future, electrical and/or natural gas interconnection points (to be) located near the Property, which will allow for such continued use and access or future related uses and access by Buyer.

ARTICLE VI CLOSING

6.1 Time and Place of Closing. The Purchase and sale transaction contemplated by this Agreement shall be consummated through a closing conference (the "Closing") which shall be held at the Title Company on or before _____, (the "Closing Date"), or at such earlier time and place as the parties may mutually agree in writing.

6.2 Actions at Closing. At the Closing, the following events shall occur and each being declared to have occurred simultaneously with the other:

(a) All documents to be recorded and funds to be delivered hereunder shall be delivered to the Title Company in escrow, to hold, deliver, record and disburse in accordance with supplemental escrow instructions, the form and content of which shall be agreed to by the parties prior to Closing.

(b) At the Closing or sooner as otherwise stated in the escrow instructions, the following shall occur:

(i) Seller shall deliver or cause to be delivered in accordance with the escrow instructions:

(1) Special Warranty Deed conveying the Property to Buyer, duly executed and acknowledged by Seller and in proper form generally for recording in _____; and

(2) All other documents required to be executed by Seller pursuant to the terms of this Agreement.

(ii) Buyer shall deliver or cause to be delivered in accordance with the escrow instructions:

(1) The Purchase Price to be; and

(2) All other documents required to be executed by Buyer pursuant to the terms so this Agreement.

(c) Buyer and Seller shall each deliver to the other, two executed copies of the Buyer's and Seller's Statement of Settlement setting forth all prorations, credits provided in this Agreement, disbursements of the purchase price, and expenses of the Closing.

Seller shall bear any and all Closing or escrow charges of the Title Company.

6.3 Seller's Remedies. In the event this transaction fails to close due to Buyer's fault or inability to close, Seller may elect either to seek specific performance of this Agreement by suit in equity, to seek damages from Buyer.

6.4 Buyer's Remedies. In the event this transaction fails to close due to Seller's fault, this Agreement shall be declared void and of no effect.

ARTICLE VII PRORATIONS

7.1 Prorations Between Seller and Buyer. The following prorations shall be made between Seller and Buyer as of the Closing Date:

(a) Real property taxes and assessments on the Property for the year of Closing shall be prorated between Seller and Buyer based on the number of days each owned the Property. In the event the Property constitutes some portion of a larger tract of land, such proration shall be based upon the average of the Property as a percentage of the acreage of the entire tract. If, as of the Closing Date, the actual tax bills for the year or years in question are not available and the amount of taxes to be prorated cannot be ascertained, then the most recent known rates, millages and assessed valuations (which amounts shall relate to the same tax year) shall be used, and such proration shall be repeated when the final tax bill is available and either Buyer and Seller, as the case may be, shall promptly pay to the other the net amount owing as a result of such redetermination.

 (b) Other Closing costs shall be apportioned between the parties in accordance with the normal and customary practice of commercial real estate transactions in Utah County, Utah.

ARTICLE VIII RELEASE, ASSUMPTION AND INDEMNITY

8.1 Seller shall indemnify, hold harmless and defend Buyer against all claims, suits, losses and damages made against or incurred by Buyer relating to the condition of the Property prior to the Closing Date or any activity in connection with the Property which occurred prior to the Closing Date. Buyer shall indemnify, hold harmless and defend Seller against all claims, suits, losses and damages incurred by Seller relating to the condition of the Property after the Closing Date or any activity in connection with the Property which occurs after the Closing Date.

ARTICLE IX MISCELLANEOUS

9.1 Entire Agreement. This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements, which written or oral, between the parties respecting such matters. Any amendments or modifications hereto in order to be effective shall be in writing and executed by the parties hereto. ~~Notwithstanding the foregoing, Buyer's use and occupancy of this Agreement shall be subject at all times to the terms and conditions of that certain Construction Coordination Agreement dated [DATE] between Seller and Buyer.~~

9.2 Amendments. This Agreement may be amended or modified only by mutual written agreement.

9.3 Survival. All warranties, representations, covenants and agreements contained in this Agreement shall survive the execution and delivery of this Agreement and all documents delivered in connection with this Agreement and shall survive the Closing of the transactions contemplated by this Agreement and all performances in accordance with this Agreement.

9.4 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, administrators, and assigns; provided, however, that notwithstanding the foregoing, neither party's interest under this Agreement may be assigned, encumbered, or otherwise transferred, whether voluntarily, involuntarily, by operation of law or otherwise.

9.5 Notices. Any notice, demand or document which any party is required or any party desires to give or deliver to or make upon any other party shall be in writing, and may be personally delivered or given or made by recognized overnight courier service or by United States registered or certified mail, return receipt requested, with postage prepaid, addressed as follows:

To Seller:

To Buyer:

| Any party may designate a different address for itself by notice similarly given. - Unless provided herein, any such notice, demand or document so given shall be effective upon delivery of the same to the proper address of the party or parties to whom the same is to be given.

9.6 Time of Essence. Time is of the essence in the performance of each and every term, condition, and covenant of this Agreement.

9.7 Counterparts. This Agreement may be executed in any number of counterparts which together shall constitute the contract of the parties.

9.8 Paragraph Headings. The paragraph headings herein contained are for purposes of identification only and shall not be considered in construing this Agreement.

9.9 Attorneys' Fees. The prevailing party in any legal proceeding brought to enforce rights hereunder shall recover from the other party its reasonable attorneys' fees and costs. As used herein in the term "prevailing party" means the party entitled to recover the costs in any suit, whether or not brought to judgment, and whether or not incurred before or after the filing of suit.

9.10 Waiver. Except as herein expressly provided, no waiver by a party of any breach of this Agreement or any warranty or representation under this Agreement by another party shall be deemed to be a waiver of any other breach of any kind or nature (whether

preceding or succeeding and whether or not of the same or similar nature) and no acceptance of payment or performance by a party after any such breach by another party shall be deemed to be a waiver of any further breach of this Agreement or of any representation or warranty by such other party whether or not the first party knows of such a breach at the time it accepts such payment or performance. No failure on the part of a party to exercise any right it may have by the terms of this Agreement or by law upon the default of another party, and no delay in the exercise of any such right by the first party at any time when such other party may be in default, shall operate as a waiver of any default, or as a modification in any respect of the provision of this Agreement.

9.11 Exhibits. Any and all exhibits attached or to be attached hereto are hereby incorporated and made a party of this Agreement by reference.

9.12 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Utah.

9.13 No Recording. This Agreement shall not be recorded in the real property records.

9.14 Further Instruments. Each party hereto shall from time to time execute and deliver such further documents or instruments as the other party, its counsel or the Title ~~company~~Company may reasonably request to effectuate the intent of this Agreement, including without limitation documents necessary for compliance with the laws, ordinances, rules and regulations of any applicable governmental authorities.

9.15 Confidentiality. The purchase price and terms of this Agreement are intended by both parties to be confidential. Therefore, except as directed by a court, administrative authority or required by subpoena, neither party shall disclose the purchase price or terms of this Agreement or any other non-public information related thereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date and year first above written.

PACIFICORP

By: _____

Its: _____

Date Signed:

[BUYER]

|
|
|

____By: _____

____Its: _____

____Date Signed:

EXHIBIT A

**PROPERTY DESCRIPTION TO BE COMPLETED
PRIOR TO CLOSING**

EXHIBIT B
SURVEY TO BE ATTACHED

EXHIBIT C

WATER RIGHTS

Buyer shall receive water rights to two hundred (200) acre-feet of ground water as part of this transaction.

**RFP 2012
ATTACHMENT 18
CURRANT CREEK
ENGINEERING, CONSTRUCTION
AND PROCUREMENT CONTRACT
(EPC)**

RFP 2012
ATTACHMENT 19
DUE DILIGENCE ITEMS FOR THE
ACQUISITION OF AN EXISTING
FACILITY

The follow is not to be considered a complete listing of due diligence items. The final listing shall be determined, in PacifiCorp's sole discretion, based on the Facility offered by the Bidder.

Due Diligence Items:

Technical Assessment

1.0 Plant General

1.1 Request plant organization charts.

1.2 Request the Annual Plant Budget (total) Actual for 5 years. Projected for 5 years.

1.3 Request a summary of the budget. Last 5 years and next 5 years.

1.3.1 Labor expenses.

1.3.2 Maintenance expense.

1.3.3 Equipment expense.

1.3.4 Insurance expense.

1.3.5 Operations expense.

1.3.6 Administrative expense.

1.3.7 Capital escrow.

1.3.8 Major Maintenance Escrow.

1.3.9 Inventory Purchase. Total Value of Inventory. Inventory Value for each division.

1.3.10 Fuel by component.

1.4 Request a summary of the maintenance expenses.

1.4.1 Major Maintenance (annual).

1.4.2 Consumables.

1.4.3 Inventory draws.

1.4.4 Maintenance contracts.

1.4.5 Building and grounds.

1.4.6 Other.

1.5 Request a summary of equipment expenses.

1.5.1 Shop equipment maintenance.

1.5.2 Equipment rental.

1.5.3 Power tools (Leased).

1.5.4 Rolling stock fuel.

1.5.5 Rolling stock maintenance.

1.5.6 Other.

1.6 Request a summary of insurance expenses.

1.6.1 Business Interruption.

1.6.2 Property.

1.6.3 General liability.

1.6.4 Vehicle liability.

1.7 Request a summary of operating expenses.

1.7.1 Regeneration Cost.

1.7.2 Clarifier Cost.

1.7.3 Boiler water chemicals.

1.7.4 Lubricants.

1.7.5 Consumables.

1.7.6 Electricity purchased.

1.7.7 Hazardous material disposal.

1.7.8 Discharge treatment chemicals

1.7.9 Laboratory supplies.

1.7.10 Emission testing.

1.7.11 Hydrogen and CO₂ for generator.

1.7.12 Ammonia, lime, limestone, other.

1.8 Request a summary of administrative expenses.

1.8.1 Telephone expenses.

1.8.2 Postage.

1.8.3 Computer hardware.

1.8.4 Computer software.

1.8.5 Office supplies.

1.8.6 Permits and licenses.

1.8.7 Professional Services.

1.9 Request a summary of capital escrow accounts.

1.9.1 Equipment purchases.

1.9.2 Balance of Plant capital.

1.9.3 Dispersion schedule of escrow accounts.

2.0 Plant Personnel.

2.1 Request a personnel roster.

2.1.1 Complete list of Classifications.

2.1.2 Number in each classification. Remaining years before retirement.

2.1.3 Annual base salary.

2.1.4 Hourly wage rate.

2.1.5 Straight time additions (%).

2.1.6 Straight time Hourly cost (Hourly rates + additions).

2.1.7 Overtime hourly costs.

2.1.8 Total overtime (% of annual base salary).

2.1.9 Employee age demographics chart.

2.2 Request a summary of payroll additions.

2.2.1 Payroll taxes.

2.2.2 Workman's compensation.

2.2.3 Retirement Account.

2.2.4 Insurance.

2.2.5 Employee Savings.

2.2.6 Vacation and Sick Leave.

2.2.7 Indirect Additions.

2.2.8 Other (Pensions, benefits and welfare Plans).

2.3 Labor.

2.3.1 Labor contracts.

2.3.2 Organizing initiatives.

3.0 Major maintenance.

3.1 Request a summary of maintenance cost and schedules.

3.1.1 Annual, major and frequency of major outages for:

3.1.1.1 Turbine valves.

3.1.1.2 Coal feeders and scales.

3.1.1.3 Pulverizers.

3.1.1.4 Boiler pressure parts.

3.1.1.5 Boiler auxiliaries.

3.1.1.6 Boiler draft system.

3.1.1.7 Casing and ductwork.

3.1.1.8 Boiler insulation and lagging.

3.1.1.9 Turbine.

3.1.1.10 Condenser.

3.1.1.11 Generator.

3.1.1.12 Pumps.

3.1.1.13 Switchgear.

3.1.1.14 Demineralizer.

3.1.1.15 Precipitators.

3.1.1.16 Flue Gas Desulphurization system.

3.1.1.17 SCR.

Provide the latest overhaul inspection reports and summaries showing the condition of major equipment. These reports are required to show the as found equipment condition, work performed during the overhaul, equipment settings-, and test results upon return service. Overhaul reports shall be provided for the following equipment:

- a. steam generation and fuel firing equipment
- b. steam turbine or combustion turbine
- c. generator and excitation equipment
- d. all emissions control equipment
- e. all plant large transformers
- f. all plant large electric motors

Provide list of all OEM service bulletins for the following equipment. Also when correction action was taken and who performed the corrective action:

- a. steam turbine or combustion turbine
- b. generator and excitation equipment
- c. large transformers

Plant Performance:

Provide the following for the design of the plant:

- Summary of plant design and operating conditions.
- P&ID's for the plant
- Heat balance calculations or diagrams with heat balance data
- Fuel specifications
- Design parameters for emissions control equipment

Provide the following actual performance data for the last 5 years:

- Actual fuel consumed quality reports and analysis data
- Plant heat rate data
- Availability data per NERC GADS formulas and codes for calculations and identification of the types of equipment **component failure mechanisms.**
 - Availability data for the unit
 - Availability data for each piece of major equipment
- Generation summaries, net and gross
- Emission rates and tests reports
- Major equipment performance testing reports
- Plant chemical treatment technologies and systems reports showing chemical treatment activities
- Plant cathodic protection plan and testing reports

3.2 Major maintenance escrow.

3.2.1 Request a major maintenance analysis (summary of planned majors and dispersions for the last 5 years and projected for the next 5 years).

4.0 Capital expense items.

4.1 Capital expense escrow.

4.1.1 Request a capital escrow analysis (summary of planned capital expenditures and dispersion for the last 5 years and projected for the next 5 years).

5.0 Operations.

5.1 How do you track efficiency?

5.2 How do you calculate availability?

5.3 In your opinion what are the major strengths of you department?

5.4 What are the major weaknesses?

5.5 What equipment presents the most problems?

5.6 Are you satisfied with the maintenance efforts?

5.7 Are the existing controls satisfactory?

5.8 How would you rate the knowledge level of your personnel?

5.8.1 Would you be receptive to additional training for your people?

5.8.2 Do you think the training would be cost effective?

5.8.3 What are the existing training methods?

5.8.4 Give a rough estimate of the average experience level of your department (years of experience).

5.8.5 How are operations people utilized during outages?

5.8.6 How would you rate relations with the various unions?

5.9 What is your occurrence of “Operator error”?

5.10 If you owned this plant what would you do to improve it?

5.11 Do you help prioritize and plan work required for efficient plant operation?

6.0 Maintenance

6.1 How heavy is the workload for your department?

- 6.1.1 Do you have all the resources needed to complete the defined tasks?
- 6.1.2 How is your maintenance work prioritized?
- 6.1.3 How much maintenance backlog work do you have?
- 6.2 How successful have you been in maintaining the plant within budget forecasts?
- 6.3 How much input do you have in budgeting for maintenance?
- 6.4 How often do you schedule major maintenance outages?
 - 6.4.1 Are you allowed sufficient time to complete planned tasks during outages?
 - 6.4.2 Do you have adequate inventories of spare parts?
 - 6.4.3 Do you have enough tools?
- 6.5 What are the major strengths of your department?
- 6.6 What are the major weaknesses of your department?
- 6.7 How would you rate the skills level of your technicians?
 - 6.7.1 Would you be receptive to additional *training* for your people? What areas?
- 6.8 What are the boundaries of your responsibilities?
- 6.9 Do you feel that you have sufficient latitude to perform your job efficiently?
- 6.10 Do you have an extended plan for Capital improvements?
 - 6.10.1 How long is the time span for forecasted equipment replacement?
 - 6.10.2 Do you have contingency plans for equipment failure?
 - 6.10.3 Are there any problems with excessive lead-time for equipment purchase?
- 6.11 Do you perform non-destructive testing on you major boiler parts and steam lines?
- 6.12 Have you conducted a comprehensive review of your HT/HP piping systems?
- 6.13 When were the last overhauls of you turbines?
 - 6.13.1 What were the major problems found?
 - 6.13.2 How were these problems corrected?

6.13.3 Do you perform bore inspections?

6.13.4 How often are overspeed trip tests conducted?

6.13.5 Are there any generator problems that you are aware of?

6.14 What is the condition of your electrical switchgear?

6.14.1 Do you perform scheduled switchgear inspections?

6.14.2 Are parts available for the switchgear?

6.15 What is the condition of your water treatment plant?

6.15.1 Are any major maintenance activities planned for the water treatment plant in the foreseeable future?

6.16 Are there any major problems with any existing environmental protection equipment?

6.16.1 Does existing environmental equipment require an inordinate amount of your people's time?

6.17 Do you have adequate on-site transportation to prevent loss of efficiency by your people?

7.0 Controls.

7.1 What type of control systems do you have?

7.2 How old are these systems?

7.3 Do you consider them obsolete?

7.4 Are parts readily available?

7.5 Who sets your work priorities?

7.6 How heavy is your workload and how much "backlog" do you have?

7.7 How would you rate the knowledge of your workforce?

7.7.1 Would you be receptive to additional training for your technicians?

7.7.2 Do you think additional training could be cost justified?

7.8 Do you have sufficient test equipment and tools?

7.9 Are there any plans to make major controls system change outs in the foreseeable future?

7.10 Is your plant equipped for fire protection?

7.10.1 Who is responsible for testing of fire fighting equipment?

7.10.2 Is there a need for more fire equipment or do you think the existing equipment is sufficient?

7.11 How do you handle injuries?

7.12 Do you have dangerous chemicals on the plant site? If so, please identify.

7.12.1 Do you have contingency plans for emergencies?

8.0 Safety

8.1 Do you have an on-going safety program?

8.2 Please describe your approach to safety?

8.3 In your opinion, does the program work?

8.4 How could the program be improved?

8.5 Provide a description of the health and safety compliance program with respect to the Facility. Include a description of any safety management systems that have been put in place and any safety policies that have been implemented at the Facility.

8.6 All OSHA citations or orders issued to the Facility, or settlements entered into by the Facility, in the last ten (10) years in each case with respect to the Facility.

8.7 All worker-related or third-party lawsuits or claims, including worker's compensation claims, filed within the last ten (10) years or now threatened, pending, or reasonably anticipated by the Facility regarding human exposure to toxic or carcinogenic substances or materials at the Facility.

8.8 All documents describing the Facility's current and past annual employee medical screening and monitoring programs at the Facility, including but not limited to, documents pertaining to current and former employees that have been diagnosed with: (a) asbestosis or any other lung related illness; (b) elevated blood lead levels; or (c) elevated blood PCB levels.

8.9 Provide information on safety performance experienced at the Facility within the last five years. Include OSHA recordable, Lost Time Accident and Restricted Work Day statistics in this information.

9.0 Environmental

9.1 What is the prevailing attitude toward environmental matters?

- 9.2 Do you think environmental concerns should receive more attention?
- 9.3 Provide any copies of environmental audits that have been performed.
- 9.4 Is there any known or suspected environmental contamination of the plant site?
- 9.5 What is your environmental exceedance record for the last 5 years?
- 9.6 Copies of all Phase I, Phase II and other environmental site assessments, risk assessments, site investigations, site remediation plans, closure reports, compliance audits, etc.
- 9.7 Copies of any environmental management systems (“EMS”) policies and procedures (including any documents pertaining to the implementation of the EMS at the facility), EHS compliance policy statement and implementation documents and voluntary disclosure policy statement and implementation documents.
- 9.8 Copies of all current Environmental Health and Safety permits, licenses, consents, registrations or approvals (collectively, “EHS Permits”) that are required by any governmental authorities and necessary ownership/operation of the Facility, including, but not limited to those associated with any types of air emissions, wastewater discharges, storm water runoff, water use, solid waste management, recycling, and/or hazardous materials generation, storage, treatment and/or disposal. In the event that there are applications (including notices/applications for permit renewals) pending for any EHS Permits, provide copies of such applications and any relevant correspondence.
- 9.9 Documents (including EHS Permits) pertaining to the use, development, conservation or disturbance of land, wetlands, natural resources, biota and/or ecologically sensitive receptors.
- 9.10 A list and description of all landfills, disposal areas, surface impoundments, ponds, diversions, dams and other similar structures located at or related in any way to the Facility, together with copies of all associated EHS Permits.
- 9.11 Documents pertaining to compliance with applicable federal, state and local EHS laws and its EHS permits (including but not limited to emission statements, compliance monitoring data, compliance inspection reports, plans and correspondence with governmental authorities) and/or reports and submissions made pursuant to applicable federal, state and local EHS laws.
- 9.12 Documents identifying or describing anticipated capital expenditures required to control pollution, investigate/remediate any environmental conditions, manage waste or achieve/ensure compliance with applicable EHS permit conditions or EHS laws at the Facility.
- 9.13 Documentation of (1) hazardous waste generator status for the Facility; (2) the types(s) and amounts of waste generated; (3) a list and description of all solid waste and hazardous waste transporters used; (4) a list of all off-site treatment, storage or disposal facilities (“TSDFs”) that have received or are receiving solid and/or hazardous waste from the Facility; and (5) copies of all manifests for off-site hazardous waste disposal.

9.14 (1) A list and description of current and former surface impoundments, underground storage tanks (“USTs”) and above-ground storage tanks (“ASTs”) located on any properties used, owned or leased in connection with the Facility as well as any information concerning the size, content, age and compliance of such impoundments/tanks; (2) any reports prepared in connection with any leaks or releases from such impoundments or tanks; and (3) closure reports prepared in connection with any closure, removal or abandonment of such impoundments, USTs or ASTs.

9.15 Documents relating to: (1) the maintenance, handling, storage or disposal of mercury or mercury-containing equipment; or (2) the testing, disposal and/or abandonment of any pipes, transformers, structures or other PCB-containing equipment or materials, particularly as those relate to compliance with the PCB Mega Rule in connection with the Facility.

9.16 Incident reports, notifications and/or other documents relating to any spill or release of hazardous materials, wastes or chemicals at the Facility or as a result of operations at the Facility.

9.17 Documents pertaining to: (1) the indoor air quality of the Facility; or (2) the presence, management, removal or abatement of asbestos-containing materials or lead-based paint.

10.0 What natural perils could affect this site?

10.1 Give a cost analysis of the last 2 such occurrences.

11.0 What licenses, permits or certificates are required at this site? (Air? Noise? Water usage? Storm water discharge? Waste water discharge? Air discharge? Business? Power production? Others?)

12.0 Give nameplate data for all units.

12.1 Give start up times, ramp rates for synchronization and total event costs to full load for hot, warm and cold start conditions.

12.2 Give heat rate, reduced load heat rates, availability, forced outage rates, capacity factors, environmental performances, catastrophic failures, obsolescence, etc for each unit.

13.0 Request a copy of all collective bargaining units’ agreements.

14.0 What other contracts, sub-contracts or leases exist for maintenance services, labor, professional services, materials, parts or other?

15.0 Supply details of all fuel purchase, transportation and storage contracts.

16.0 Supply details of any waste disposal procedures or contracts.

16.1 What opportunities do you see for “revenues” from your various waste streams?

17.0 Title.

17.1 Real property.

17.2 UCC Filings.

18.0 Claims history (both by and against Seller in connection with the Facility).

18.1 Litigation (including arbitration and other forms of alternative dispute resolution).

18.2 Labor issues.

18.3 Warranty claims.

18.4 Copies of all auditor's letters prepared by law firms with respect to the Facility or with respect to Seller's liability in connection with the Facility.

19.0 Contracts.

19.1 Copies of all contracts.

20.0 Permits/Licenses.

20.1 Copies of all permits, licenses, easements, etc.

21.0 Organizational Documents.

22.0 Insurance.

22.1 Copies of all insurance policies that have been in effect at any time with respect to the Facility or under which coverage may have at any time been provided with respect to the Facility.

**Technical Evaluation of Potential Acquisition
Questions, Documents & Data to be Reviewed**

- O&M contract.
- Power Purchase contract.
- Interconnect agreements and terms.
- Fuel purchase, transportation and storage contracts.
- Ash storage, transportation and disposal contracts.
- Production by product sales contracts.
- Steam sales contracts.
- Water supply/sewer agreements.
- All other contracts, subcontracts and leases for maintenance services, labor, professional services, materials, parts or other at each plant.
- Collective bargaining agreements, if any.
- Pension, benefit and welfare plans.
- O&M and capital budgets vs. actuals for last five years. Budgets or budget forecasts for next five years. Status of maintenance escrow accounts.
- Operating & Maintenance plan, and capital improvement plan, for last five years and next five years.
- Staffing plan including organizational chart and salary levels.
- Environmental permits including air, noise, water usage, stormwater discharge and wastewater discharge. Provide documentation to show compliance with permits and/or any violations or citations. Provide reports of any Environmental Audits or Assessments of the projects/sites. Is there any known or suspected environmental contamination of the site of facilities? We may wish to conduct a site assessment.
- A listing of hazardous and non-hazardous wastes which are stored on-site or off-site, or have been disposed of.
- Any federal, state or local licenses, permits and certifications

- Major maintenance requirements at each plant: historical as well as recommended and/or planned major maintenance activities. Maintenance schedules from last five years and projections for next five years.
- Maintenance records - preventative maintenance, corrective maintenance, major maintenance and scheduled maintenance.
- Spare parts inventory - item description, quantity and value.
- Written procedures, programs, policies, records and logs relative to operations, maintenance, safety, environmental, training and others.
- Capacity Factor, EAF and EFOR for each of the last five years. Define terms and method of calculation. History of all scheduled maintenance outages and all significant forced outages.
- Heat rate at each plant: design heat balance; curves of heat rate vs. load; actual average monthly heat rate based on fuel purchases and net energy produced; and results of any heat rate tests.
- Results of tests of Net Maximum Capacity tests.
- Startup times and ramp rates from synchronization to full load for hot, warm, and cold start conditions.
- Data to show compliance with QF requirements (if applicable) for last five years.
- Interviews with Plant Manager and supervisors at each plant.
- Are there any remaining warranties? Are there any warranty claims or issues outstanding?
- Is there potential for efficiency improvement? expansion? repowering?
- Assess the technology employed. Is it proven?
- What are the risks associated with this technology? i.e. startup times, heat rate, heat rate at reduced load, availability, force outage rate, capacity factor, environmental performance, catastrophic failure, obsolescence, etc.
- What Natural perils could affect this site?

RFP 2012
Attachment 20
CODE OF CONDUCT

DRAFT
Code of Conduct Governing PacifiCorp's Intra-Company Relationships for RFP 2012 Process

As part of the RFP 2012 process, PacifiCorp will commit to abide by a self-imposed code of conduct which will govern PacifiCorp's intra-company business relationships in order to ensure a fair and unbiased RFP evaluation and selection process. As part of the RFP process, PacifiCorp has identified various teams and work groups who will be responsible for the evaluation of the proposals and the development of the benchmark resources. The Evaluation Team and the Benchmark Team will have separate responsibilities and be required to adhere to the self-imposed code of conduct. The Evaluation Team and the Benchmark Team must be accompanied by the Independent Evaluator when and if any technical discussions are held with or about specific proposals.

Bidders will provide a Request for Qualification that will not be blinded; however, in order to ensure the proper treatment of "blinded" and "unblinded" Bidder information once the proposals are submitted and throughout this process, each Bidder is expected to adequately blind its proposal such that the bid number is the only identifying aspect of the bid. Following review and a determination by the Independent Evaluator that the bids are adequately blinded, the bids will be provided to the Evaluation Team for analysis. PacifiCorp will take the steps outlined below to maintain the appropriate "blinded" or "unblinded" nature of the Bidder and benchmark information until the final shortlistshort list is selected. Once the final shortlistshort list is selected, the proposals will be unblinded and the Evaluation Team will negotiate with the counterparties. The Benchmark Team will not be involved in negotiations with the counterparties; however, the Benchmark Team may participate in meetings with the counterparties with the attendance of the IE. The Evaluation Team and the Benchmark Team will comply with this code of conduct during the RFP evaluation process beginning on the date the Public Service Commission of Utah approves the RFP for issuance.

EVALUATION TEAM

The Evaluation Team will be made up of eight separate work groups. Prior to the selection of the final shortlistshort list, certain work groups on the Evaluation Team will be considered "Blinded Individuals" and shall not be given access to unblinded Bidder information. Other work groups will be considered "Unblinded Individuals" and shall be given access to unblinded Bidder information; however, these Unblinded Individuals will not share such information with Blinded Individuals prior to the selection of the final shortlistshort list. After the final shortlistshort list is selected, the Evaluation Team and the Benchmark Team may participate in discussions with the Independent Evaluator present.

Consistent with PacifiCorp's identification of shared employees under FERC's Standards of Conduct, the IRP work group will be treated as a shared resource to perform work for the Evaluation Team and the Benchmark Team. The IRP work group will not share any

information it obtains from either Team with the other Team until after the final shortlistshort list and the IRP work group will not share any non-public transmission system information with either Team at any point in this process.

In addition, the Benchmark Team will provide necessary technical expertise to the Evaluation Team; however, any communications by the Evaluation Team requesting technical expertise from the Benchmark Team shall be made in writing and made available to the Independent Evaluator, or made verbally in the presence of the Independent Evaluator. The Independent Evaluator shall be involved in all communications between these members and must retain copies of all written communications.

As set forth below in the Information Status, no members of the Evaluation Team will have contact or communication with any Bidder other than through the Independent Evaluator. until a final shortlistshort list is selected. If any Bidder or member of the Benchmark Team attempts to contact a member of the Evaluation Team, such Bidder or member of the Benchmark Team shall be directed to the Independent Evaluator for all information and such communication shall promptly be reported to the Independent Evaluator by the Evaluation Team.

The roles and responsibilities of the members of the Evaluation Team work groups are set forth below, along with the individual member's name and title and information status restrictions for each work group.

Blinded Individuals on Evaluation Team: Origination, Structuring and Pricing, IRP, Transmission Manager and Environmental

1. Origination

Roles: Members of the Origination work group will be responsible for overall coordination of the RFP process, including bid process management for all proposals. The Origination work group will also have responsibility to coordinate with the Independent Evaluator and all of the Evaluation Team work groups. The Origination work group will also perform the evaluation of the non-price components of the bid analysis.

Individual Members and Titles: [tbd]

Information Status: All Bidder information shared with the Origination group will remain blinded prior to the selection of the final shortlistshort list. No members of the Evaluation Team will have contact or communication with any Bidder other than through the Independent Evaluator. until a final shortlistshort list is selected.

2. Structuring and Pricing

Roles: Members of the Structuring and Pricing work group will be responsible for the economic analysis and modeling for the initial ~~shortlist~~short list including the validation on the inputs to the risk assessment of the bid.

Individual Members and Titles: [tbd]

Information Status: All Bidder information shared with the Structuring and Pricing group will remain blinded prior to the selection of the final ~~shortlist~~short list. No members of the Evaluation Team will have contact or communication with any Bidder other than through the Independent Evaluator ~~until a final shortlistshort list is selected.~~

3. Integrated Resource Planning (IRP)

Roles: Members of the IRP work group will be responsible for running the capacity expansion model and the planning at risk model to determine the portfolios. The IRP work group will ~~also be available to the Benchmark Team to receive the inreceive puts~~inputs from the Benchmark Team which will be required to model the benchmark portfolios subject to the information sharing restrictions set forth below. The IRP work group will not be responsible for making an economic determination about the bids.

Individual Members and Titles: [tbd]

Information Status: All Bidder information shared with the IRP group will remain blinded prior to the selection of the final ~~shortlist~~short list. Any information the IRP group obtains from the Benchmark Team on benchmark portfolios will not be shared with the Origination or Structuring and Pricing work groups until after the final ~~shortlist~~short list is determined.. No members of the Evaluation Team will have contact or communication with any Bidder other than through the Independent Evaluator. ~~until a final shortlistshort list is selected.~~

4. Commercial & Trading Regulated Transmission Manager (Transmission Manager)

Roles: The Transmission Manager will assist Structuring and Pricing and Origination with PacifiCorp's transmission requests and evaluations in determining the appropriate costs and/or agreements required for any bid options.

Individual Member and Title: [tbd]

Information Status: All Bidder information shared with the Transmission Manager will remain blinded prior to the selection of the final shortlistshort list. No members of the Evaluation Team will have contact or communication with any Bidder other than through the Independent Evaluator. until a final shortlistshort list is selected.

5. Environmental

Roles: The Environmental work group will be responsible for evaluation and acquisition of necessary air, water supply and discharge, emission credits, and siting and facilities permits.

Individual Members and Titles: [tbd]

Information Status: All Bidder information shared with the Environmental group will remain blinded prior to the selection of the final shortlistshort list. No members of the Evaluation Team will have contact or communication with any Bidder other than through the Independent Evaluator until a final shortlistshort list is selected..

Unblinded Individuals on Evaluation Team: Credit, Legal and Risk Management

6. Credit

Roles: The Credit work group will be responsible for credit screening, evaluation and monitoring throughout the entire RFP process.

Individual Members and Titles: [tbd]

Information Status: All Bidder information shared with the Credit group will be unblinded throughout the entire RFP process. The Credit group must not reveal to other Evaluation Team members any blinded information regarding the identity of any of the Bidders and may not discuss specific bids with the Unblinded Individuals on the Evaluation Team. No members of the Evaluation Team will have contact or communication with any Bidder other than through the Independent Evaluator until a final shortlistshort list is selected.

7. Legal

Roles: The Legal work group will be responsible for confirming compliance of bids to the RFP requirements, including the forms, attachments and appendices. The Legal work group will conduct the legal process and due diligence inquiries, and will have responsibility for legal review of any documentation entered into as part of the RFP process.

Individual Members and Titles: [tbd]

Information Status: All Bidder information shared with the Legal group will be unblinded throughout the entire RFP process. The Legal group must not reveal to other Evaluation Team members any blinded information regarding the identity of any of the Bidders and may not discuss specific bids with the Unblinded Individuals on the Evaluation Team. No members of the Evaluation Team will have contact or communication with any Bidder other than through the Independent Evaluator until a final shortlistshort list is selected.

8. Risk Management

Roles: The Risk Management work group will be responsible for validating the internal modeling of the proposals and the Company benchmark proposal.

Individual Members and Titles: [tbd]

Information Status: All Bidder information shared with the Risk Management group will be unblinded throughout the entire RFP process. The Risk Management group must not reveal to other Evaluation Team members any blinded information regarding the identity of any of the Bidders and may not discuss specific bids with the Unblinded Individuals on the Evaluation Team. No members of the Evaluation Team will have contact or communication with any Bidder other than through the Independent Evaluator until a final shortlistshort list is selected.

BENCHMARK TEAM

The Benchmark Team will consist of members from PacifiCorp Energy's Generation unit. A third-party engineering consultant may be retained by Generation as needed and if retained, will be considered a member of the Benchmark Team. No member of the Evaluation Team will be a member of the Benchmark Team; however, the Benchmark Team may utilize the IRP work group to model benchmark portfolios. The IRP work group may not share any information received from the Benchmark Team with the Evaluation Team.
until after the final shortlistshort list.

Benchmark Team

Roles: The Benchmark Team will be responsible for development of PacifiCorp's benchmark resources. The Benchmark Team will be responsible for specifying, evaluating and confirming conformity of all resource options with design specifications, as well as conducting technological and operational due diligence on resource options at the request of the Evaluation Team. The Benchmark Team will provide generation expertise and perform due diligence on all resource options.

Individual Members and Titles: Generation and/or Third Party Engineering Consultant [tbd]

~~Information Status: All information will be blinded and the Benchmark Team will not have any discussions with the Evaluation Team or any Bidders without the presence of the Independent Evaluator.~~

FERC'S STANDARDS OF CONDUCT

In addition to this self-imposed code of conduct, as a transmission provider, PacifiCorp is required to comply with FERC's Standards of Conduct which govern interactions between PacifiCorp's Transmission Function and its Marketing Affiliate. Under the Standards of Conduct, PacifiCorp's Transmission Function employees must function independently of PacifiCorp's Marketing Affiliate employees. Marketing Affiliate employees cannot have access to transmission control center or other transmission facilities or information systems that differ in any way from the access provided to non-affiliated transmission customers. The Standards of Conduct prohibit Marketing Affiliate employees from gaining access to any information about PacifiCorp's transmission system that is not posted on the OASIS or otherwise made publicly-available to all other market participants.

Under the Standards of Conduct, FERC will allow certain non-operating employees to be shared between the Transmission Function and Marketing Affiliate. Under FERC's "no-conduit rule", shared employees may receive confidential transmission system or marketing information, but they are prohibited from sharing such information with Marketing Affiliate employees through any non-public or off-OASIS communications.

Marketing Affiliate Employees

PacifiCorp has identified the following business groups as Marketing Affiliate Business Units of PacifiCorp:

PacifiCorp Energy, Commercial & Trading:

Energy Trading (includes Regulated Transmission Manager)

Marketing & Trading Contracts

Origination

Structuring and Pricing Valuation

Structuring and Pricing Model Integration

Transmission Function Employees

PacifiCorp's Transmission Function includes: employees, contractors, consultants or agents of PacifiCorp who conducts transmission system operations or reliability functions, including, but not limited to, those who are engaged in day-to-day duties and responsibilities for planning, directing, or carrying out transmission-related operations.

Shared Employees

PacifiCorp has identified Integrated Resource Planning, Environmental, Credit, Legal, and Risk Management as shared employee functions under FERC's Standards of Conduct.

Information Status

PacifiCorp's Marketing Affiliate (as defined above) will not be involved in a Bidder's transmission interconnection and integration with the control area. PacifiCorp's employees will at all times abide by FERC's Standards of Conduct. If an issue arises about compliance with FERC's Standards of Conduct, PacifiCorp's FERC Standards of Conduct Compliance Officer, Lara Skidmore, should be contacted immediately.

RFP 2012
ATTACHMENT 21
Credit Methodology

RFP 2012 Credit Security Requirements Methodology

Methodology Overview

RFP 2012 (includes eligible resources for 2012-2014) selected resources have the potential to expose PacifiCorp and its ratepayers to credit risk in the event a selected Bidder is unable to fulfill its obligations pursuant to the terms of an executed agreement. The credit risk profile is a function of several factors:

1. Type of eligible resource (see Eligible Resource Key at the end of this paper)
2. Size of eligible resource
3. Expected energy delivery start date
4. Term of underlying contract (would need to be adjusted based on resources less than 10 years in duration):
5. Creditworthiness of Bidder or Bidder's credit support provider

Acquisition of an Asset

For all resources that involve a physical asset with appropriate step-in rights (resources B3-B7), PacifiCorp views potential credit exposure as the cost it would incur in the event the resource failed to come on-line when expected. PacifiCorp believes it could take up to 12 months to either step in and complete the project or cause the project to be completed on its behalf. If the failure occurred near the expected on-line date, PacifiCorp would have to procure energy in the open market at then-prevailing market prices.

Although it may take up to one additional year to get the resource on-line in the event of a Bidder default, PacifiCorp is most concerned about replacing expected energy during the summer months (June-September), specifically the on-peak hours.

In determining where prices for replacement power might be between contract execution and the replacement period (i.e. the future summer months), PacifiCorp employs standard stochastic analysis to estimate future price levels within a certain confidence interval. Once the "stressed" forward price is determined, the expected cost to procure energy, had the project not been delayed, based on contract terms and conditions is subtracted. The difference between these prices is then multiplied by the number of megawatt hours for the replacement period to estimate the expected replacement cost, or damages, PacifiCorp might sustain due to Bidder nonperformance.

To illustrate, for the 2012 resource the forward price for on-peak power delivered at Mona over the four summer months during 2012 as indicated by the market on June 26, 2006 was \$66.26/MWh. Market-implied volatility of prices for those same delivery months was 37.5%²³ on the same observation date. Using this data, PacifiCorp estimated – with 84% confidence – that prices for that delivery point and replacement period are

²³ Execution of contracts related to the RFP is expected to occur on June 1, 2007. Therefore, volatility for the 2011 period was used as the best estimate of where volatility levels would be in 2012 as viewed on June 1, 2007.

expected to be no higher than \$155.49/MWh. Subtracting the cost of on-peak power PacifiCorp expects to pay had the resource been operational (e.g. \$66.26/MWh) yields a potential replacement cost to PacifiCorp of \$89.23/MWh, or \$174,185²⁴ for a 1 MW resource.

Using a similar assessment for the 2013 and 2014 resources, the potential credit exposure was estimated to be \$190,574 and \$220,427, respectively, for a 1 MW resource.

Asset-Backed Agreements

For other eligible resources that are backed by an asset with appropriate step-in rights (resources B1, B2, B8: asset-backed only), PacifiCorp views its potential credit exposure as the cost it would incur in the event the Bidder failed at any time during the life of the contract. However because the resource is backed by an attachable asset, PacifiCorp believes it can have the project operational, or cause to have the project operational on its behalf, within 12-18 months from the date of nonperformance. PacifiCorp acknowledges that the potential for prices to change is greater for this resource group due to the term of the underlying contract but will treat the potential replacement costs the same as asset backed resources B3-B7. PacifiCorp will hold the security for a longer period, however, due to the length of contract related to this resource group.

This discussion of the credit requirements for Power Purchase Agreements (and Tolling Services Agreements) and the Asset Purchase and Sales Agreements assumes, for these credit requirements to be comparably analyzed, that each of these types of agreement is backed by its respective physical asset. In order for this to be the case, the agreements by their terms must put that physical resource behind the agreement, which would include, but not be limited to, the following: allowing PacifiCorp meaningful and actual exercise of step-in rights and a second lien (behind only the project lenders) on the assets and the special purpose entity equity, limiting the amount of leverage on the project by way of a cap on the debt to equity ratio, and other financial covenants for the life of the Power Purchase Agreement (resources B1, B2 and B8).

Non-Asset Backed Agreements

For eligible resources that are not backed by an asset (resources B1, B2, B8, and B9a), PacifiCorp estimates potential credit exposure on not just four summers' worth of replacement volume but on the entire remaining volume at any point a Bidder might default during the term of a contract. PacifiCorp also takes into account the full-time horizon of the contract from contract execution. To estimate potential credit exposure at any possible point of default, PacifiCorp performs a Monte Carlo simulation²⁵ using a program purchased from a third-party vendor²⁶ that factors in forward prices, forward price volatility, temporal correlations, and asset correlations. The simulation steps

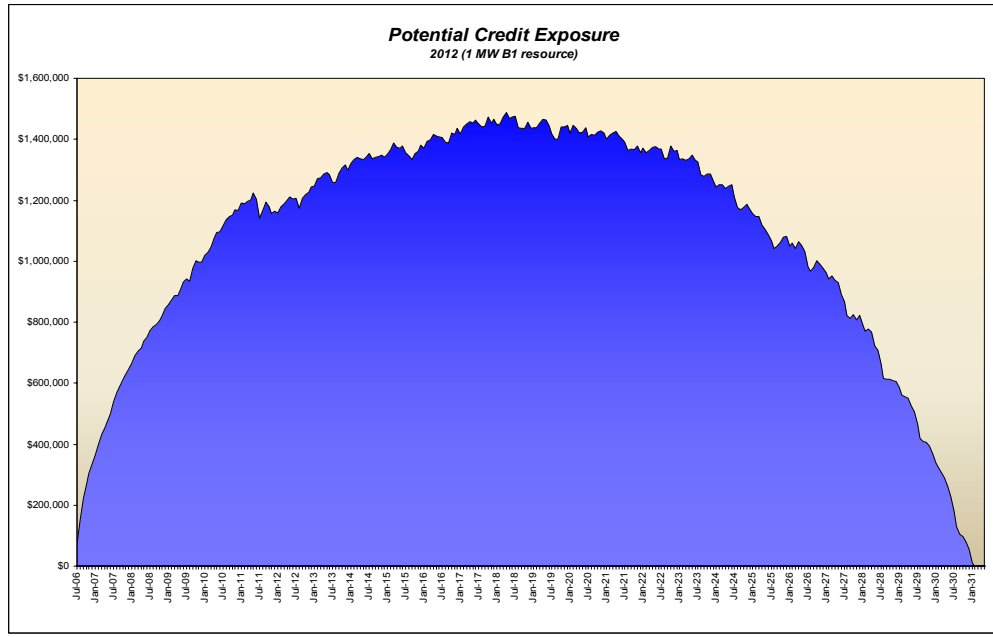
²⁴ Assumes 1,952 on-peak hours during June-September 2012.

²⁵ A Monte Carlo simulation incorporates randomness into the revaluation process while mindful of the boundaries imposed by volatility and correlation assumptions.

²⁶ Risk Capital Management Partners, LLC, acquired by Towers Perrin on June 19, 2006.

through time, removing delivered volumes from the valuation while revaluing remaining, undelivered volumes. The result is a distribution of potential credit exposures from which PacifiCorp uses those at the 84th percentile.

The following chart shows the potential credit risk profile of a 1 MW, B1 resource for 2012:



For the 2012, 2013, and 2014 resources that are not backed by an asset, the potential credit exposure was estimated to be \$1,488,754, \$1,603,434, and \$1,605,863, respectively, for a 1 MW resource.

Credit Matrix

Once the potential credit exposures were estimated for all resources, the exposures then were inserted into a series of credit matrices (each a “Credit Matrix”). Each Credit Matrix lists various sizes of resources in 50 MW increments (columns) for each possible credit rating of Bidder or Bidder’s credit support provider (rows). A Credit Matrix for each resource category is shown for each resource year.

Next, PacifiCorp applies its internal credit risk tolerance specific to this RFP to each potential credit exposure in every cell of every Credit Matrix. The results are the amounts of excess credit risk that PacifiCorp requests be secured through third-party guaranties, cash, letters of credit, or other collateral, or combinations thereof.

To interpret a Credit Matrix, a Bidder needs to select the type of resource, the size of the resource, and the year the resource is expected to be operational. Depending on the credit

rating of the Bidder or the Bidder’s credit support provider, the value in the specific Credit Matrix represents the maximum value of credit security the Bidder or Bidder’s credit support provider must provide.

Using the Credit Matrix excerpt below for illustration, credit security required for a 550 MW asset purchase and sale agreement for 2012 with a ‘BBB+’ rated Bidder would be \$0 (row 8). If the Bidder was not rated or was rated less than investment grade, the Bidder would be required to provide \$95,801,750 (row 11) in credit security to cover the potential credit exposure. Security could include a third-party guaranty from an investment grade entity but in that event additional security may be required depending on the security amounts listed in the Credit Matrix corresponding to the rating of the guarantor. For instance, if the third-party guarantor was only rated ‘BBB’, PacifiCorp would require a guaranty in the amount of \$75m (\$95,801,750 (row 11) minus \$20,081,750 (row 9)) from the guarantor and additional security (i.e. a letter of credit) in the amount of \$20,801,750 (row 9) from the Bidder.

Size of Nameplate bid in MW ==>	501-550	
Credit Rating		
AAA/Aaa and above	\$0	row 1
AA+/Aa1	\$0	row 2
AA/Aa2	\$0	row 3
AA-/Aa3	\$0	row 4
A+/A1	\$0	row 5
A/A2	\$0	row 6
A-/A3	\$0	row 7
BBB+/Baa1	\$0	row 8
BBB/Baa2	\$20,801,750	row 9
BBB-/Baa3	\$45,801,750	row 10
Below BBB-/Baa3	\$95,801,750	row 11

In the event the Bidder’s credit rating or Bidder’s credit support provider’s credit rating adversely changes during the contract term, the amount of credit security must be adjusted commensurate with the amounts listed in the Credit Matrix.

Posting of Credit Security

For all eligible resources that are backed by an asset that can be attached by PacifiCorp, credit security must be posted in accordance with the following schedule:

<u>Cumulative Value of Credit Security*</u>	<u>2012 Resource</u>	<u>2013 Resource</u>	<u>2014 Resource</u>
<u>10%</u>	<u>Effective Date (ED)</u>	<u>Effective Date (ED)</u>	<u>Effective Date (ED)</u>
<u>20%</u>	<u>ED+6 months</u>	<u>ED+18 months</u>	<u>ED+30 months</u>
<u>30%</u>	<u>ED+12 months</u>	<u>ED+24 months</u>	<u>ED+36 months</u>
<u>40%</u>	<u>ED+18 months</u>	<u>ED+30 months</u>	<u>ED+42 months</u>

<u>100%</u>	<u>ED+24 months</u>	<u>ED+36 months</u>	<u>ED+48 months</u>
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* When the Bidder receives project development financing, 100% of the required credit security is then immediately due, regardless of the deadlines contained in the schedule.

The Effective Date is the date the contract is approved by the Utah Commission or the date the contract is executed by the parties, which ever is later.

A Bidder may select to either post the initial security, which must be in the form of cash or letter of credit only, or alternatively, a Bidder may post the full amount of credit security using *any* form of security acceptable to PacifiCorp (e.g. a third-party guaranty.)

For all other resources, full credit security is due within ten (10) business days after the Effective Date.

<u>Eligible Resource Key:</u>	
<u>B1</u>	<u>Power Purchase Agreements</u>
<u>B2</u>	<u>Tolling Service Agreements</u>
<u>B3</u>	<u>Asset Purchase and Sale Agreements on PPW sites</u>
<u>B4</u>	<u>Asset Purchase and Sale Agreements</u>
<u>B5</u>	<u>EPC Contract for Currant Creek</u>
<u>B6</u>	<u>Purchase of an Existing Facility</u>
<u>B7</u>	<u>Purchase of a portion of a facility jointly owned by or operated by PPW</u>
<u>B8</u>	<u>Restructuring of existing Power Purchase Agreement or Exchange Agreement</u>
<u>B9a</u>	<u>Load Curtailment</u>

RFP 2012
ATTACHMENT 22
Credit Commitment Letter

ATTACHMENT 22

GUARANTY COMMITMENT LETTER

(Bidder parent or credit support provider letterhead)

PacifiCorp

(insert our address)

Dear Sirs:

The undersigned bears the following relationship to the ~~bidder~~Bidder _____ (NOTE: Please insert ~~bidder~~Bidder name) ("Counterparty") in your RFP 2012 process: (NOTE: insert nature of relationship, e.g., Parent company, tax investor, etc.).

This will indicate our promise to you that, should you enter into a transaction with Counterparty arising out of any bid submitted by Counterparty in the RFP 2012, that we will at that time issue an unconditional guaranty in form and substance reasonably satisfactory to you, and that we will guarantee all obligations of payment and performance of Counterparty to you as our independent obligation, (up to a maximum amount of \$ _____, plus enforcement expenses).

We understand that you will not enter into a transaction with Counterparty without said guaranty. We understand that you are under no obligation to enter into any transaction with Counterparty, under the RFP 2012 or otherwise.

Yours truly,

(name of committing guarantor)

(name of authorized officer)

RFP 2012
FORM 1
PRICING INPUT SHEET

**RFP 2012
FORM 2
PERMITTING AND
CONSTRUCTION MILESTONES**

RFP 2012

FORM 2

2

PERMITTING AND CONSTRUCTION MILESTONES

Milestone	<u>Date</u>	<u>Bidder to insert Break up Fee</u>
Notice to Proceed		
Secure Property		
Secure Water Rights		
Secure ERCs		
Secure Permits		
Natural Gas Interconnection Agreement		
Complete LGIA with PacifiCorp		
Break Ground		
P/O for CTs, Xfrmr's, Cooling Tower/Condenser/ACC HRSGs and ST		
Begin Pouring of Foundations		
Delivery of HRSG1		
Delivery of HRSG2		
Set ST		
Set CT1		
Set CT2		
Complete Natural Gas Interconnect		
Set Main Transformers		
Backfeed (at Transmission Level)		
First Fire of CT1		
First Fire of CT2		
Synchronization to Grid		
Complete installation of Cooling Towers/ACC		
Completion of Steam Blows		
Roll ST		
Begin Performance Testing		
Substantial Completion		
Final Acceptance		

RFP 2012
PERMITTING AND CONSTRUCTION MILESTONES

<u>Milestone</u>	<u>Date</u>	<u>Bidder to insert Break up Fee</u>
<u>Notice to Proceed</u>		
<u>Secure Property</u>		
<u>Secure Water Rights</u>		
<u>Secure ERCs</u>		
<u>Secure Permits</u>		
<u>Natural Gas Interconnection Agreement</u>		
<u>Complete LGIA with PacifiCorp</u>		
<u>Break Ground</u>		
<u>P/O for CTs, Xfmr's, Cooling Tower/Condenser/ACC HRSGs and ST</u>		
<u>Begin Pouring of Foundations</u>		
<u>Delivery of HRSG1</u>		
<u>Delivery of HRSG2</u>		
<u>Set ST</u>		
<u>Set CT1</u>		
<u>Set CT2</u>		
<u>Complete Natural Gas Interconnect</u>		
<u>Set Main Transformers</u>		
<u>Backfeed (at Transmission Level)</u>		
<u>First Fire of CT1</u>		
<u>First Fire of CT2</u>		
<u>Synchronization to Grid</u>		
<u>Complete installation of Cooling Towers/ACC</u>		
<u>Completion of Steam Blows</u>		
<u>Roll ST</u>		
<u>Begin Performance Testing</u>		
<u>Substantial Completion</u>		
<u>Final Acceptance</u>		

**RFP 2012
FORM ---
PERMITTING AND CONSTRUCTION MILESTONES
INTEGRATED GASIFICATION COMBINED CYCLE**

General	<u>Bidder to insert</u> Break up Fee
Feasibility Study Complete	
FEED Study complete	
Geotech Report complete	
Major Permit Applications Filed	
Secure Property	
Secure Water Rights	
Major Permits secured	
Natural Gas Interconnection Agreement	
Complete Large Generator Interconnection Agreement	
Full Notice to Proceed	
Site Access Available	
Power Grid (Backfeed) Available	
Natural Gas Available	
Major Equipment Procurement	
Combustion Turbine generators	
Steam Turbine generator	
Main Condenser	
Generator Step-Up & Main Auxiliary Transformers	
Heat Recovery Steam Generators/SCR System/Duct/Stacks	
Gasifiers	
Coal Preparation System	
Air Separation System	
Acid Gas Removal System	
Tail Gas Clean up System	
Digital Control System	
Engineering (Overall)	
Final Process /Equip. Data Sheets Issued	
Piping & Instrument Diagrams Issued for Design	

Major Foundation Design Completed	
Underground Utilities Design	

General	Break up Fee
Fabrication & Delivery of Major Equipment	
Gas Turbine generators	
Steam Turbine generator	
Main Condenser	
Generator Step-Up & Main Auxiliary Transformers	
Heat Recovery Steam Generators/SCR/Stacks	
Gasifiers	
Coal Preparation System	
Air Separation System	
Acid Gas Removal System	
Tail Gas Clean up System	
Digital Control System	
Overall Construction & Installation	
Mobilized	
Break ground	
Begin pouring of piling & foundations	
Major Buildings Complete	
Combustion Turbine 1 set	
Combustion Turbine 2 set	
Heat Recovery Steam Generator 1 erected	
Heat Recovery Steam Generator 2 erected	
Gasification Major Components set	
Steam turbine set	
Critical Piping Installed	
Install Digital Control System	
Main Transformers set	
Mechanically complete	
First Fire of Combustion Turbine 1	
First Fire of Combustion Turbine 2	
First Fire of each Gasifier and associated Air Separation Unit and downstream cleanup	
Cooling Tower Installation Complete	
Startup and Commissioning	
Steam Blows Complete	
Roll Steam Turbine	

General	Break up Fee
Performance Testing Complete - Natural Gas	
Performance Testing Complete - Syn-Gas	
Substantial Completion	
Final Acceptance	

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PacifiCorp
Draft RFP 2012
Responses due January 2007

2012 Request for Proposals Base Load Resources

TABLE OF CONTENTS

	Page
Section 1. Introduction.....	1
A. Purpose and Scope	1
B. Eligible Resources.....	3
C. Resource Alternatives	4
1. Power Purchase Bid	7
2. Tolling Service Agreement.....	8
3. Asset Purchase and Sale Agreement on PacifiCorp Site	10
4. Asset Purchase and Sales Agreement on a Bidder’s Site	11
5. Engineering, Procurement, and Construction Contract (“EPC Contract”) for the Currant Creek Site (no proposals for an EPC contract at the Lake Side site will be accepted).....	12
6. Purchase of an Existing Facility	13
7. Agreement Purchase of a Portion of a Facility Jointly Owned and/or Operated by PacifiCorp	13
8. Restructure of an Existing Power Purchase Agreement or an Exchange Agreement and/or Buyback of an Existing Sales Agreement.....	14
9. Eligible Resources Exceptions.....	14
Section 2. Logistics.....	16
A. Schedule of RFP 2012 Actions: RFP 2012 is anticipated to be issued in November, 2006.....	16
B. Prebid Conference.....	16
C. Request for Qualification (RFQ) Bid forms (Appendix A and B).....	17
D. Submission of Bids	17
E. RFP 2012 Team.....	18
F. Bidder Evaluation Fees.....	19
G. Effectiveness of Bids	20
H. Procedural Items	20
1. Request for Qualification (RFQ) Bid Form.....	20
2. Submission of Proposals by Bidders.....	21
3. Minimum Eligibility Requirements for Bidders.....	22
4. Company’s Reservation of Rights and Disclaimer.....	23
5. Accounting.....	24
6. Confidentiality	26
7. Regulatory Process.....	27
8. Subsequent Regulatory Action	27
Section 3. RFP 2012 Proposal Content.....	27
Section 4. Resource Information.....	30

A. Price and Nonprice Information.....	30
B. Price Information.....	30
1. Fixed Costs.....	30
2. Variable Costs.....	31
C. Nonprice Information.....	32
1. Point(s) of Delivery.....	32
2. Proposals Requiring Third-Party Point-to-Point Transmission Service.....	33
3. Interpretation with Interconnection Agreement.....	33
4. PacifiCorp Transmission Interconnection Service.....	33
5. PacifiCorp Transmission Integration Service.....	34
6. Use of PacifiCorp’s Sites.....	34
Section 5. Bid Evaluation Process of the Proposals	34
A. Step 1—Price and Nonprice Evaluation to Determine the Initial Short List	35
1. Price Factor Evaluation (Up to 80%).....	36
2. Nonprice Factors (up to 20%).....	37
B. Step 2—Capacity Expansion Model - Production Cost Run	38
C. Step 3—Risk Analysis	39
1. Stochastic Analysis	39
2. Deterministic Scenario Analysis.....	39
Section 6. Awarding of Contracts.....	40
A. Invitation	40
B. Post-Bid Negotiation.....	41
C. Confidentiality Agreement.....	41
D. Nonreliance Letter.....	41

Appendices

Appendix A:	Request for Qualification (RFQ) Bid Form	49
Appendix B:	Bidder's Qualification and Credit Information	56
Appendix C:		66
	Appendix C-1: PPA and TSA Information Request	67
	Appendix C-2: APSA Information Request,	75
	Appendix C-3: EPC Information Request	83
	Appendix C-4: Existing Asset Purchase Information Request	90
Appendix D:	Fuel Supply Form	97
Appendix E:	Officer Certification Form	99
Appendix F:	SFAS No. 13 Form	101
Appendix G:	Bidder Site Control Form	103
Appendix H:	Construction Coordination Agreement	107

Attachments

Attachment 1:	Benchmark Resources	129
Attachment 2:	QF Bidder Information	142
Attachment 3:	Power Purchase Contract	149
Attachment 4:	Role of the Independent Evaluation and communications between the Evaluation Team, the Bid Team, the Bidders and the Independent Evaluator	150
Attachment 5:	Tolling Service Agreement Contract	155
Attachment 6:	Asset Purchase and Sale Agreement (APSA) with Appendices	156
Attachment 7:	Lake Side APSA Rights and Facilities	157
Attachment 8:	Currant Creek APSA Rights and Facilities	159
Attachment 9:	Owner's Costs under APSA and EPC	161
Attachment 10:	Owner's Development Cost Assumptions	164
Attachment 11:	Form of Letter of Credit	166
Attachment 12:	Standard & Poor's Inferred Debt Methodology Article	168
Attachment 13:	PacifiCorp Costs Associated with Integration	169
Attachment 14:	Confidentiality Agreement	172
Attachment 15:	Non-Reliance Letter	176
Attachment 16:	Site Purchase Agreement for Lake Side	180
Attachment 17:	Site Purchase Agreement for Currant Creek	194
Attachment 18:	Currant Creek Engineering, Procurement and Construction Contract (EPC)	208
Attachment 19:	Due Diligence Items for the Acquisition of an Existing Facility	209
Attachment 20:	Code of Conduct	224
Attachment 21:	Credit Methodology	231
Attachment 22:	Credit Commitment Letter	237

Forms

Form 1:	Pricing Input Sheet	239
Form 2:	Permitting and Construction Milestones	240

SECTION 1. INTRODUCTION

A. Purpose and Scope

The purpose of this document is to prescribe the process by which PacifiCorp (“the Company”) will request and evaluate proposals from third parties to fulfill a portion of the supply-side resource need identified in the Company’s 2004 Integrated Resource Plan (“IRP”) and the 2004 IRP update. The scope of this Request for Proposals (“RFP 2012”), subject to the limitations described herein, is focused on all Base Load supply-side resource capable of delivering energy and capacity in or to the Company’s Network Transmission system in the Company’s Eastern Control Area (“PACE”) (www.oasis.pacificorp.com) and that fulfills the requirements of being a Network Resource. A Base Load supply side resource is defined as any resource with any type of fuel source that provides unit contingent or firm capacity and associated energy that are incremental to the Company’s existing capacity and energy resources and are available for dispatch or scheduling by June 1, 2012, June 1, 2013 and/or June 1, 2014.

Potential Bidders should note that the Company’s affiliates will not be eligible to respond to the RFP 2012. As described in more detail below, the Company has put in place prudent safeguards to assure that no bias occurs. The Company seeks proposals from all potential suppliers who can meet the conditions of RFP 2012.

Bidders should note that although from a planning basis the IRP and the IRP update use specific types of resources in the base case and in the preferred portfolio this should not be considered by Bidders to be the only resource type or technology that the Company is willing to consider. **Any Bidder who has a question with respect to any resource characteristic it is considering to bid is instructed to contact the Independent Evaluator (“IE”) described below after the final and approved issuance of the RFP 2012.**

The Company may opt to contract for more or less power, depending among other things, on the quality of bids received in response to RFP 2012, updates to the Company’s forecasts, regional transmission availability and timing, and changes in the wholesale energy market conditions.

This introductory section describes the type, timing and amount of Base Load resources sought for 2012 through 2014 (“the Term”). Section 2 covers logistics such as where and when proposals must be submitted, Bidder fees and important policies and procedures. Section 3 provides information related to power delivery requirements, including RFP related requirements for those proposals involving interconnection of new generation facilities directly to the transmission system. Section 4 outlines the requirements to be included within each proposal. Section 5 outlines the evaluation process. Section 6 outlines the awarding and rejecting of proposals. The Appendices include all the required Attachments and Forms for each of the Eligible Resources.

The resource need assessment for the Term is outlined below. The total resource need is a combination of supply side resources and front office transactions required for PacifiCorp’s system during the Term. The renewable targets set forth in the IRP are not included in the RFP 2012 however; the fixed amount of renewable targets will be input into the CEM model (which is discussed in more detail in Section 5) based on IRP forecasted price. The resource need in the IRP and the IRP update has changed. The supply side resources, from both the IRP and the IRP update, assume a 15%

planning margin and the inclusion of front office transactions. The IRP identified a resource need of 2743MW for the Term and the IRP update identified a resource need for the Term of 1775MW. The range of the resource need identified in the IRP and the IRP update for the Term is between 1775MW and 2743MW. The resource need previously filled with market purchases, i.e. front office transactions, on a planning basis will use specific generation assets for the purposes of a benchmark in this RFP.

The chart below shows the total resource need identified in the IRP and the IRP update by year during the term, the range of benchmark resource options by year and the difference between the total resource need and the Company Benchmark Resource(s) being solicited in this RFP.

Total Resource Requirements (East-Side)	2012	2013	2014
A combination of Supply Side resources and Front Office Transactions in the 2004 IRP and 2004 IRP Update	1800 MW (2004 IRP) <i>(includes prior years)</i> 1275 MW (2004 IRP Update)	560 MW (2004 IRP) 335 MW to 935 MW* (2004 IRP Update)	383 MW (2004 IRP) 500 MW (2004 IRP Update)
RFP 2012 Benchmark Resources	Hunter 4 600 MW IPP 3 340 MW	Bridger 5 750 MW	IGCC 250 MW to 600 MW
Annual Benchmark Resources in the RFP 2012	340MW to 940 MW	750 MW	250 MW to 600 MW
Total Benchmark Resources in the RFP 2012			1600 MW to 2290 MW
Total Resources in the 2004 IRP and 2004 IRP Update			1775 MW to 2,743 MW

The issues of timing and requirements of resources in light of uncertain load growth, changes in technology, environmental requirements and costs (i.e. CO₂ and mercury impacts), market prices and resources availability and other factors are exacerbated by the trend toward long lead time coal based resources. To address such uncertainty the Company has included two benchmark options that have different risk and cost profiles for the benchmark for 2012. The Company will submit a detailed evaluation for each Benchmark Resource, with supporting cost information, to the Oregon Commission and the IEs prior to the opening of proposals submitted by the Bidders. If during the course of the RFP process, the Company, with input from the IEs, determines that a Bidder update is appropriate, the Company will then also be entitled to update the assumptions in the Benchmark Resource(s). The IEs will review the reasonableness of the Benchmark Resource(s). To the extent Bidders want to propose in service date deferral options, use Form 1 and or contract buyout options, use Form 2, as a component of their bids, they should identify them clearly with specific triggers (i.e., triggers associated with specific milestones) within the Bidder's proposal. The Company has included, in Form 1, for Bidders to provide proposals with different on line dates as options to the Company and Form 2 with suggested milestones and breakup fees for the Bidders to consider For each resource and option Form 1 and Form 2 should be completed. Each base proposal will be evaluated under one bid fee if it is the same project with up to two alternatives. However, each proposal and any given option will have separate bid numbers. This will allow Bidders to structure different pricing associated with different on line dates and provide break up fees for specific resource proposals. Potential Bidders

should note that pursuant to applicable law, this RFP process will be subject to the safeguards of review by and involvement of an independent evaluator consistent with the Utah Energy Resource Procurement Act Section 54-17-203, and Oregon Order No. 06-446 Guideline 5. More information concerning the role of the Independent Evaluator (“IE”) is provided below. An IE has been hired by the Utah Commission and a separate IE is in the process of being hired in Oregon and will be retained prior to receiving proposals.

B. Eligible Resources

The Company is seeking up to four Base Load resource(s) for the Term of 2012, 2013, and/or 2014. (See **Attachment 1** for a description of the engineering specifications, fuel type, technology, efficiency, location, projected life, transmission requirements and operation and dispatch characteristics of each Company Benchmark). Unless a resource qualifies for one of the exceptions outlined below, the minimum bid that will be accepted is for 100 MW of dependable capacity or greater and a minimum term of five years. Any Base Load resource(s) bid must provide unit contingent or firm capacity and associated energy that are incremental to the Company’s existing capacity and energy resources and are available for dispatch or scheduling by June 1, 2012, June 1, 2013 and/or June 1, 2014.

For each proposal submitted by a Bidder, the Bidder **must** submit its individual proposal under only one of the eight Resource Alternatives or one of the two exceptions listed below. The Company will not consider a proposal unless the Bidder has selected one of the eight alternatives **or** one of the two exceptions of Eligible Resources listed in the Request for Qualifications (Appendix A and Appendix B). One Bidder may submit more than one proposal, but each proposal can be for only one Resource Alternative, which must specify the year within the Term or specify the Company’s options within the Term for the Eligible Resource, designated by the Bidder. If the Bidder submits the same Eligible Resource proposal in different years or in the form of an alternative proposal however, it is the same resource, the proposal will be considered one proposal with two alternatives and the Bidder will receive three separate bid numbers for the resource and pay one bid fee.

The Company will not accept proposals where the Bidder retains the option to displace any resource for economic reasons and/or where the Bidder holds the unilateral option to select one or more alternate Point(s) of Delivery. In addition, the Company will not accept any proposal that provides for planned maintenance or planned derates (as defined by NERC) during the months of June through September or December through February in any year.

Qualifying Facilities (“QFs”), as defined under the regulations implementing the Public Utility Regulatory Policies Act of 1978 (“PURPA”), with 10 MW or greater of capacity are eligible to participate in this RFP 2012. Firm QFs with 10 MW or greater of capacity and a minimum term of five years or longer will fall under the Eligible Resource exception as outlined in Section B. Each QF Bidder must submit the required information in **Attachment 2** in order to be evaluated under this RFP 2012. Any QF Bidder that has a question regarding these provisions is instructed to contact the IE.

C. Resource Alternatives

The Company will consider bids that take one of the following forms: (1) Power Purchase Agreement; (2) Tolling Service Agreement, which may include gas or coal; (3) Asset Purchase and Sale Agreement (PacifiCorp site and PacifiCorp's specifications); (4) Asset Purchase and Sale Agreement (Bidder site); (5) Engineering, Procurement and Construction Contract (Currant Creek site only); (6) purchase of an existing facility; (7) purchase of a portion of a facility jointly owned or operated by the Company; (8) restructuring of an existing Power Purchase Agreement or Exchange Agreement or (9) Exceptions which include Load Curtailment or Qualified Facilities. Descriptions of each of these categories are set out below. Each bid must be for one and only one of the categories, although a Bidder may submit separate bids for energy and capacity from a single resource for any of the categories. The chart outlines a summary of the eligible forms which are then discussed in more detail. The Company has attached Pro Forma Agreements to the Request for Proposals. There are eight Eligible resources, with two exceptions. There are more types of resource options than there are Proforma agreements. These Proforma Agreements will be used to initiate the negotiations between the Company and those Bidders on the final shortlist.

Eligible Resources	Term	Location	Requirements
1) Power Purchase Agreements	Fixed term specified in the bid up to the life of the asset from a single resource located in or delivering to PACE under the PPA. Must be a minimum of 5 years and 100MW.	Bidders can bid on their sites or on PacifiCorp ("PPW") sites; however, PPW is not required to operate the facilities, and it can not impact PPW existing generation on the site.	If the Bidder bids on one of the PPW sites the Bidder must bid a minimum of 420MW and 85% of the facility's dependable generation with no less than 420MW nominal generating capacity a minimum of 20 years and a maximum of the life of the asset. Life of asset will be evaluated consistent with IRP Tables C.27 and C.28.
2) Tolling Service Agreements Gas or Coal	Same as #1 under the PPA	Same as #1	Same as #1
3) Asset Purchase and Sale Agreements on PPW sites	Life of asset will be evaluated consistent with IRP Tables C.27 and C.28.	Currant Creek or Lake Side facilities.	Must be bid to result in the development and construction of a facility that complies with the

			<p>specifications in the APSA and the specification for each site set forth in the Appendices. The Company will require that the project be operated and maintained by Bidder for up to a 10 year term to ensure cost effectiveness, availability and reliability of the resources prior to the Company's acceptance of the resource.</p>
<p>4) Asset Purchase and Sales Agreement for Gas or Coal</p>	<p>Life of asset will be evaluated consistent with IRP Table C.27 and C.28.</p>	<p>Facility built on a Bidder's site which is a new facility. If it is an existing facility, it should be bid under #6.</p>	<p>Must be pursuant to the APSA Contract; PPW will own and operate the facility following commercial operation. All Bidders must complete Appendix C-2. The Company will require that the project be operated and maintained by Bidder for up to 10 years in order to ensure cost effectiveness, availability and reliability of the resources prior to the Company's acceptance of the resource</p>

5) EPC Contract for Currant Creek	Life of asset will be evaluated consistent with IRP Table C.27	Currant Creek site.	Must be pursuant to the EPC Contract with a Fixed price bid in accordance with Attachment 19 and the specifications for Currant Creek. Must complete the information in Appendix C-3. The Company will require that the project be operated and maintained by Bidder for up to 10 years in order to ensure cost effectiveness, availability and reliability of the resources prior to the Company's acceptance of the resource.
6) Purchase of an existing facility	Evaluation will be completed based on the remaining depreciated life of the asset. Life of the asset will be determined by the IRP Table C.27.	A single resource located in or delivering to PACE and integrated as a Network Resource.	Due Diligence of facility that PPW deems appropriate. Must complete information in Appendix C-4. PPW would own and operate the facility.
7) Purchase of a portion of a facility jointly owned by and or operated by PPW.	Same as #6	Same as #6	Same as #6
8) Restructuring of Existing Power Purchase Agreement or Exchange Agreement	Fixed term specified in the bid up to the life of the PPA or Exchange Agreement must be a minimum of 5 years and 100MW.	Same as #6	The restructuring of the PPA or Exchange Agreement must result in incremental capacity and energy.

Exceptions			
9) (a) Load curtailment	Same as above	Existing end use PPW customers with a load that can be physically curtailed and must be not less than 25MW. The load must respond within 30 minutes prior to the hour and remain curtailed for one continuous hour blocks.	Bidder must adhere to the same terms and conditions as other supply side resources in the RFP 2012. PPW will not accept proposals for the financial curtailment nor will it accept proposals that result in PPW having a residual delivery obligation via any other contract, law or regulatory rule or order.
9) (b) Qualified Facility	Same as above	Same as #6	Bidder must adhere to the same terms and conditions as other supply side resources in the RFP 2012. QFs are as defined under the regulations implementing PURPA. Each QF Bidder must submit the required information in Attachment 2 in order to be evaluated under this RFP 2012.

1. Power Purchase Bid

Power purchase bids must be for a fixed term at a stated price which may be indexed or vary in price by year from a single resource located in or into PACE, and must be in the form of the Power Purchase Agreement (“PPA”) attached as Attachment 3. The source of energy and capacity for the PPA should be (a) a generation facility located on a Bidder-supplied site, (b) a generation facility located on one of the PacifiCorp sites identified in this RFP, or (c) from the Bidder’s electrical system. For purposes of

this RFP 2012, the PacifiCorp sites consist of real property currently owned by the Company immediately adjacent to the Company's Currant Creek and Lake Side facilities.

In the event a Bidder proposes to locate a facility on a PacifiCorp site, the Bidder must propose a PPA for quantity equal to no less than 85% of the facility's dependable generation capacity, with such amount being no less than 420 MW nominal generation capacity, and a minimum term equal to or greater than 20 years or a maximum consistent with IRP Tables C. 27 and C.28 life of the asset. Design evaluation criteria that the Company will use for bid screening and evaluation purposes can be located in Appendix C (Tables C.27 and C.28) of the IRP. These minimums are put in place on PacifiCorp sites because both of these sites are capable of second units, and PacifiCorp must ensure the value of these assets are used in the best interest of customers.

The Bidder should assume that the Company will not own or operate any facility bid into this category. All Bidders in this category must complete the information requested in **Appendices C-1 and D.**

In the event a facility is proposed to be located on a PacifiCorp site, the Bidder must negotiate and enter into a lease or land purchase agreement acceptable to the Company, together with a Construction Coordination Agreement substantially in the form attached as **Appendix H.** These negotiations will occur if and when the Bidder is selected in the final shortlist. **THIS RFP 2012 IS NOT AN OFFER TO SELL A PACIFICORP SITE TO ANY BIDDER, AND IN NO EVENT WILL PACIFICORP BE OBLIGATED TO SELL A PACIFICORP SITE TO ANY BIDDER. ANY SALE OF A PACIFICORP SITE WILL BE SUBJECT TO THE NEGOTIATION, EXECUTION AND DELIVERY OF ALL AGREEMENTS AND OTHER DOCUMENTS NECESSARY AND PROPER FOR THE SALE OF PROPERTY, AND TO PACIFICORP'S SATISFACTION, IN ITS SOLE DISCRETION, THAT SUCH TRANSACTION WILL BE IN THE BEST INTERESTS OF PACIFICORP'S CUSTOMERS AND WILL NOT IMPAIR IN ANY MANNER PACIFICORP'S OPERATION OF ITS FACILITIES THEN LOCATED ON OR ADJACENT TO THE PACIFICORP SITES.**

At the Bidder's request, the Company may agree to provide certain facility connection points at a PacifiCorp site for facilities located at a PacifiCorp site. The estimated cost and description of these points are contained in **Attachments 7 and 8;** however, actual costs to the Bidder may vary.

Bidders should note that any proposal submitted in this category that proposes new construction of a generation facility must utilize the services of a single primary Contractor under a single engineer, procure, construct (EPC) contract or an equivalent structure which will not increase the risk of default by multiple contractors to the Company and its customers. Any Contractor must be experienced with the type of facility being proposed and, in addition to any other credit provision described herein, this entity must have a Credit Rating that is BBB-/Baa3 or greater from S&P/Moody's or, if not publicly rated, an equivalent Credit Rating as determined by PacifiCorp Credit.

2. Tolling Service Agreement

Tolling Service Agreement bids must be for a fixed term at a stated price from a single resource which may be either coal or gas which is located in or delivering to PACE, and must be in the form of the Tolling Service Agreement ("TSA") attached as Attachment 5. The facility from which the TSA is bid

can be located on (a) a Bidder-supplied site, or (b) a PacifiCorp site. In the event the Bidder proposes to locate a facility on a PacifiCorp site(s), the Bidder must propose a TSA for an amount equal to no less than 85% of the facility's dependable generating capacity, with such amount being no less than 420 MW nominal generating capacity, and a minimum term equal to or greater than 20 years or a maximum consistent with IRP Tables C. 27 and C.28 life of the asset. Design evaluation criteria that the Company will use for bid screening and evaluation purposes can be located in Appendix C (Tables C.27 and C.28) of the IRP.

The TSA Bidder should assume that the Company will not own or operate any facility bid into this category. All Bidders in this category must complete the information requested in Appendices C-1 and D.

In the event a facility is proposed to be located on a PacifiCorp site, the Bidder must negotiate and enter into a land purchase agreement acceptable to the Company, together with a Construction Coordination Agreement substantially in the form attached as **Appendix H** if and when the Bidder has been advised that they are on the Final Shortlist. **THIS RFP 2012 IS NOT AN OFFER TO SELL A PACIFICORP SITE TO ANY BIDDER, AND IN NO EVENT WILL THE COMPANY BE OBLIGATED TO SELL A PACIFICORP SITE TO ANY BIDDER. ANY SALE OF A PACIFICORP SITE WILL BE SUBJECT TO THE NEGOTIATION, EXECUTION AND DELIVERY OF ALL AGREEMENTS AND OTHER DOCUMENTS NECESSARY AND PROPER FOR THE SALE OF PROPERTY, AND TO THE COMPANY'S SATISFACTION, IN ITS SOLE DISCRETION, THAT SUCH TRANSACTION WILL BE IN THE BEST INTERESTS OF THE COMPANY'S CUSTOMERS AND WILL NOT IMPAIR IN ANY MANNER THE COMPANY'S OPERATION OF ITS FACILITIES THEN LOCATED ON OR ADJACENT TO PACIFICORP'S SITES.**

At the Bidder's request, the Company may agree to provide certain facility connection points at a PacifiCorp site for facilities located at a PacifiCorp site. The estimated cost and description of these points are contained in **Attachments 7 and 8**; however, actual costs to the Bidder may vary.

The Bidder must specify in its bid whether the TSA will take the form of a financially settled physical TSA or physical TSA, if applicable. Provided the TSA is (1) a financially settled physical tolling arrangement, the Bidder will be responsible to purchase the fuel, transportation, fuel-related O&M, and start-up charges, if any, or (2) a physical tolling arrangement, the Company may supply the fuel. In the case of physical tolling arrangements, the Bidder may be responsible to obtain or demonstrate the ability to provide fuel, fuel transportation, long-term coal contract(s) and identify the coal quality in such contract(s), lime and/or limestone for Air Quality Control System, and/or rail arrangements in quantities sufficient to operate the facility at its maximum capacity, and shall make all necessary assignments of rights to the Company for the term of the TSA.

If a TSA Bidder proposes to locate a facility on a PacifiCorp site, and the Bidder proposes the utilization of the existing natural gas lateral to the site, then the Company will accept only a physical tolling arrangement that does not adversely impact the Company's existing fuel resource deliveries and cost at a PacifiCorp site. PacifiCorp maintains contractual rights to 190,000 Dth/day of transportation capacity on each natural gas lateral connection to the Currant Creek and Lake Side sites. Assuming a capacity to burn natural gas at each plant of 95,000 Dth/day, PacifiCorp would release for such plant up to 95,000 Dth/day of transportation capacity on the respective laterals to each site.

Bidders are not limited to a physical tolling arrangement on a PacifiCorp site as the Bidder may make its own arrangements for delivery of natural gas to a PacifiCorp site.

Bidders should note that any proposal submitted in this category that proposes new construction of a generation facility must utilize the services of a single primary Contractor under a single engineer, procure, construct (EPC) contract or an equivalent structure which will not increase the risk of default by multiple contractors to the Company and its customers. Any Contractor must be experienced with the type of facility being proposed and, in addition to any other credit provision described herein, this entity must have a Credit Rating that is BBB-/Baa3 or greater from S&P/Moody's or, if not publicly rated, an equivalent Credit Rating as determined by PacifiCorp Credit.

3 Asset Purchase and Sale Agreement on PacifiCorp Site

Asset Purchase and Sale Agreement ("APSA") bids for construction on a PacifiCorp site must be in the form of the APSA attached as Attachment 6 and its Appendices which have the PacifiCorp site specifications set forth therein. Any APSA proposal for development and construction on a PacifiCorp site (Lake Side or Currant Creek), must be bid that results in the development and construction of a facility that complies with the specifications in the APSA. Pricing for the purchase and sale of the facility can be structured to include progress payments, or as a single lump sum payment due upon achievement of commercial operation. The Company will in no event make progress payments to a Bidder unless each such payment results in the transfer of a tangible asset or a percentage ownership of an asset at the time each payment is made. Bidders must submit bids that comply with one of these two payment structures. All Bidders in this category must complete the information requested in **Appendix C-2**.

The Bidder will be required to enter into an APSA Contract, and a Construction Coordination Agreement, which is attached to the APSA as Appendix S. The Bidder shall be responsible for all aspects of the development and construction of the facility, including, but not limited to, permitting, engineering, procurement, construction and all related costs up to achieving commercial operation, with the exception of those costs to be borne by the Company to support start-up, testing, commissioning, and acceptance that are explicitly defined in the Bidder's proposal. The Operating and Maintenance (O&M) contract will be negotiated between the Parties after the final shortlist is selected. Without limiting the foregoing, the Bidder shall be responsible for obtaining all rights and resources required to construct and provide an operational generation resource consistent with the Bidder's proposal. Such rights and facilities may include without limitation water, emissions reduction credits, wells and pipelines.

The Company may, but will not be required to, make available for the successful Bidder's purchase those rights and facilities outlined in **Attachment 7** for Lake Side and **Attachment 8** for Currant Creek. Bidder costs related to such rights and facilities subsequent to commercial operation of the facility shall be as negotiated under the APSA. The Company will require that the project be operated and maintained by Bidder for up to 10 years in order to ensure cost effectiveness, availability and reliability of the resources prior to the Company's acceptance of the resource. The Parties agree to negotiate an O&M Agreement after the final shortlist is selected.

In the event a facility is proposed to be located on a PacifiCorp site, the Bidder must negotiate and enter into a lease or land purchase agreement acceptable to the Company, together with a Construction Coordination Agreement substantially in the form attached as **Appendix S** to the APSA after the Bidder has been notified that it is on the Final Shortlist. **THIS RFP 2012 IS NOT AN OFFER TO SELL A PACIFICORP SITE TO ANY BIDDER, AND IN NO EVENT WILL THE COMPANY BE OBLIGATED TO SELL A PACIFICORP SITE TO ANY BIDDER. ANY SALE OF A PACIFICORP SITE WILL BE SUBJECT TO THE NEGOTIATION, EXECUTION AND DELIVERY OF ALL AGREEMENTS AND OTHER DOCUMENTS NECESSARY AND PROPER FOR THE SALE OF PROPERTY, AND TO THE COMPANY'S SATISFACTION, IN ITS SOLE DISCRETION, THAT SUCH TRANSACTION WILL BE IN THE BEST INTERESTS OF THE COMPANY'S CUSTOMERS AND WILL NOT IMPAIR IN ANY MANNER THE COMPANY'S OPERATION OF ITS FACILITIES THEN LOCATED ON OR ADJACENT TO THE PACIFICORP SITES.**

Bidders should note that any proposal submitted in this category that proposes new construction of a generation facility must utilize the services of a single primary Contractor under a single engineer, procure, construct (EPC) contract or an equivalent structure which will not increase the risk of default by multiple contractors to the Company and its customers. Any Contractor must be experienced with the type of facility being proposed and, in addition to any other credit provision described herein, this entity must have a Credit Rating that is BBB-/Baa3 or greater from S&P/Moody's or, if not publicly rated, an equivalent Credit Rating as determined by PacifiCorp Credit.

The aggregate of the "all-in" capital cost for the APSA resource shall include all payments to be made to the Bidder under the APSA and all Company costs. A complete listing of categories of Company costs can be found in **Attachment 10**.

4. Asset Purchase and Sales Agreement on a Bidder's Site

APSA bids for construction on a Bidder-owned site must be in the form of the APSA attached as Attachment 6. A Bidder may propose an APSA for a facility located on a Bidder-owned site. Pursuant to the APSA Contract, the Company will own and operate the facility following commercial operation. All Bidders in this category must complete the information requested in Appendix C-2.

Pricing for the purchase and sale of the facility can be structured to include progress payments or as a single lump sum payment due upon achievement of commercial operation. The Company will in no event make progress payments to a Bidder unless each such payment results in the transfer of a tangible asset or percentage ownership of an asset at the time each payment is made according to a schedule set forth in the associated bid and acceptable to the Company.

This bid category is only for facilities that have not reached commercial operation as of the bid response date. In the event the facility being proposed is existing and commercially operable as of the bid response date, then the Bidder should submit a bid pursuant to Resource Alternative #6. The Bidder shall be responsible for all aspects of the development and construction of the facility, including, but not limited to, permitting, engineering, procurement, construction and all related costs up to commercial operation with the exception of those costs to be borne by the Company to support start-up, testing, commissioning, and acceptance that shall be explicitly defined in the Bidder's proposal. The Company will require that the project be operated and maintained by Bidder for up to 10

years in order to ensure cost effectiveness, availability and reliability of the resources prior to the Company's acceptance of the resource. The Parties agree to negotiate an O&M Agreement after the final shortlist is selected.

Bidders should note that any proposal submitted in this category that proposes new construction of a generation facility must utilize the services of a single primary Contractor under a single engineer, procure, construct (EPC) contract or an equivalent structure which will not increase the risk of default by multiple contractors to the Company and its customers. Any Contractor must be experienced with the type of facility being proposed and, in addition to any other credit provision described herein, this entity must have a Credit Rating that is BBB-/Baa3 or greater from S&P/Moody's or, if not publicly rated, an equivalent Credit Rating as determined by PacifiCorp Credit.

The Company will own and the Bidder will operate the facility following commercial operation for up to ten years. Any existing power supply obligations (if any) associated with the facility shall not be assigned to the Company unless the Company, in its sole discretion, accepts.

The aggregate of the "all-in" capital cost for the APSA resource shall include all payments to be made to the Bidder under the APSA and all Company costs. A complete listing of categories of Company costs can be found in Attachment 9 and Attachment 10.

5. Engineering, Procurement, and Construction Contract ("EPC Contract") for the Currant Creek Site (no proposals for an EPC contract at the Lake Side site will be accepted)

An EPC proposal can be bid at the Currant Creek PacifiCorp site only. The EPC Contract must be in the form of a fixed price bid, and may be structured to include progress payments or a single lump sum payment due upon achievement of commercial operation. The Company will, in no event, make progress payments to the Bidder unless each such payment results in the simultaneous transfer of a tangible asset or a percentage ownership of an asset at the time each such payment is made. Bidders must bid one of these two payment structures and in accordance with the EPC Contract in Attachment 18 and the specifications for Currant Creek contained therein. All Bidders in this category must complete the information requested in Appendix C-3.

The Company will be responsible for the development and permitting of the proposed facility at the Currant Creek site. The Company's assumptions for all aspects of development on the Currant Creek site are outlined in Attachment 8. The successful Bidder shall be responsible for all development and permitting and any other costs not identified in Attachment 8.

The aggregate of the "all-in" capital cost for the EPC resource and Owner's Cost in Attachment 10 shall include all payments to be made to the Bidder and all Company costs. A complete listing of categories of Company costs can be found in Attachment 10.

Bidders should note that any proposal submitted in this category shall result in the Bidder directly performing the EPC services, as opposed to utilizing a sub-EPC contractor or an

equivalent structure which will not increase the risk of default by multiple contractors to the Company and its customers. A Bidder in this category must be experienced with the type of facility being proposed and, in addition to any other credit provision described herein, this entity must have a Credit Rating that is BBB-/Baa3 or greater from S&P/Moody's or, if not publicly rated, an equivalent Credit Rating as determined by PacifiCorp Credit.

6. Purchase of an Existing Facility

In the event sale of an existing facility is proposed by a Bidder, and if the facility is interconnected to PACE and commercially operable as of the bid response date, the Company will consider purchasing, owning and operating the facility. Any such purchase would be contingent on disclosure to the Company by the Bidder of all information regarding the facility that may be material to the Company's decision to make the purchase, including without limitation all potential or existing claims or liabilities, on the Company's completion of and satisfaction with the results of such due diligence inquiries that the Company may deem appropriate in its sole discretion, and on the transfer of good and marketable title to the Company by the Bidder, free and clear of any and all liens and encumbrances. Such inquiries may include, but will not be limited to, site inspections, interviews, audit of all applicable books, contracts, forecasts, and records, and/or an assessment of past, future, or potential environmental liabilities. In addition, any existing network or point-to-point transmission rights associated with the facility's output must be released and reassigned to the Company, at the Company's option.

Such due diligence will be performed by qualified generation experts, who may be third-party legal and environmental experts and consultants satisfactory to the Company in its sole discretion, in addition to Company personnel. The Company reserves the right to no longer consider the resource, if in its sole discretion; it determines that there are aspects of the resource not in the best interest of the Company and its customers. The Company will require the following information outlined in **Appendix C-4** to be provided by the Bidder in order to determine if the asset will be evaluated and the priorities of the evaluation.

Existing power supply obligations associated with the facility, if any, shall not be assigned to the Company unless the Company, in its sole discretion, accepts such assignment.

The Company's aggregate "all-in" capital cost for the EPC resource shall include all payments to be made to the Bidder.

7. Agreement Purchase of a Portion of a Facility Jointly Owned and/or Operated by PacifiCorp

A Bidder may propose that the Company purchase all or an additional portion of a facility in which the Company already has an existing ownership interest or one that the Company currently operates. Any such purchase by the Company would be contingent upon disclosure to the Company by the Bidder of all information regarding the facility and the Bidder's interest that may be material to the Company's decision to make the purchase, including without limitation, potential or existing claims or liabilities, on the Company's completion of and satisfaction with the results of such due diligence inquiries that the Company may deem appropriate in its sole discretion, and on the transfer of good and marketable

title to the Company by the Bidder of the Bidder's interest, free and clear of any and all liens, claims and encumbrances. The Company's due diligence inquiries may include, but will not be limited to, an audit of all applicable books and records, and/or an assessment of past, future, or potential environmental liabilities. In addition, any existing network or point-to-point firm transmission rights associated with the facility's output owned or controlled by the Bidder must be released and reassigned to the Company, at the Company's option.

Such due diligence will be performed by qualified generation experts, which may be third-party legal and environmental experts and consultants, in addition to Company personnel. The Company reserves the right to no longer consider the resource, if in its sole discretion it determines that there are aspects of the resource that are not in the best interests of the Company and/or its customers. The Company will require the following information outlined in **Appendix C-4** to be provided by the Bidder, in order to determine if the asset will be evaluated and the priorities of the evaluation.

The Company would own and operate the prospective facility following closing on the sale. Existing power supply obligations associated with the facility, if any, shall not be assigned to the Company unless the Company, in its sole discretion, accepts such assignment.

8. Restructure of an Existing Power Purchase Agreement or an Exchange Agreement and/or Buyback of an Existing Sales Agreement.

The Company will accept proposals under this category of bids for one or more of (a) restructuring of an existing PPA between the Company and the Bidder; (b) an Exchange Agreement between the Company and the Bidder; and (c) the termination or buyback of an existing agreement for the sale of energy and capacity by the Company to the Bidder in the PACE.

If the bid calls for the restructuring of an existing PPA between the Company and the Bidder, such restructuring must result in making available to the Company incremental dependable energy and capacity in an amount of not less than 100 MW within PACE during the summer season (June through September) for delivery as provided in this RFP 2012 starting June 1, 2012, June 1, 2013 or June 1, 2014 for a minimum term of five years. The Bidder would assign any and all existing network or point-to-point firm transmission rights associated with the incremental energy and capacity to the Company at the Company's request at no additional cost should the Company select this bid.

If the bid calls for an exchange agreement, such agreement would provide for the delivery by the Bidder to the Company of dependable energy and capacity in an amount of not less than 100 MW for delivery of a minimum of a five year term as described in this RFP, in exchange for power to be supplied by the Company to the Bidder at another location, other than PACE and/or during another time period.

9. Eligible Resources Exceptions

As noted above, all resources must be for 100 MW of dependable capacity and for a minimum period of 5 years, except to the extent that the resources qualify for one of the two exceptions set forth below:

a) Load Curtailment

The Company has found that bilateral agreements with large end-use customers for the physical curtailment of load have proven to be effective in reducing the need for incremental energy and capacity at critical times. As a result, the Company invites end-use customers to bid physical load curtailment under this RFP 2012. Any such bid must meet the following requirements: (a) the Bidder must be an existing end-use customer of the Company; (b) the load to be curtailed must be not less than 25 MW; (c) the curtailment must be a physical curtailment of the load; (d) the load to be curtailed must respond to the curtailment order 30 minutes prior to the hour within and remain curtailed for continuous one-hour blocks; (e) the Company must not have any residual delivery obligation upon exercising its curtailment rights hereunder under any other contract, law, regulation or order, and Bidder must waive any and all rights to assert any such contrary rights; and (f) the Bidder must provide the Company with contractual surety and adequate credit assurances that such load curtailment will take place at times and in amounts required by this RFP 2012. The Company will not accept proposals for the financial curtailment of load nor will it accept physical load curtailment proposals that result in the Company having a residual delivery obligation via any other contract, law, or regulatory rule or order.

b) Qualifying Facility

Qualifying Facilities (“QFs”), as defined under the regulations implementing the Public Utility Regulatory Policies Act of 1978 (“PURPA”), with 10 MW or greater of capacity are eligible to participate in this RFP 2012. QFs must be 10 MW or greater of firm capacity and a minimum term of five years or longer. Each QF Bidder must submit the required information in **Attachment 2** in order to be evaluated under this RFP 2012.

SECTION 2. LOGISTICS

A. Schedule of RFP 2012 Actions: RFP 2012 is anticipated to be issued in November, 2006

The anticipated schedule will be:

Event	Anticipated Date
RFP 2012 issued	November 2006
RFP bid conference	Issued + 15 days
RFQ form	Issued + 30 days
Responses due	Issued + 75 days
Evaluation complete	Issued + 120 days
Bidder negotiation	Issued + 270 days
Oregon Commission acknowledgement of Final Short List ¹	Issued + 275 days
PacifiCorp decision	Issued + 280 days
Utah Public Service Commission approval proceeding -180 days	Issued + 460 days
Avoided cost filing ²	Issued + 500 days

Bidders should note that the above schedule is an anticipated schedule only and is subject to change. The Company accepts no liability to the extent the actual schedule is different from the anticipated schedule.

B. Prebid Conference

- Time: tbd
- Date: tbd
- Location: tbd

Interested parties and Bidders may submit questions prior to the RFP bid conference, so that such questions may be addressed in a more timely fashion. All information, including the pre-bid conference materials, questions and answers will be posted by PacifiCorp on the PacifiCorp website at www.pacificorp.com prior to the issuance of the final approved RFP 2012. After the final approval of the RFP 2012 the IE and the Company will be responsible to maintain and post all material on a website established by the IE at www.merrimackenergy.com, [insert Oregon IE website] and on the Company's website at www.pacificorp.com.

¹ The Oregon Commission may acknowledge the Final Short list. See Oregon Order No. 06-446 Guideline 13.

² Updated avoided costs filing by state will be made to the extent required by law or regulatory order.

C. Request for Qualification (RFQ) Bid forms (Appendix A and B)

Bidders who intend to be considered as part of this RFP 2012 process **must** return the “RFQ Form” (**Appendix A and B**) to the IE no later than close of business on the date indicated in Section 2. The RFQ is not blinded. The IE will provide each Bidder who has met the qualifications under the RFQ (which will include creditworthiness, demonstrated capability, experience, performance references and qualifications to deliver the indicated Eligible Resource option selected on the form) with a bid number.

Five (5) copies of the Request for Qualifications must be sent to each of the following addresses by the date indicated in Section 2.

PacifiCorp RFP 2012

Independent Evaluator Utah
Merrimack Energy Group, Inc.: PacifiCorp RFP 2012
c/o Utah Division of Public Utilities
160 E 300 S, 4th floor
Salt Lake City, Utah 84111

Independent Evaluator Oregon
[Insert Name Once Selected]: PacifiCorp RFP 2012
c/o Oregon Public Utility Commission
550 Capitol Street, N.E. Suite 215
Salem, OR 97301

D. Submission of Bids

Each Bidder must submit its bids to the offices of the Utah Public Service Commission and the Oregon Public Utility Commission to the attention of the Independent Evaluators. The Bidder will be required to submit its proposal(s) utilizing only the bid number, and with no other identifying information. Bidders are responsible to check all of their document headers and footers and the Property tab of the electronic copies that are submitted to ensure that no reference to their company is on the electronic copies.

Utah Independent Evaluator Merrimack Energy Group, Inc.: PacifiCorp RFP 2012

1. a signed original and five (5) hard copies of each bid and any required forms, and
2. two (2) electronic copies of the bid and any required forms (on two separate compact discs) that are in PDF format.

The IE will review all submissions, to ensure that only bid numbers are in the proposals and electronic submissions, prior to forwarding them to the RFP 2012 Evaluation Team. All bids must be submitted utilizing only the assigned bid number(s) and such must be transmitted by express, certified or registered mail or hand delivered to:

PacifiCorp
Draft RFP 2012
Responses due January 2007

PacifiCorp RFP 2012
Independent Evaluator
Merrimack Energy Group, Inc.: PacifiCorp RFP 2012
c/o Utah Division of Public Utilities
160 E 300 S, 4th floor
Salt Lake City, Utah 84111

Oregon Independent Evaluator (TBA): PacifiCorp RFP 2012

3. a signed original and five (5) hard copies of each bid and any required forms, and
4. two (2) electronic copies of the bid and any required forms (on two separate compact discs) that are in PDF format.

The IE will review all submissions, to ensure that only bid numbers are in the proposals and electronic submissions, prior to forwarding them to the RFP 2012 Evaluation Team. All bids must be submitted utilizing only the assigned bid number(s) and such must be transmitted by express, certified or registered mail or hand delivered to:

Independent Evaluator Oregon
[Insert Name Once Selected]: PacifiCorp RFP 2012
c/o Oregon Public Utility Commission
550 Capitol Street, N.E. Suite 215
Salem, OR 97301

Bids will be accepted until 5 p.m. Pacific Prevailing Time on January X, 2007. Any bids received after this time, at the Company's discretion, will be returned by the IEs, unopened to the Bidder.

All bids will be reviewed by both IEs to determine that they are adequately blinded and then will be provided to the RFP 2012 Evaluation Team for further analysis. The IEs will provide an original copy (with a cross-reference table to Bidders) to the Company's credit, risk and legal departments who will have access to the unblinded Bids and will not be allowed to discuss specific bids with the Blinded individuals in the Evaluation Team or with the Benchmark Team (See Code of Conduct in Attachment 20). To the extent the IEs determines that any proposal is not adequately blinded, the IEs will determine if the IEs can effectuate effective blinding itself or, as determined by the IEs, may request that the Bidder undertake the appropriate blinding. If the Bidder is nonresponsive to the IE's requests, then the bid will be rejected by the IEs and returned to the Bidder.

E. RFP 2012 Team

A Bid Team will be established by the Company prior to the final approval of the RFP 2012. The Bid Team shall consist of an Evaluation Team and a Benchmark Team which will be made up of various work groups within the Company. The composition of the Bid Evaluation Team and the Benchmark Team and their primary roles and responsibilities of each Team are shown below. Additional Protocols between the Teams are outlined in Attachment 4 and in Attachment 20:

Work Group	Roles
Independent Evaluator (IE)	The IE has been hired by the Utah Public Service Commission to ensure a fair and reasonable process is used in the RFP 2012. The IE will provide oversight of the RFP 2012 process and will validate, audit and review all aspects of all proposals, providing an oversight to the process and validation on the models, inputs, assumption(s), risk assessment, and generation specifications for the PacifiCorp sites and the Benchmark resources. See Attachment 4 for Roles, Function and Communications of IE.
Evaluation Team: Origination and generation engineer (not a part of the Benchmark Team) or Engineering Consultants as required. (Blinded prior to Short List)	Overall coordinator of the process. Bid process management for all proposals and coordination with the IE and all of the work groups. Evaluation of the non price components of the analysis. Specifying, evaluating and confirming conformity with design specifications; conducting, as needed, technological and operational due diligence, generation expertise, environmental due diligence on all resources.
Evaluation Team: Structuring and Pricing (S&P), and Integrated Resource and/or Third-Party Engineering Consultant as required. Planning (Blinded prior to Short List)	Economic analysis and modeling including the validation on the inputs to the risk assessment of the bid.
Evaluation Team: Commercial and Trading Regulated Transmission Manager (Blinded prior to Short List)	Assist S&P and Origination with transmission requests and evaluations in determining the appropriate costs and/or agreements.
Evaluation Team: Environmental (Blinded prior to Short List)	Air, water and discharge, emission credits, site permits and facilities.
Evaluation Team: Credit (Unblinded)	Credit screening, evaluation and monitoring throughout the process.
Evaluation Team: Legal and Risk (Unblinded)	Legal will confirm compliance of bids to requirements of RFP and its Forms, Attachments and Appendices; conduct of legal process; conducting due diligence inquiries; supervising any documentation entered into as part of the RFP process. Risk will validate the internal modeling of the proposals and the Company benchmark.
Benchmark Team: Generation	Development of the Benchmark Resources.

F. Bidder Evaluation Fees

To help defray the cost of the IE, each Bidder shall submit with each of its bid proposals a nonrefundable “Bid Fee” of \$10,000. A bid may consist of one proposal in addition to two alternatives for the Base Load resource under the same bid fee. The alternatives may consist of a different term or eligible resource option for the same Base Load resource. Bidders submitting a bid in Resource Alternative category #9 (load curtailment and QF) shall have a per-bid fee of \$1,000. A

Bidder submitting more than one bid will be required to submit a bid fee for each bid. The bid fee(s) must be submitted with the proposals to Merrimack Energy Group.

Bidders may submit multiple bid proposals in response to this RFP 2012. The IE and the Company shall determine in their sole discretion whether a Bidder's submission constitutes one or more proposals, for purposes of assessing the foregoing fee.

Bid proposals for the same site and the same generation technology and size will be considered a single bid proposal; provided, that all such proposals are submitted under only one Resource Alternative. If a bid is submitted under more than one Resource Alternative then the bid will be considered as two separate proposals, and two separate bid fees will be required. A single proposal that offers two in-service years will only be required to pay for one bid evaluation fee.

G. Effectiveness of Bids

Each bid proposal must remain open for acceptance by the Company from the date of submittal through February X, 2008, unless earlier released in writing by the Company. To the extent the pricing is tied to or subject to market indices changes, the Bidder must identify which components of their capacity prices are subject to these movements, and what triggers will effectuate these changes and when pricing will be fixed.

H. Procedural Items

1. Request for Qualification (RFQ) Bid Form

Each Bidder must complete and submit to the IE the RFQ Bidders Form which consists of Appendix A and B for each Resource Alternative it intends to submit in its proposal to participate in the RFP 2012 by the date identified in Section 2. The Company will require each Bidder to meet the specific credit requirements and capability requirements outlined below.

Bidders Qualification, Capability and Credit in the RFQ Bid Form (Appendix A and B)

Each Bidder must be able to demonstrate its Credit Capability and its capability, experience and qualification under each Eligible Resource. This should include but not be limited to its ability to perform its obligations that would arise upon execution and delivery of the documents associated with the Company's acceptance of the Bidder's bid, and references to support its capability in each of the selected Eligible Resources options which it will be submitting in this RFP.

Appendix A and B will be attached to the RFQ Bid Form and must be completed to receive a bid number by the IE for each Eligible Resource. In Appendix A, the Bidder must demonstrate that the Bidder's project development team has successfully completed the development and commissioning of at least one generation project with characteristics similar to the proposed project. The proposal must pose an acceptable level of development and technology, as determined by PacifiCorp's bid evaluation team. In Appendix B the Bidder must be investment grade or have the ability to post credit assurance to qualify as an investment grade entity. Each Bidder must provide the requested financial and credit information and indicate if it is not investment grade what its ability will be to post any necessary credit assurances to be equivalent to an investment grade entity. All Bidders must demonstrate how

they can meet Security requirements in the appropriate Proforma Agreement for the Eligible Resource they are proposing and how they intend to qualify. If appropriate, the Bidder will be notified that it will not be eligible to submit a proposal.

Eligible Bidders will then be permitted to submit proposal(s) into the RFP 2012 process. In the event that the Bidder's credit status changes at any time after submission of a bid into the RFP 2012 process, PacifiCorp Credit reserves the right to request updated information pursuant to the Credit Appendix B, to reevaluate the Bidder and to request further credit assurances. In the event that the Bidder does not provide evidence of its ability to provide such further credit assurances, the Company reserves the right to reject the Bidder's proposal after consultation with the IE and return the bid fee.

The Bidder will be required to demonstrate its ability to post credit assurance in the amounts outlined in the Credit Matrix in Appendix B. A Credit methodology paper explaining the rationale behind the Credit Matrix is provided in **Attachment 21**. A Bidder must be able to demonstrate its ability to post any necessary credit assurances in the form of a commitment letter from a proposed guarantor or from a financial institution that would be issuing a Letter of Credit. A form of credit commitment letter is provided in **Attachment 22**. The amount of any credit assurances to be provided will be determined based upon (a) the Credit Rating in the Credit Matrix of either the Bidder or the entity providing credit assurances on behalf of the Bidder, (b) the size of the project, and c) the type of Eligible Resource bid.

The Credit Rating will be the lower of: (x) the most recently published senior, unsecured long-term debt rating (or corporate rating if a debt rating is not available) from Standard & Poor's ("S&P") or (y) the most recently published senior, unsecured debt rating (or corporate rating if a debt rating is not available) from Moody's Investor Services. If option (x) or (y) is not available, the Credit Rating will be determined by PacifiCorp Credit through an internal process review and utilizing a proprietary credit scoring model developed in conjunction with S&P. All Bidders will receive a Credit Rating which will determine the amount of any credit assurances to be posted.

Please note that should a Bidder be an existing counterparty with PacifiCorp, PacifiCorp Credit reserves the right to protect itself from counterparty credit concentration risk and require credit assurance in addition to that outlined in the Credit Matrix.

In the event that the Bidder posts a Letter of Credit as collateral it must be issued by a bank acceptable to the Company in the Company's reasonable discretion, and be in form and substance consistent with the form of the Letter of Credit set out in **Attachment 11**.

2. Submission of Proposals by Bidders

All bid proposals must be received by the IE no later than the date specified in Section 2. All bid proposals must be in the format set forth in the RFP 2012 Proposal Form for the specific Eligible Resource as indicated in Section 3 which outlines the requirements for each Eligible Resource. The RFP 2012 Proposal Form identifies all the required Attachments and Forms for each Resource Alternative selection the Bidder intends to submit. Any bid proposal that does not contain all of the required information by the due date specified in Section 2 will be subject to rejection as nonresponsive by the Company. It is each Bidder's responsibility to submit additional information

related to its bid proposal if such information will materially improve the value of its bid proposal or the Company's understanding thereof.

Each bid proposal must be signed by an officer of the bidding company via an Officer Certification **found in Appendix E.**

a) Each bid must include a statement by the Bidder that the Terms and Conditions of the Attachment, selected as part of the Resource Alternatives submitted by Bidder, are acceptable to the Bidder or identify any and all exceptions to the Pro Forma contracts when submitting the proposal.

b) Proposals must clearly specify all pricing terms. Any and all index prices and or price escalations must be fully explained. Proposals with pricing that is subject to change prior to February X, 2008 must explain what triggers the change, what the change is tied to and any information the Company will require to evaluate the pricing risks associated with the proposal. All pricing must be in terms of nominal dollars. Prices and dollar figures quoted will be assumed to be in nominal terms for the year in which they occur unless clearly stated otherwise. The Form Pricing Input Sheet (Form 1) contains the applicable pricing inputs which will be required to be completed by the Bidder for the bid to be evaluated. This Form Pricing Input Sheet includes inputs such as start/end date, point of interconnection, resource type, variable and fixed O&M, start-up costs, capacity payment or capital expenditures, PPA or TSA escalation rates, heat rates and capacity levels adjusted for both expected temperature, degradation per the manufacturer's recommended maintenance schedule, start-up charges, and a variety of other inputs, including specific published indices if applicable.

A Bidder will also complete SFAS No. 13 Form (**Appendix F**), which will require the Bidder to complete the inputs to support the Bidder's assertion regarding Capital Lease versus Operating Lease.

a) All bid proposals must be for a capacity greater than 100 MW except for: (a) Qualifying Facility which must have 10 MW or greater of installed capacity; and (b) end-use customers of the Company with physical load curtailment proposals for a minimum of 25 MW each.

b) Bid proposal prices must include all costs that the Bidder expects the Company to pay associated with any of the Eligible Resources, including but not limited to station service, test energy, fuel for testing, gas lateral construction, electrical interconnection, and all costs (including fuel) incurred as necessary to accomplish synchronization.

3. Minimum Eligibility Requirements for Bidders

Bidders may be disqualified for failure to comply with the RFP 2012 if any of the requirements are not met. To the extent proposals do not comply with these requirements they will be deemed ineligible and will not be considered for further evaluation. PacifiCorp will return those proposals, which in its sole discretion it deems ineligible together with the bid evaluation fee. Reasons for rejection of a Bidder or its bid include:

a) Receipt of Proposal and/or Request for Qualifications after the response deadline.

- b) Failure to meet the requirements and provide all the information requested in Section 3 of the RFP 2012.
- c) Failure to permit disclosure of information contained in the proposal to PacifiCorp's agents, contractors or regulators.
- d) Any attempt to influence PacifiCorp or the IE in the evaluation of the proposals, outside the solicitation process.
- e) Any failure to disclose the real parties of interest in the proposal submitted.
- f) The Bidder is in current litigation or has threatened litigation against PacifiCorp. Threatened litigation includes circumstances in which the Bidder has issued a demand letter to PacifiCorp, the Bidder and PacifiCorp are currently involved in dispute resolution, the Bidder and PacifiCorp have an unresolved dispute pending or the Bidder has noticed a pending law suit against PacifiCorp.
- g) Proposal must include all applicable content requirements described in Section 3 for each Eligible Resource.
- h) Proposal must include a check for the appropriate Bid Evaluation fee.
- i) Proposal must clearly specify all pricing terms.
- j) Proposals must offer unit contingent or system firm capacity and energy, and include appropriate contract term lengths and commercial operation dates.
- k) Proposal must not present any unacceptable level of development and technology risk, with the exception of IGCC, however, Bidder still must demonstrate that its proposed IGCC is fully backed by the respective gasifier technology supplier and constructors as determined by PacifiCorp in consultation with the IE.
- l) Proposal must demonstrate that the Bidder project development team has successfully completed the developmental and commissioning of at least one generation project, with the exception of IGCC, however, Bidder still must demonstrate that its proposed IGCC is fully backed by the respective gasifier technology supplier and constructors with characteristics similar to the proposed project.
- m) Bidder must demonstrate, to PacifiCorp's satisfaction that they can meet the security requirements for each Eligible Resource they are proposing consistent with the requirements in the appropriate Proforma Contracts for that resource.

4. Company's Reservation of Rights and Disclaimer

The Company reserves the right, without qualification and in its sole discretion, to reject any or all bids, and to terminate this RFP 2012 in whole or in part at any time. Without limiting the foregoing, the Company reserves the right to reject as nonresponsive any or all bid proposals received for failure to meet any requirement of this RFP 2012 outlined in Section 3 of the RFP 2012. The Company also reserves the right to request that the IE contact any Bidder for additional information. The Company

further reserves the right without qualification and in its sole discretion to decline to enter into any agreement with any Bidder for any reason, including but not limited to change in regulation or regulatory requirements that impact the Company and/or any collusive bidding or other anticompetitive behavior or conduct.

Bidders who submit bid proposals do so without recourse against the Company, its parent company, its affiliates and its subsidiaries, or against any director, officer, employee, agent or representative of any of them, for any modification or withdrawal of this RFP 2012, rejection of any bid proposal, failure to enter into an agreement, or any other reason. The Bid Fees submitted by any Bidder, once the bid is accepted, will not be refunded (unless otherwise determined in the sole discretion of the Company) in the event of any modification or withdrawal of this RFP 2012, rejection of any bid proposal, or failure to execute an agreement.

5. Accounting

All contracts proposed to be entered into as a result of this RFP 2012 will be assessed by the Company for appropriate accounting and/or tax treatment. Bidders shall be required to supply the Company with any and all information that the Company reasonably requires in order to make such assessments.

Specifically, given the term lengths that PPA, TSA, and/or exchange proposals may cover in response to RFP 2012, accounting and tax rules may require either: (i) a contract be accounted for by PacifiCorp as a Capital Lease or Operating Lease³ pursuant to SFAS No. 13, or (ii) the seller or assets owned by the seller, as a result of an applicable contract, be consolidated as a Variable Interest Entity⁴ (VIE) onto PacifiCorp's balance sheet. To the extent a Bidder proposal results in an applicable contract, the following shall apply with respect to VIE treatment:

- The Company is unwilling to be subject to accounting or tax treatment that results from VIE treatment. As a result, all Bidders are required to certify, with supporting information sufficient to enable the Company to independently verify such certification, that none of their proposals will subject the Company to such VIE treatment. Bids that result in VIE treatment will be rejected.
- Further, any applicable contract that the Company executes will require that: (i) the Seller covenant that the Company will not be subject to VIE treatment at any point during the term of the agreement, and (ii) in the event that the contract causes the Company to be subject to VIE treatment at any point during the term of the agreement, unless cured, such treatment will constitute a seller event of default.

Each Bidder must also declare, in each of its proposals, whether or not each such proposal will subject the Company to Capital Lease treatment or Operating Lease treatment pursuant to SFAS No. 13. In

³ "Capital Lease" and "Operating Lease" - shall have the meaning as set forth in the Statement of Financial Accounting Standards ("SFAS") No. 13 as issued and amended from time to time by the Financial Accounting Standards Board.

⁴ "Variable Interest Entity" or "VIE" - shall have the meaning as set forth in Financial Accounting Standards Board ("FASB") Interpretation No. 46 (Revised December 2003) as issued and amended from time to time by the FASB.

any case for which the Bidder declares that the proposal will subject the Company to lease treatment pursuant to SFAS No. 13, after application of Emerging Issues Task Force (“EITF”) 01-08 (“Determining Whether an Arrangement Contains a Lease”), the Bidder is required to certify such declaration (Capital Lease or Operating Lease), with supporting information sufficient to enable the Company to independently verify the Bidder’s opinion of how the Company will be required to account for the proposal.

Each Bidder must also agree to make available at any point in the bid evaluation process, any and all financial data associated with the Bidder, the Facility and/or the PPA, TSA or other contract that PacifiCorp requires to independently verify the Bidder’s accounting declarations or certifications required above. Such information may include, but may not be limited to, data supporting the economic life (both initial and remaining), the fair market value, executory costs, nonexecutory costs, and investment tax credits or other costs (including debt specific to the asset being proposed) associated with the Bidder’s proposal. Financial data contained in the Bidder’s financial statements (e.g., income statements, balance sheets, etc.) may also be required to provide additional information.

A SFAS No. 13 Form (Appendix F) must be completed to the extent the Bidder submits a proposal which results in either direct or inferred debt.

Cost Associated with Direct or Inferred Debt

PacifiCorp will take into account a cost associated with direct or inferred debt as part of its economic analysis in the final screening.

- **Direct debt** results when a contract is deemed to be a Capital Lease pursuant to EITF 01-08 and SFAS No. 13 and the lower of the present value of the nonexecutory minimum lease payments or 100% of the fair market value of the asset must be added to PacifiCorp’s balance sheet.
- **Inferred debt** results when credit rating agencies infer an amount of debt associated with a power supply contract and, as a result, take the added debt into account when reviewing PacifiCorp’s credit standing.

In both instances, PacifiCorp would need to inject equity to maintain the same debt/equity ratio as before the power supply contract. Since equity has a cost, this cost will be taken into account when evaluating the bids to determine the final short list.

For the purposes of RFP 2012, PacifiCorp will determine the amount of debt associated with each bid that would result in an applicable contract, derive the associated equity infusion, then include in its analysis the cost associated with the equity amount multiplied by the pre-tax difference between Return on Equity (“ROE”) and PacifiCorp’s Weighted Average Cost of Capital (“WACC”). Pre-tax ROE will be assumed to be equal to 16.92% and pre-tax WACC will be assumed to be 11.48%. The amount of debt will be the higher of the direct or inferred debt. This will be updated prior to the issuance of the final RFP 2012.

Direct debt will be determined for each year as of the beginning of the contract as the amount PacifiCorp must place on its balance sheet as a result of a Capital Lease. If the bid does not result in a Capital Lease then the amount of direct debt will be zero.

Inferred debt will be determined by utilizing the methodology used by Standard & Poor's in the article attached as Attachment 12. At the beginning of the contract, the net present value of the remaining fixed payments will be calculated using a 10% discount rate and then multiplied by a "risk factor." The risk factor will be 50%.

The Company will be required to justify and defend its use of imputed and/or direct debt costs in the final shortlist.

6. Confidentiality

The Company will attempt to maintain the confidentiality of all bids submitted, to the extent allowed by law or regulatory order, as long as such confidentiality does not adversely impact a regulatory proceeding.

It is the Bidder's responsibility to clearly indicate in its proposal what information it deems to be confidential. Bidders may not mark their entire proposal as confidential, but must mark specific information on individual pages to be confidential in order to receive confidential treatment for that information.

All information supplied to the Company or generated internally by the Company shall remain the property of the Company. Bidder shall maintain the confidentiality of such information and shall not be available to any entity before, during or after this RFP 2012 process unless required by law or regulatory order. The Bidder expressly acknowledges that the Company may retain information submitted by the Bidder in connection with this RFP 2012.

Only those Company employees who are directly involved in this RFP 2012 process or with the need to know for business reasons will be afforded the opportunity to view submitted bids or Bidder information.

Bidders should be aware that information supplied by Bidders may be requested and supplied during docketed regulatory proceedings, subject to appropriate confidentiality provisions applicable to that particular proceeding. This means that parties to docketed proceedings may request to view confidential information. If such a request were to occur, the Company will attempt to prevent such confidential Bidder information from being supplied to intervening parties who are Bidders or who may be providing services to a Bidder, but the Company shall not be held liable for any information that it is ordered to be released or that is inadvertently released.

Lastly, the Company intends to utilize its internal, proprietary, forward price projections in its evaluation process. The resulting projections and evaluations will not be shared with entities external to the Company, including with Bidders, unless required by law or regulatory order.

7. Regulatory Process

Utah Code § 54-17-101, *et seq.* requires PacifiCorp to use a solicitation process to construct or acquire a significant energy resource, defined as 100 MW or more with a dependable life of ten years or more. This law requires the participation of an independent evaluator, appointed by the Utah Public Service Commission, to actively monitor the solicitation process for fairness and compliance with state law. Prior to execution of any of the eight alternatives, or the two exceptions listed above, the Company will go through a preapproval process, consistent with the Utah Energy Resource Procurement Act⁵ and acknowledgement of resources pursuant to Oregon Order No. 06-446.⁶

8. Subsequent Regulatory Action

The Company does not intend to include a contractual clause whereby the Company is allowed to adjust contract prices in the event a regulatory agency exercises jurisdiction over the Company, and does not fully recognize the contract prices in determining the Company’s revenue requirement. As of the issuance date of this solicitation, PacifiCorp is unaware of any such actual or proposed law or regulatory order.

SECTION 3. RFP 2012 PROPOSAL CONTENT

The following outlines the content and format requirements for all proposals by Eligible Resource when responding to RFP 2012. Proposals that do not include the information requested in this form will be deemed ineligible for further evaluation unless the information is not relevant.

The Bidder is required to provide information in the following format to meet the criteria of this RFP. All sections must be completed and in compliance with the RFP in order for the bid to be accepted. Bidders must provide the appropriate bid fee for the number of Eligible Resources that are being provided.

Each Bidder must provide the following information 1) All RFP Appendices, Form(s) and Attachments in Section 3.A for each Eligible Resource as applicable and 2) the Appendices, Form(s) and Attachment identified under each of the Eligible Resources identified in Section 3.B through 3.K.

Proposal Type	Required Information
All Bidders are required to submit the following	<ul style="list-style-type: none"> ▪ RFQ Bid Form: Appendix A and Appendix B ▪ Appendix D – Fuel Supply Form (may

⁵ The Utah Energy Resource Procurement Act may be viewed at: <http://www.le.state.ut.us/~2005/htmldoc/sbillhtm/SB0026S01.htm>

⁶ Oregon Order No. 06-446 is located at: <http://edocs.puc.state.or.us>.

	<ul style="list-style-type: none"> vary if Bidders offer fixed price) ▪ Appendix E – Officer Certificate Form ▪ Attachment 13 - PacifiCorp Costs Associated with Integration that will be used in the analysis ▪ Form 1 - Pricing and Input Sheet Form 2 - Permitting and Construction Milestones depending on the resource.
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Proposal Type	Additional Required Information
Power Purchase Bid (1):	<ul style="list-style-type: none"> ▪ Attachment 3 - Power Purchase Contract ▪ Attachment 16 - Site Purchase Agreement for Lake Side (if applicable) ▪ Attachment 17 - Site Purchase Agreement for Currant Creek (if applicable) ▪ Appendix C-1 - PPA and TSA Information Request ▪ Appendix F - SFAS No. 13 Form ▪ Appendix G - Bidder Site Control Form ▪ Appendix H - Construction Coordination Agreement (if applicable)
Tolling Service Agreement Bid (2):	<ul style="list-style-type: none"> ▪ Attachment 5 – Tolling Service Agreement Contract ▪ Attachment 16 - Site Purchase Agreement for Lake Side (if applicable) ▪ Attachment 17 - Site Purchase Agreement for Currant Creek (if applicable) ▪ Appendix C-1 - PPA and TSA Information Request ▪ Appendix F - SFAS No. 13 Form ▪ Appendix G - Bidder Site Control Form ▪ Appendix H - Construction Coordination Agreement (if applicable)
APSA Bids at PacifiCorp Sites (3):	<ul style="list-style-type: none"> ▪ Attachment 6 - Asset Purchase and Sale Agreement (APSA) with Appendices – Lake Side ▪ Attachment 6- Asset Purchase and Sales Agreement (APSA) with Attachment 18 Currant Creek, Engineering, Procurement and Constructing Contract (EPC) ▪ Site Purchase Agreement – Attachment 16 or Attachment 17. ▪ Appendix C-2 - APSA Information Request ▪ Bidders form of O&M Agreement
APSA Bids at Bidder Sites (4):	<ul style="list-style-type: none"> ▪ Attachment 6 - Asset Purchase and Sale Agreement (APSA) with Appendices ▪ Appendix C-2 - APSA Information Request ▪ Appendix G - Bidder Site Control Form ▪ Bidders form of O&M Agreement

EPC Bids at Currant Creek Site only (5):	<ul style="list-style-type: none"> ▪ Attachment 18 - Currant Creek Engineering, Procurement and Construction Contract (EPC) ▪ Appendix C-3 - EPC Information Request ▪ Bidders form of O&M Agreement
Sale of Existing Facilities Bids (6):	<ul style="list-style-type: none"> ▪ Attachment 19 – Due Diligence items for the Acquisition of an Existing Facility ▪ Appendix C-4 – Existing Asset Purchase Information Request

Proposal Type	Additional Required Information
Sale of Portion of Jointly Owned or Operated Bids (7):	<ul style="list-style-type: none"> ▪ Attachment 19 - Due Diligence Items for the Acquisition of an Existing Facility ▪ Appendix C-4 - Existing Asset Purchase Information Request ▪ Appendix F - SFAS No. 13 Form
Restructuring Bids of an Existing Power Purchase Agreement or an Exchange Agreement and/or Buyback of an Existing Sales Agreement (8):	<ul style="list-style-type: none"> ▪ Any other form deemed to be required based on the restructuring. ▪ Appendix F - SFAS No. 13 Form
Exceptions (9) Qualifying Facilities: Load Curtailment:	<ul style="list-style-type: none"> ▪ Attachment 3 - Power Purchase Contract ▪ Attachment 16 - Site Purchase Agreement for Lake Side (if applicable) ▪ Attachment 17 - Site Purchase Agreement for Currant Creek (if applicable) ▪ Appendix C-1 - PPA and TSA Information Request ▪ Appendix F - SFAS No. 13 Form ▪ Appendix G - Bidder Site Control Form ▪ Appendix H - Construction Coordination Agreement (if applicable) ▪ Attachment 2- QFs Bidder Information

SECTION 4. RESOURCE INFORMATION

A. Price and Nonprice Information

The Company's IRP incorporated numerous price and nonprice resource cost(s) and assumptions which resulted in the IRP Action Plan. Bidders should refer directly to the IRP for the Company's estimated cost and availability of new resource alternatives. Bidders are reminded that the IRP is a planning document and certain resource assumptions were used as a proxy for planning purposes. As such, the Company shall rely on the outcome from this RFP to ascertain the most prudent resource decision. Bidders should note that the IRP is a useful document for information purposes and **Bidders should not infer in any way that the IRP should prescriptively guide their specific proposal.** The Company intends to use then-current assumptions in its evaluation of bids.

With respect to air quality standards, it is PacifiCorp's intent to incorporate cost assumptions into all bids that are consistent with the "then current assumptions." The base case assumptions can be located in the 2004 IRP in Appendix C. This represents the best information currently available at this point in time to the Company via the IRP public input process and other information sources. The base case will be updated through the RFP process only if any new assumptions become available to the Company.

This RFP will incorporate assumptions regarding the future cost, if any, associated with future tax assessment(s) or other impositions based on the quantity of carbon dioxide (CO₂) emissions produced from the combustion of fuel by a facility selected and contracted through this RFP. If a Bidder proposes an arrangement wherein a specific facility is not identified (such as may be the case with a PPA), the resulting contract shall explicitly state that the buyer (PacifiCorp) shall not be liable for any CO₂-related expenses, and the Bidder will be required to enter into a CO₂ Indemnity Agreement. For bids with a specified facility, which would include an asset backed PPA, the potential CO₂-related expenses will be included in the Company's evaluation. The CO₂-related expenses will be consistent with the reference case assumptions utilized in the 2004 IRP or the then current assumptions if applicable. The bid evaluation process will incorporate the assumption that the Bidder does not contractually absorb the liability associated with potential future CO₂ expenses.

As such, even if the bid does not provide for the passing through of such costs, Bidders are directed to submit bids that specify the results of the assumption that Bidders will pass through any costs associated with meeting future air quality requirements relating to specified facilities.

B. Price Information

Fixed & Variable cost for Capacity and Energy

1. Fixed Costs

The fixed resource costs will include, but are not limited to, the following components:

The Bidder-specified capacity cost payment (\$/kw-mo) or equivalent capital cost purchase price (including Owner's cost) plus ongoing capital estimates for the term of the resource. The Bidder-specified fixed O&M payment (\$/kw-mo).

The Bidder-specified property tax, sales tax, and insurance payment, if not included in capacity cost or fixed O&M payment (\$/kw-mo). Transport costs which may include: 1) Fuel pipeline costs for the estimated costs of adequate firm natural gas capacity or 2) railway and or other transportation, if applicable. Interconnection, integration and any other costs (e.g., applicable transmission wheeling expense) necessary to deliver the energy to load. Proposed fixed cost adjustment factor for availability.

2. Variable Costs

The variable generation costs will include, but are not limited to, the following components:

The variable energy commodity price, which, depending on structure, will likely be variable, tied to a natural gas price (including variable gas transportation costs) and a contractual or manufacturer recommended heat rate and capacity at the time of delivery (adjusted for temperature) or a coal index, and any variable cost associated with coal. In certain structures, the variable energy commodity price will be fixed, or potentially fixed with an annual escalation. Escalators must be a fixed annual percentage, CPI, or GDP.

Variable O&M (\$/MWh).

Potential CO2 costs (\$/ton) (\$/MWh based on a \$/ton CO2 basis).

Transmission losses in those cases where the Company will incur third-party transmission losses (if applicable).

Start costs (if applicable) per plant and per machine (if applicable). Bidders must define if this start cost is from initiation of start to minimum sustainable load or to full load. Start costs and variable O&M must be clearly separated. Cost presentation format provided by the Bidder should be in \$/MWh terms, assuming both eight- and sixteen- hour run periods, for up to 365 starts per year at 100% availability.⁷

⁷ The number of starts assumed per year should be adjusted down for expected mechanical availability. For example, if a resource has an expected mechanical availability of 90%, the number of assumed starts per year should equal 365 x 90% = 328.

C. Nonprice Information

1. Point(s) of Delivery

RFP 2012 is requesting resources that are capable for delivery into or in the Company's network transmission system⁸ in PACE. All proposals will be contingent on the Company Merchant function's ability to designate the proposed resource (new, existing, imported, etc.) as a Network Resource under the network service contract between PacifiCorp Transmission (www.oasis.pacificorp.com) and PacifiCorp Merchant.

PacifiCorp is interested in resources that are capable of delivery into or in a portion of the Company's network transmission system in PACE. Specifically, the point(s) of delivery of primary interest to PacifiCorp are:

- Salt Lake Valley
- PacifiCorp Sites
 - Currant Creek
 - Lake Side
- Mona⁹ 345 kV
- Glen Canyon 230 kV
- Nevada/Utah Border:
 - Gonder-Pavant 230 kV line known as "Gonder 230 kV"
 - Sigurd – Harry Allen 345 line known as "NUB" or Red Butte 345 kV
 - Crystal 500 kV¹⁰ Located in Nevada—PacifiCorp is willing to purchase capacity and associated energy that is sourced from Nevada; provided, the selling entity is able to purchase firm transmission from the resource to either Gonder or NUB.
- West of Naughton

The Company is generally not interested in resources delivered to the following areas:

- Wyoming, unless the resource(s) electrically reside south of the Naughton-Monument 230 kV line and the cost of the upgrade is included.
- Borah, Brady or Kinport unless such resource is interconnected to the Company's Southwest Idaho electrical system near the Goshen area.

⁸ Any costs required to upgrade PacifiCorp's electrical infrastructure (integration costs) will be considered in the overall economics of the resource. See Attachment 13 for cost assumptions for Integration costs. If the Bidder is proposing another site that is not stated in Attachment 13, PacifiCorp will use the best available information at the time of evaluation to determine the integration costs for the analysis.

⁹ PacifiCorp's transmission function has broken Mona into three distinct delivery points. These three points are "MDWP" (IPP-Mona from LADWP control area), "MDGT" (Bonanza-Mona within the PACE control area), and "MPAC" (all other lines into Mona with the PACE control areas). In order for PacifiCorp to properly incorporate deliveries at Mona as a network generation resource, the respondent should indicate which point at Mona the deliveries will be made from. PacifiCorp requested a system impact study (SIS) from PacifiCorp Transmission, which will be available in September and will update the timing and costs to integrate resources at Mona, Nevada Utah Border, Gonder, Glen Canyon 230kV and Currant Creek.

¹⁰ Crystal substation is currently not a valid network point of delivery on PacifiCorp's system. PacifiCorp is studying the expansion of facilities to Crystal 500 kV. Bidders are warned that the ability to accept proposals delivered to Crystal is highly contingent on the expansion of such facilities.

2. Proposals Requiring Third-Party Point-to-Point Transmission Service

For proposals that will require third-party transmission service to provide delivery of capacity and associated energy to the bid-specified Point of Delivery on PacifiCorp's system, Bidders are responsible for any interconnection, electric losses, transmission and ancillary service arrangements required to deliver the proposed capacity and associated energy to the bid specified Point(s) of Delivery. Such proposals must identify all third-party interconnection, electric losses, transmission and ancillary service products, provide a complete description of those service agreements, and provide documentation that such service(s) will be available to Bidder during the full term of offer(s) proposed. Bidders who propose unit contingent arrangements or system portfolio bids and rely on third-party transmission should be aware that the use of nonfirm transmission in any segments of the schedule from the source to the Point(s) of Delivery will result in the Company's evaluating the need to carry 100% reserves against the import schedule. The third-party transmission service is NOT a transmission service agreement with the Company Merchant function; rather it is with the Company's Transmission function, which must maintain strict functional and informational separation.

3. Interpretation with Interconnection Agreement

Each Bidder responding to RFP 2012 must conduct its operations in compliance with FERC Order No. 2004, Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions. This RFP requires that all Bidders responding must enter into a separate Interconnection Agreement or Transmission Service Agreement (TSA), in accordance with the PacifiCorp's Open Access Transmission Tariff, with PacifiCorp Transmission if such agreements are necessary.

4. PacifiCorp Transmission Interconnection Service

Bidders requiring interconnection service from PacifiCorp Transmission must specify in their proposal if they have requested transmission service or not, and if so, what type of service (Energy Resource Interconnection Service (ER) or Network Resources Interconnection Service (NR)). Bidders must advise PacifiCorp Transmission that they are requesting the service as part of this RFP.

All Proposals that will require a new electrical interconnection to the PacifiCorp Transmission system or an upgrade to an existing electrical interconnection to the PacifiCorp Transmission system must include (a) a statement of the cost of interconnection, together with a diagram of the interconnection facilities. The Bidder will be responsible for, and is required to include in its bid, all costs to interconnect to the Company's Transmission system. The Bidder will be responsible for applying to the Company Transmission for a Large Generator Interconnection Agreement ("LGIA"), except in connection with the EPC Contract, in which case PacifiCorp Generation will apply for the LGIA. However, the interconnection costs will be included in the bid evaluation. PacifiCorp's Transmission function has the option of funding the interconnection upgrades or requiring the Bidder to fund such upgrades and then receive revenue credits. Any such refunds shall be assigned to PacifiCorp's Merchant function by the Bidder.

5. PacifiCorp Transmission Integration Service

PacifiCorp has preliminarily identified the potential costs to integrate resources in Attachment 13.

These costs will be used in the evaluation analysis. In the event that a Bidder proposes a facility, PPA or TSA that is not at one of the locations identified in Attachment 13, PacifiCorp will utilize the best information reasonably available at the time of evaluation to estimate the cost to integrate the resource. Both the cost to integrate and interconnection upgrades will be utilized in the economic evaluation to determine the least-cost resource. **Bidders are reminded that they shall bear 100% of the costs to interconnect to PacifiCorp's Transmission system.** Bidders are encouraged to contact PacifiCorp's Transmission function (at www.pacificorp.com) for information related to system interconnection.

6. Use of PacifiCorp's Sites

In the event a facility is proposed to be located on a PacifiCorp Site, the Bidder must negotiate and enter into a land purchase agreement acceptable to the Company (Attachment 16 and/or 17), together with a Construction Coordination Agreement substantially in the form attached as Appendix S to Attachment 7 or Appendix H if and when the Bidder has been selected as a resource in the final shortlist. **THIS RFP 2012 IS NOT AN OFFER TO SELL PACIFICORP'S SITE TO ANY BIDDER, AND IN NO EVENT WILL THE COMPANY BE OBLIGATED TO SELL A PACIFICORP SITE TO ANY BIDDER. ANY SALE OF A PACIFICORP SITE WILL BE SUBJECT TO THE NEGOTIATION, EXECUTION AND DELIVERY OF ALL AGREEMENTS AND TO THE COMPANY'S SATISFACTION, IN ITS SOLE DISCRETION, THAT SUCH TRANSACTION WILL BE IN THE BEST INTERESTS OF THE COMPANY'S CUSTOMERS AND WILL NOT IMPAIR IN ANY MANNER THE COMPANY'S OPERATION OF ITS FACILITIES THEN LOCATED ON OR ADJACENT TO THE COMPANY SITES.**

SECTION 5. BID EVALUATION PROCESS OF THE PROPOSALS

The Bidders must submit their proposals on or before January X, 2007. The RFP 2012 Evaluation Team and the IE will adhere to the following bid evaluation process.

Overview of the Evaluation Process

The Company intends to utilize a "first price sealed bid format" in order to determine both the initial and final short list of proposals in each of the Resource Alternatives. The selection of an initial short list of bids will be based on price and nonprice factors taking into account resource diversity of the term and fuel source. The price factor will be derived, in the initial short list analysis, using the PacifiCorp Structuring and Pricing RFP Base Model. The RFP Base Model will be used to establish the initial shortlist of the top performing proposals in each of the Eligible Resource categories specified in the RFP 2012 based on the projected net present value revenue requirement (net PVRR) per kilowatt month (Net PVRR/kW-mo). The nonprice factors will evaluate the resource characteristics, the Bidders' characteristics and compliance with the Proforma contracts.

The initial list will be run through a production cost model to establish a preferred portfolio and subsequently a final short list. After the final short list is determined, post-bid negotiations will take place. Under this format, contract payments are based on the price contained in each winning bid

proposal. The “first price sealed bid format” means that the Company will utilize the initial prices and/or pricing structure submitted by the Bidders in order to determine the initial short-listed entities and the final short-listed entities.

In selecting the RFP 2012 bids for contract negotiations, an optimization model will be used to pick the least cost portfolio of resource options from the initial short list under a given set of assumptions (prices, emission expenses, etc.) about the future. The optimization procedure will be applied under a set of future scenarios to develop a set of optimal resource portfolios. Additional deterministic and stochastic analyses will be performed to determine the expected present value revenue requirement (PVRR) and selected risk measures for each of the optimal portfolios determined by the optimization model.

The three-step process described below is consistent with that used in the Company’s Integrated Resource Planning process and is expected to provide sufficient analytical basis from which to make resource choices. The evaluation will lead to the resources in the highest performing (least cost, adjusted for risk) portfolios as the RFP “winners” that will then advance to contract negotiations. The Company will not ask for, or accept, updated pricing from Bidders during this evaluation period. It is the Company’s intent to negotiate both price and nonprice issues during the post-bid negotiations. Selection for the initial short list, final short list, and/or post-bid negotiation does not constitute a “winning bid proposal.” For the purpose of the RFP 2012, only execution of the definitive agreement by both the Company and the Bidder that is specific to the Bidder’s proposal, as the same may be amended pursuant to any post-bid negotiations, will constitute a “winning bid proposal.”

Bidders should also be aware that operational separation exists, pursuant to FERC’s Standards of Conduct, between the merchant and transmission functions of PacifiCorp (See Attachment 20). As a result, it is PacifiCorp’s requirement that the Bidder is responsible for the negotiation, execution and cost of interconnection and integration with the interconnection control area. The Bidder will be responsible for all incremental transmission expenses associated with delivery to the PacifiCorp network transmission system (inclusive of any third-party system upgrade needed to deliver such energy to PACE). Any anticipated transmission cost which is not included in Attachment 13 or otherwise that is not disclosed in the Bidder’s response will be added by PacifiCorp using information reasonable and readily available during the economic evaluation phase.

The Company will not make any of the evaluation models - the RFP Base Model, the Capacity Expansion Model, the Planning and Risk Model - available to Bidders.

Bids submitted to the RFP 2012 will be evaluated in three steps:

A. Step 1—Price and Nonprice Evaluation to Determine the Initial Short List

The Company intends to evaluate each bid received in a consistent manner by breaking the resource and price characteristics of the structure into individual components. Each component will be evaluated separately and recombined to determine the bundled price and nonprice score. The price factor will be weighted up to 80%, while the nonprice factor will be weighted up to 20%. No proposal will receive a total weighting in excess of 100%. The Price and Nonprice evaluation will be added

together and used to determine the initial short list. The initial short list will be made up of the highest scoring proposals for each Resource Alternative.

1. Price Factor Evaluation (Up to 80%)

The Company will utilize the RFP Base Model to screen the proposals and to evaluate and determine the initial short list. The RFP Base Model is contained in a Microsoft Excel workbook that includes a number of proprietary Visual Basic macros, custom add-ins, and computational code written in C++.

RFP Base Model Inputs:

- Market Quote Date: The model will pull corresponding forward price, volatilities, and correlation projections for electricity and fuel commodities. Treasury discount curves are also included. The same Market Quote Date will be used for all bids during each evaluation phase.
- Term: Start and End date
- Transmission Cost assumptions
- Emission Inputs,
- Rate Base Inputs: if applicable
- Point of Delivery (POD) and Point of Receipt (POR)
- Dispatch Pattern
- Limitation of Duct Firing or Power Augmentation Capability (hours per day, hours per year, etc.)
- Firm/Unit Contingent
- Resource Type
- Product Source
- Temperature-adjusted undegraded (new and clean) Capacity Curve
- Temperature – adjusted undegraded (new and clean) Heat rate Curve
- Capacity (MW) Degradation Schedule (Expected and/or Guaranteed)
- Heat Rate Degradation Schedule (Expected and/or Guaranteed)
- Turbine Type
- Variable O&M Payment (\$/MWh)
 - VOM costs (\$/MWh)
 - Start-Up Costs (\$/MWh)
- Fixed O&M Payment (\$/KW-mo)
- Gas Capacity (MMBtu/day)
- Gas Demand Charge (\$/MMBtu-mo)
- Gas Transportation/Delivery Adder (\$/MMBtu)
- Fixed Energy Payment (\$/MWh, if applicable)
- Capacity Charge (\$/KW-mo)
- Resource/POD Availability by Month
- Forward Price Curve Multiplier by Month
- Corporate Financial Inputs – Inflation Curve, WACC, etc.

Comparison Metric

The comparison metric will be the projected net present value revenue requirement (net PVRR) per kilowatt month (Net PVRR/kW-mo). The net PVRR component views the value of the energy and capacity as a positive, and the offsetting costs as negative. The larger the net PVRR, the more valuable a given resource is to the Company's customers. The net PVRR/kW-mo metric is the annuity value which, when applied to the nominal kilowatts on a monthly basis and present-valued, will result in the same net PVRR as a straight NPV calculation.¹¹

Bid Cost relative to adjusted price curves	Price Factor Weighting
Less than or equal to 80% of adjusted price projections	80%
Greater than 80% of adjusted price projections but less than 120% of adjusted price curves	Linearly interpolated
Equal to or greater than 120% of the adjusted price projection	0%

2. Nonprice Factors (up to 20%)

The primary purpose of the nonprice analysis is to help gauge the relative development, construction and contractual risk associated with each proposal and have parties bid to a consistent set of Terms and Conditions within the Proforma Contracts. A matrix will be established for each nonprice factor and used to compare the bids with one another.

Nonprice factors will be weighted up to 20% in the determination of which proposals will be chosen for the initial short list.

The nonprice factor weighting for operation issues shall consist of the following:

Nonprice	Nonprice Weighting Factor
Development, Construction and Operational experience	up to 10%
Site Control and Permitting	up to 10%

Development, Construction, and Operational Experience

Bidders will be evaluated on the number of projects they have developed, constructed, and or operated. The scoring will be separated into two areas: 1) one percentage point will be awarded for each project the Bidder has developed, not to exceed 5%, 2) one percentage point will be awarded for the number of projects that the Bidder has constructed and/or operated in the past, not to exceed 5%. Scores for development, construction, and/or operational experience will not exceed 10%.

Site Control and Permits

Bidders must be able to 1) document they have obtained site control and necessary permits, awarded

¹¹ The term "straight NPV calculation" refers to the act of present-valuing the net of the nominal capacity and energy value, and costs, to derive a net present value of the net margin between value and costs. To the extent that all proposals are above 120% of adjusted price curves, they will be ranked by percentage.

10% or 2) Bidders can demonstrate how site control and permits will be obtained, awarded 5%. For Bidders to demonstrate how they will obtain site control, they must submit documentation which supports the site control requirements and all required permits that must be obtained. The Bidder must also submit a defined plan and/or process with specific milestones in addition to any and all hurdles with an explanation of how these hurdles will be overcome.

The initial short list will be established using the combined price and nonprice results. The initial short list will include the top bids in each Resource Alternative, up to the approximate megawatt needs for each year during the term.

The Final Short List will be comprised of Step 2 and Step 3.

B. Step 2—Capacity Expansion Model - Production Cost Run

Based on the initial short list, Global Energy Decision's Capacity Expansion Model (CEM®) will be used to develop optimized portfolios under various assumptions for future emission expense levels and market prices. CEM® will develop a corresponding number of optimized portfolios—one for each combination of emission and wholesale market price assumptions—drawing from resource options in the initial short list (described above) along with the Company's benchmark resources. These assumptions will be conceptually consistent with the 2006 Integrated Resource Plan high, medium, and low cases, but may reflect more recent data at the time the analysis is conducted.

Each portfolio from the CEM® scenarios will be a candidate for the optimum combination of resources to be selected through the RFP 2012 process and will therefore be advanced to the stochastic/deterministic analysis step described below. Resources bid into the RFP 2012 that are not included in any of the portfolios resulting from this step will no longer be considered candidates for acquisition by the Company.

C. Step 3—Risk Analysis

In order to identify the resources in the highest performing (least cost, adjusted for risk) portfolios, stochastic and deterministic analyses will be performed on each optimized portfolio.

1. Stochastic Analysis

Global Energy Decision's Planning and Risk (PaR®) model will be used in stochastic mode to develop expected PVRR and PVRR volatility parameters. PaR® is an hourly dispatch model that varies loads, wholesale gas prices, wholesale electric prices, hydro variations, and thermal unit performance. The model dispatches resources to meet load with given markets and transmission access to minimize PVRR using linear programming techniques. The resulting distribution of PVRR, typically over 100 draws of the variables, can be evaluated for the expected PVRR, tail risk PVRR, and PVRR volatility.

2. Deterministic Scenario Analysis

As an additional risk analysis step, the optimal portfolios will be subjected to a more in depth deterministic dispatch model using CEM®, with each portfolio being assessed for each of the future scenarios described in Step 2 above. For example, Portfolio 1 will have been optimized for Scenario 1, but in this step Portfolio 1 will be reevaluated under scenarios 2 through N in order to assess the consequences of choosing a portfolio under non-optimal futures. This step is intended to identify portfolios with especially poor performance under certain future scenarios and used to inform the selection of final resource options.

Inputs used in CEM® and PaR® include:

Operational Costs

For each portfolio, the operational information for each added proposal will be entered into the production cost simulation (CEM® and PaR®). In addition, the Company will include any changes to the system topology to reflect transmission upgrades required by the added proposals. The operational information used in the production cost simulations includes:

1. Maximum capacity of each unit
2. Minimum capacity of each unit
3. Dependable per-unit capacity
4. Peaking capacity, for use under specified conditions
5. Actual pre-specified commitment and/or unit dispatch
6. Daily charge for operating a unit for at least one hour in the day
7. Variable O&M cost of each unit
8. The heat rate curve for a unit
9. Pre-scheduled maintenance, number of units and duration
10. Maintenance rate, for distributed maintenance per unit
11. Mean, maximum, and minimum time to repair, for outages scheduled by Convergent Monte Carlo
12. Minimum up- and downtimes of a unit
13. Per-hour operating cost, exclusive of fuel and variable O&M costs

14. Pumped storage pumping capacity and pumping minimum
15. Unit ramp and run-up rates
16. Unit start-up O&M and fuel costs and corresponding hours
17. Emission rates/costs

The production-cost model simulations (CEM® and PaR®) will provide information on net system costs for fuel, variable plant O&M, unit start-up, market contracts and spot market purchases and sales.

Fixed Costs

As mentioned above, the revenue requirement costs associated with additional investments required by the bid—investment in new resources and/or transmission—will be added to the variable operating costs. The information required for new resources in order to calculate the fixed costs include:

1. Capital Costs—generation and transmission
2. Fixed O&M
3. Incremental Transmission Asset Life
4. Incremental Resource Asset Life
5. Direct & Inferred Debt

SECTION 6. AWARDING OF CONTRACTS

A. Invitation

RFP 2012 is merely an invitation to make proposals to the Company. No proposal in and of itself is a binding contract. The Company may, in its sole and absolute discretion, perform any one or more of the following:

Determine which proposals are eligible for consideration as proposals in response to this RFP 2012.

Issue additional subsequent solicitations for information and conduct investigations with respect to the qualifications of each respondent.

Disqualify proposals contemplating resources that do not meet this RFP 2012's definition of Base Load resources.

Supplement, amend, or otherwise modify this RFP 2012, or cancel this RFP 2012 with or without the substitution of another RFP.

Negotiate and respond to Bidders to amend any proposals.

Select and enter into agreements with the respondents who, in the Company's sole judgment, are most responsive to the RFP 2012 and whose proposals best satisfy the interest of the Company and its customers, and not necessarily on the basis of any single factor alone.

Issue additional subsequent solicitations for proposals.

Reject any or all proposals in whole or in part.

Vary any timetable.

Conduct any briefing session or further RFP 2012 process on any terms and conditions.

Withdraw any invitation to submit a response.

B. Post-Bid Negotiation

The Company will further negotiate both price and nonprice factors during post-bid negotiations. The Company will continually update its economic and risk evaluation until a definitive agreement acceptable to the Company in its sole and absolute discretion is executed by both parties. The Company will allow Bidders to negotiate final contract terms that are different from the generic Proforma contracts as long as such negotiated terms constitute contract provisions that are acceptable to PacifiCorp on a legal, contractual, credit and other business basis. **The Company shall have no obligation to enter into any agreement with any Bidder to this RFP 2012 and the Company may terminate or modify this RFP 2012 at any time without liability or obligation to any Bidder.**

C. Confidentiality Agreement

All parties will be required to sign Confidentiality Agreements if they are short-listed (**Attachment 14**) prior to entering into negotiations with the Company.

D. Nonreliance Letter

All parties will be required to sign a nonreliance letter if they are short-listed (**Attachment 15**) prior to entering into negotiations with PacifiCorp.

**Request for Qualification Bid Form
for 2012 Request for Proposal**
Due November X, 2006

Complete Appendix A and Appendix B

Request for Qualification (RFQ) Bid Form for RFP 2012

This RFQ is comprised of Appendix A and Appendix B of which both must be fully completed and submitted by November X, 2006 to the Independent Evaluator (IE) in order to participate in PacifiCorp's RFP 2012.

This is to declare that the undersigned intends to respond to PacifiCorp's Request for Proposals, Electric Resources (RFP 2012)

Please include:

Company:	
Mailing Address:	
Phone: Fax:	
Email:	
Contact Person:	
Authorized Signature:	
Date:	

Return by FedEx Mail by November X, 2006 to:

Attention: Independent Evaluator
Merrimack Energy Group, Inc.: PacifiCorp RFP 2012
c/o Utah Division of Public Utilities
160 E 300 S, 4th floor
Salt Lake City, Utah 84111

The RFQ consists of Appendix A and Appendix B. Both Appendices **must be completed in their entirety**. Bidders must be able to demonstrate their credit, capability, experience and qualification to deliver, along with specific references for each and every selected Eligible Reference resource option being submitted in response to the RFP 2012.

PacifiCorp reserves the right, without qualification and in their sole discretion, to reject as non-responsive any, all, or portions of bid proposals received for failure to meet any requirement of this RFP 2012. PacifiCorp also reserves the right to request that the IE contact any Bidder for additional information. PacifiCorp further reserves the right

RFQ Draft RFP
Due November X, 2006

without qualification and in their sole discretion to decline to enter into any Agreement with any Bidder for any reason.

RFQ Draft RFP
Due November X, 2006

RFQ Draft RFP
Due November X, 2006

RFQ Draft RFP
Due November X, 2006

RFQ Bid Form 2012
APPENDIX A
Qualification, Capability and
Experience

1. ELIGIBLE RESOURCES

Bidder must submit a separate form for each Eligible Resource it is going to submit. Each Eligible Resource will have a separate Bid number. Bidder must select by marking with an "X" only one of the following Eligible Resources which is described in Section C.1 of the RFP 2012. To the extent the Bidder submits a proposal that is different than the one checked, in the RFQ, PacifiCorp reserves the right not to accept the RFP Proposal.

- Power Purchase
- Tolling Agreement
- Asset Purchase and Sale Agreement on Bidder's Site
- Asset Purchase and Sale Agreement on PacifiCorp Site
 - Currant Creek
 - Lake Side
- Engineering, Procurement and Construction Contract (EPC) (Currant Creek site only)
- Purchase of an existing Facility
- Purchase of a portion of a facility, jointly owned or operated by PacifiCorp
- Restructure of an existing Power Purchase Agreement (PPA)
- Restructure of an existing Exchange Agreement
- Qualifying Facility
- Load Curtailment

RFQ Draft RFP
 Due November X, 2006

Full Legal Name of Seller:	
Full Legal Name of Guarantor:	
Commercial Contact:	
Title:	
Office Phone:	
Cell Phone:	
Email Address:	
Credit Contact:	
Title:	
Office Phone:	
Cell Phone:	
Email Address:	
Legal Contact:	
Title:	
Office Phone:	
Cell Phone:	
Email Address:	
Proposed Project (As applicable but not limited to the project submitted.)	<ul style="list-style-type: none"> • Commercial Operation Date) - _____ • Size (100 MW minimum) - _____ • Location and Delivery Point _____ • Technology (e.g. LM 6000, CT, CCGT, etc.) _____ • New, Repowered or Relocated _____ • Status of Project development and engineering _____ • Status of Construction and Air Applications and Permits _____ • Status of Electric Interconnection Request and Studies _____ • Status of Gas System Interconnection Agreements _____ • Other Information - _____

2. BIDDER QUALIFICATION

Please complete and/or provide documentation on the following sections listed below

1. Corporate structure and primary and secondary businesses
2. Location of offices
3. Biographies of key officers
4. Please provide documentation of your company's previous experience providing the Proposed Eligible resource over the last three to five years.
5. At least one contact (name and telephone number) for each project or power supply venture (for reference purposes) the Bidder has entered into.

6. Description of any current or previous contract dispute(s) involving similar projects in which the Bidder is or was involved during the last five years.

7. Provide separate descriptions, as appropriate, for each member of a consortium or partnership of two or more firms and the relationship between the firms for this Proposal.

3. Bidder Experience

In the case where a bid contains a proposal to develop a new project or an existing project please describe the status of all activities necessary to either fully develop and/or implement the project, such as negotiations for partnership agreements, equipment supplier agreements, and EPC agreements, fuel supply agreements, if applicable, permitting, financing etc. **Any and all contingencies must be described in detail.** If the Bidder cannot demonstrate to the Company's reasonable satisfaction that the Bidder possesses the requisite expertise and experience in providing or operating the Eligible Resources, proposed by the Bidder, the Company, after consulting with the IE, reserves the right to exclude the Bidder from the RFP process.

4. Bidder Capability

Site Description and Control

Provide the following information:

- (i) Address of the site where the Project will be located (the “Project Site”).
- (ii) Name of existing facility at the Project Site, if any.
- (iii) True and correct copies of maps showing the boundaries of the Project Site and key facilities, including any off-sites (fuel, water, wastewater and electrical interconnections). List and provide a copy of documentation establishing that the Seller has and/or will have site control for the entire Term of the Definitive Agreements.
- (iv) If Seller does not have site control as of the date of this Offer Sheet, Seller must describe in detail how it plans to obtain site control by the first date of the Term of the Definitive Agreements, including a description of the current status of any negotiations regarding the Project Site and a timeline of when Seller will have site control.
- (v) Status of permits or process applicable to the Project
- (vi) Emissions offsets and credits required and how these will be obtained.
- (vii) Source of water – if the Bidder has control and if not, how will it be obtained.
- (viii) Project schedule including both the development and construction schedule to be updated with the proposal.

If the Bidder cannot demonstrate to the Company’s reasonable satisfaction that the Bidder possesses the capability to provide the Eligible Resources, proposed by the Bidder, the Company, after consulting with the IE, reserves the right to exclude the Bidder from the RFP process

RFQ 2012 Bid Form
APPENDIX B
Credit and Credit Matrix

BIDDER'S CREDIT INFORMATION AND CREDIT MATRIX

Please provide the following information so PacifiCorp can evaluate the financial viability of the Bidder or any entity providing credit assurances on behalf of the Bidder.

Bidder's Credit Information

1. Credit information for Bidder

A. Exact, legal name and address of Bidder:

B. Debt Ratings from S&P and/or Moody's (please provide senior unsecured long term debt rating (or corporate rating if a debt rating is unavailable). Please indicate type of rating, rating, and source:

C. Please attach copies of audited financial statements (including balance sheet, income statement, and cash flow statement) for the three most recent fiscal years.

Fiscal Year End:

D. Identify pending legal disputes (describe):

E. Please state whether Bidder is or has within the past five (5) years been the debtor in any bankruptcy proceeding.

F. If Bidder is unable to provide audited financial statements or is relying upon another entity to provide credit assurances on its behalf, Bidder must indicate so here and complete the following section.

Is Bidder unable to provide audited financial statements?
Is Bidder relying upon another entity to provide credit assurances on Bidder's behalf?

2. Credit information for entity providing credit assurances on behalf of Bidder (if applicable)

A. Exact, legal name and address of entity providing credit assurances on behalf of Bidder:

B. Describe relationship to Bidder and describe type of credit assurances to be provided (e.g. parental guaranty, letter of credit, etc.). Bidder must provide a letter of commitment from the entity providing the credit assurances on behalf of the Bidder executed by an authorized signatory and indicating the amount and form of credit assurances it will provide.

C. Debt Ratings from S&P and/or Moody's (please provide senior unsecured long term debt rating (or corporate rating if a debt rating is unavailable). Please indicate type of rating, rating, and source:

D. Please attach copies of audited financial statements (including balance sheet, income statement, and cash flow statement) for the three most recent fiscal years.

Fiscal Year End:

E. Pending legal disputes (describe):

F. Please state whether entity providing credit assurances on behalf of the Bidder is or has within the past five (5) years been the debtor in any bankruptcy proceeding.

CREDIT MATRIX

The Bidder should utilize the Credit Matrix to determine the maximum credit assurance requirements based on its credit rating and the size and type of Eligible Resource bid. The Bidder will be required to demonstrate the ability to post any required credit assurances in the form of a comfort letter from a proposed guarantor or from a financial institution that would be issuing a Letter of Credit.

The amount of any credit assurances to be provided will be determined based upon the a) the Credit Rating in the Credit Matrix of either the Bidder or the entity providing credit assurances on behalf of the Bidder, b) the size of the project, and c) the type of Eligible Resource. The Credit Rating will be the lower of: x) the most recently published senior, unsecured long term debt rating (or corporate rating if a debt rating is unavailable) from Standard & Poor's (S&P) or y) the most recently published senior, unsecured debt rating (or corporate rating if a debt rating is unavailable) Moody's Investor Services.

If option x) or y) is not available, the Credit Rating will be determined by PacifiCorp Credit through an internal process review utilizing a proprietary credit scoring model developed in conjunction with S&P. All Bidders will receive a Credit Rating which will determine the Amount of Unsecured Credit. Please note that should a Bidder be an existing counterparty with PacifiCorp, PacifiCorp reserves the right to protect itself from counterparty credit concentration risk and require credit assurance in addition to those outlined in the Credit Matrix.

Credit Appendix B for RFP 2012-2014

Credit Matrices Notes

- Maximum Value of Credit Assurances to be Posted for each range of MW for a 2012-2014 Resource
- Based on Size and Type of Resource Alternative Bid
- For projects between 5-10 years the credit may be adjusted.

PacifiCorp
 Draft RFP 2012
 Responses due January, 2007

RFP 2012 Credit Matrices

For Eligible Resources B3, B4, B5, B6 and B7

Size of Nameplate bid in MW =>	100	101-150	151-200	201-250	251-300	301-350	351-400	401-450	451-500	501-550	551-600	601-650	651-700	701-750	751-800	801-850	851-900	901-940
Credit Rating																		
AAA/Aaa and above	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$21,929,500	\$30,638,750	\$39,348,000	\$48,057,250	\$56,766,500	\$63,733,900
BBB/Baa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$20,801,750	\$29,511,000	\$38,220,250	\$46,929,500	\$55,638,750	\$64,348,000	\$73,057,250	\$81,766,500	\$88,733,900
BBB-/Baa3	\$0	\$0	\$0	\$0	\$0	\$10,964,750	\$19,674,000	\$28,383,250	\$37,092,500	\$45,801,750	\$54,511,000	\$63,220,250	\$71,929,500	\$80,638,750	\$89,348,000	\$98,057,250	\$106,766,500	\$113,733,900
Below BBB-/Baa3	\$17,418,500	\$26,127,750	\$34,837,000	\$43,546,250	\$52,255,500	\$60,964,750	\$69,674,000	\$78,383,250	\$87,092,500	\$95,801,750	\$104,511,000	\$113,220,250	\$121,929,500	\$130,638,750	\$139,348,000	\$148,057,250	\$156,766,500	\$163,733,900

For Eligible Resources B1, B2 and B8 (ASSET BACKED)

Size of Nameplate bid in MW =>	100	101-150	151-200	201-250	251-300	301-350	351-400	401-450	451-500	501-550	551-600	601-650	651-700	701-750	751-800	801-850	851-900	901-940
Credit Rating																		
AAA/Aaa and above	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$21,929,500	\$30,638,750	\$39,348,000	\$48,057,250	\$56,766,500	\$63,733,900
BBB/Baa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$20,801,750	\$29,511,000	\$38,220,250	\$46,929,500	\$55,638,750	\$64,348,000	\$73,057,250	\$81,766,500	\$88,733,900
BBB-/Baa3	\$0	\$0	\$0	\$0	\$0	\$10,964,750	\$19,674,000	\$28,383,250	\$37,092,500	\$45,801,750	\$54,511,000	\$63,220,250	\$71,929,500	\$80,638,750	\$89,348,000	\$98,057,250	\$106,766,500	\$113,733,900
Below BBB-/Baa3	\$17,418,500	\$26,127,750	\$34,837,000	\$43,546,250	\$52,255,500	\$60,964,750	\$69,674,000	\$78,383,250	\$87,092,500	\$95,801,750	\$104,511,000	\$113,220,250	\$121,929,500	\$130,638,750	\$139,348,000	\$148,057,250	\$156,766,500	\$163,733,900

For Eligible Resources B1, B2 and B8 (NON ASSET BACKED)

Size of Nameplate bid in MW =>	100	101-150	151-200	201-250	251-300	301-350	351-400	401-450	451-500	501-550	551-600	601-650	651-700	701-750	751-800	801-850	851-900	901-940
Credit Rating																		
AAA/Aaa and above	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$42,127,800	\$116,565,500	\$191,003,200	\$265,440,900	\$339,878,600	\$399,428,760
BBB/Baa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$68,814,700	\$143,252,400	\$217,690,100	\$292,127,800	\$366,565,500	\$441,003,200	\$515,440,900	\$589,878,600	\$649,428,760	
BBB-/Baa3	\$0	\$0	\$0	\$0	\$0	\$21,063,900	\$95,501,600	\$169,939,300	\$244,377,000	\$318,814,700	\$393,252,400	\$467,690,100	\$542,127,800	\$616,565,500	\$691,003,200	\$765,440,900	\$839,878,600	\$899,428,760
Below BBB-/Baa3	\$148,875,400	\$223,313,100	\$297,750,800	\$372,188,500	\$446,628,200	\$521,063,900	\$595,501,600	\$669,939,300	\$744,377,000	\$818,814,700	\$893,252,400	\$967,690,100	\$1,042,127,800	\$1,116,565,500	\$1,191,003,200	\$1,265,440,900	\$1,339,878,600	\$1,399,428,760

PacifiCorp
 Draft RFP 2012
 Responses due January, 2007

For Eligible Resource B9a)

Size of Nameplate bid in MW ==>	For a term of greater than 10 years			
	Up to 25	26 to 50	51 to 75	76 to 100
Credit Rating				
AAA/Aaa and above	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$0
BBB/Baa2	\$0	\$0	\$0	\$0
BBB-/Baa3	\$0	\$0	\$0	\$0
Below BBB-/Baa3	\$37,218,850	\$74,437,700	\$111,656,550	\$148,875,400

For projects between 5-10 years the credit may be adjusted.

PacifiCorp
 Draft RFP 2012
 Responses due January, 2007

RFP 2013 Credit Matrices

For Eligible Resources B3, B4, B5, B6 and B7

Size of Nameplate bid in MW ==>	100	101-150	151-200	201-250	251-300	301-350	351-400	401-450	451-500	501-550	551-600	601-650	651-700	701-750
Credit Rating														
AAA/Aaa and above	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$20,287,000	\$29,815,700	\$39,344,400	\$48,873,100	\$58,401,800	\$67,930,500
BBB/Baa2	\$0	\$0	\$0	\$0	\$0	\$19,979,600	\$29,508,300	\$39,037,000	\$48,565,700	\$58,094,400	\$67,623,100	\$77,151,800	\$86,680,500	\$95,901,800
BBB-/Baa3	\$0	\$0	\$0	\$10,143,500	\$19,672,200	\$29,200,900	\$38,729,600	\$48,258,300	\$57,787,000	\$67,315,700	\$76,844,400	\$86,373,100	\$95,901,800	\$105,430,500
Below BBB-/Baa3	\$19,057,400	\$28,586,100	\$38,114,800	\$47,643,500	\$57,172,200	\$66,700,900	\$76,229,600	\$85,758,300	\$95,287,000	\$104,815,700	\$114,344,400	\$123,873,100	\$133,401,800	\$142,930,500

For Eligible Resources B1, B2 and B8 (ASSET BACKED)

Size of Nameplate bid in MW ==>	100	101-150	151-200	201-250	251-300	301-350	351-400	401-450	451-500	501-550	551-600	601-650	651-700	701-750
Credit Rating														
AAA/Aaa and above	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$20,287,000	\$29,815,700	\$39,344,400	\$48,873,100	\$58,401,800	\$67,930,500
BBB/Baa2	\$0	\$0	\$0	\$0	\$0	\$19,979,600	\$29,508,300	\$39,037,000	\$48,565,700	\$58,094,400	\$67,623,100	\$77,151,800	\$86,680,500	\$95,901,800
BBB-/Baa3	\$0	\$0	\$0	\$10,143,500	\$19,672,200	\$29,200,900	\$38,729,600	\$48,258,300	\$57,787,000	\$67,315,700	\$76,844,400	\$86,373,100	\$95,901,800	\$105,430,500
Below BBB-/Baa3	\$19,057,400	\$28,586,100	\$38,114,800	\$47,643,500	\$57,172,200	\$66,700,900	\$76,229,600	\$85,758,300	\$95,287,000	\$104,815,700	\$114,344,400	\$123,873,100	\$133,401,800	\$142,930,500

For Eligible Resources B1, B2 and B8

Size of Nameplate bid in MW ==>	100	101-150	151-200	201-250	251-300	301-350	351-400	401-450	451-500	501-550	551-600	601-650	651-700	701-750
Credit Rating														
AAA/Aaa and above	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$51,717,000	\$131,888,700	\$212,060,400	\$292,232,100	\$372,403,800	\$452,575,500
BBB/Baa2	\$0	\$0	\$0	\$0	\$0	\$78,873,600	\$159,045,300	\$239,217,000	\$319,388,700	\$399,560,400	\$479,732,100	\$559,903,800	\$640,075,500	\$720,247,200
BBB-/Baa3	\$0	\$0	\$0	\$25,858,500	\$106,030,200	\$186,201,900	\$266,373,600	\$346,545,300	\$426,717,000	\$506,888,700	\$587,060,400	\$667,232,100	\$747,403,800	\$827,575,500
Below BBB-/Baa3	\$160,343,400	\$240,515,100	\$320,686,800	\$400,858,500	\$481,030,200	\$561,201,900	\$641,373,600	\$721,545,300	\$801,717,000	\$881,888,700	\$962,060,400	\$1,042,232,100	\$1,122,403,800	\$1,202,575,500

PacifiCorp
 Draft RFP 2012
 Responses due January, 2007

For Eligible Resource B9a)

Size of Nameplate bid in MW ==>	For a term of greater than 10 years			
	Up to 25	26 to 50	51 to 75	76 to 100
Credit Rating				
AAA/Aaa and above	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$0
BBB/Baa2	\$0	\$0	\$0	\$0
BBB-/Baa3	\$0	\$0	\$0	\$0
Below BBB-/Baa3	\$40,085,850	\$80,171,700	\$120,257,550	\$160,343,400

- For projects between 5-10 years the credit may be adjusted.

PacifiCorp
 Draft RFP 2012
 Responses due January, 2007

RFP 2014 Credit Matrices

For Eligible Resources B3, B4, B5, B6 and B7											
Size of Nameplate bid in MW ==>	100	101-150	151-200	201-250	251-300	301-350	351-400	401-450	451-500	501-550	551-600
Credit Rating											
AAA/Aaa and above	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$17,606,750	\$28,628,100	\$39,649,450	\$50,670,800	\$61,692,150	\$72,713,500	\$83,734,850	\$94,756,200
BBB/Baa2	\$0	\$0	\$15,960,400	\$26,981,750	\$38,003,100	\$49,024,450	\$60,045,800	\$71,067,150	\$82,088,500	\$93,109,850	\$104,131,200
BBB-/Baa3	\$0	\$14,314,050	\$25,335,400	\$36,356,750	\$47,378,100	\$58,399,450	\$69,420,800	\$80,442,150	\$91,463,500	\$102,484,850	\$113,506,200
Below BBB-/Baa3	\$22,042,700	\$33,064,050	\$44,085,400	\$55,106,750	\$66,128,100	\$77,149,450	\$88,170,800	\$99,192,150	\$110,213,500	\$121,234,850	\$132,256,200

For Eligible Resources B1, B2 and B8 (ASSET BACKED)											
Size of Nameplate bid in MW ==>	100	101-150	151-200	201-250	251-300	301-350	351-400	401-450	451-500	501-550	551-600
Credit Rating											
AAA/Aaa and above	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$17,606,750	\$28,628,100	\$39,649,450	\$50,670,800	\$61,692,150	\$72,713,500	\$83,734,850	\$94,756,200
BBB/Baa2	\$0	\$0	\$15,960,400	\$26,981,750	\$38,003,100	\$49,024,450	\$60,045,800	\$71,067,150	\$82,088,500	\$93,109,850	\$104,131,200
BBB-/Baa3	\$0	\$14,314,050	\$25,335,400	\$36,356,750	\$47,378,100	\$58,399,450	\$69,420,800	\$80,442,150	\$91,463,500	\$102,484,850	\$113,506,200
Below BBB-/Baa3	\$22,042,700	\$33,064,050	\$44,085,400	\$55,106,750	\$66,128,100	\$77,149,450	\$88,170,800	\$99,192,150	\$110,213,500	\$121,234,850	\$132,256,200

For Eligible Resources B1, B2 and B8											
Size of Nameplate bid in MW ==>	100	101-150	151-200	201-250	251-300	301-350	351-400	401-450	451-500	501-550	551-600
Credit Rating											
AAA/Aaa and above	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$26,465,750	\$106,758,900	\$187,052,050	\$267,345,200	\$347,638,350	\$427,931,500	\$508,224,650	\$588,517,800
BBB/Baa2	\$0	\$0	\$39,922,600	\$120,215,750	\$200,508,900	\$280,802,050	\$361,095,200	\$441,388,350	\$521,681,500	\$601,974,650	\$682,267,800
BBB-/Baa3	\$0	\$53,379,450	\$133,672,600	\$213,965,750	\$294,258,900	\$374,552,050	\$454,845,200	\$535,138,350	\$615,431,500	\$695,724,650	\$776,017,800
Below BBB-/Baa3	\$160,586,300	\$240,879,450	\$321,172,600	\$401,465,750	\$481,758,900	\$562,052,050	\$642,345,200	\$722,638,350	\$802,931,500	\$883,224,650	\$963,517,800

PacifiCorp
 Draft RFP 2012
 Responses due January, 2007

For Eligible Resource B9a)

	For a term of greater than 10 years			
Size of Nameplate bid in MW ==>	Up to 25	26 to 50	51 to 75	76 to 100
Credit Rating				
AAA/Aaa and above	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$0
BBB/Baa2	\$0	\$0	\$0	\$0
BBB-/Baa3	\$0	\$0	\$0	\$0
Below BBB-/Baa3	\$40,146,575	\$80,293,150	\$120,439,725	\$160,586,300

For projects between 5-10 years the credit may be adjusted.

RFP 2012
Appendix C
Information Required in Bid
Proposals for each Eligible Resource

Appendix C-1

Power Purchase Agreements and Tolling Agreements

Information Required in Bid Proposals

In general, PacifiCorp expects Bidders to provide any information that could impact the cost, reliability, dispatch frequency, or output capability of a resource. In the event a Bidder is proposing a transaction that does not require the construction of a resource, much of the following information may not apply. PacifiCorp believes these resource attributes largely consist of, but may not be limited to, the following information categories:

Impact of Temperature on Output – If Project output will vary with ambient conditions, capacity, and any associated performance impact, should be stated in terms of conditions expected during a summer day, with ambient air conditions of 95°F and 20% relative humidity, and a winter day with ambient conditions of 20°F and 75% relative humidity. The Bidder will complete Table C-1.1 showing output at specific ambient conditions, with and without duct firing and/or power augmentation, if applicable. To the extent pricing, capacity and/or availability vary based on specific characteristics of the facility, the Bidder shall clearly identify those relationships in tabular form.

Impact of Other Factors on Output – PacifiCorp prefers generation facilities designed, permitted, and operated so that, to the extent practicable, the proposed capacity and any related energy provided to PacifiCorp is not restricted by:

- Environmental permits or other environmental limitation or environmental forfeitures
- Hours of operation
- Sales of capacity or energy to other parties
- Interruption of primary fuel supply
- Sale of thermal energy
- Any other factor relevant to the technology (noise, agreements with neighbors, etc.
- Bidders shall describe in detail any such limitations in their Proposal
- Ability to provide additional capacity over the net capable rating
- Non-environmental or technology factors that could encumber the facility
- Water availability

Siting – Bidders are responsible for all construction and coordination with the applicable service provider(s) for any new electrical transmission and fuel transportation facilities required in response to this RFP. Bidders are responsible for satisfying all zoning and environmental requirements.

Facility Information – To the extent applicable, the Bidder should clarify the following information with respect to any proposed facility:

- Proposed air emissions (all criteria pollutants and air toxics), description of emission controls, description of plan to acquire any required emission offsets, and description of criteria used to determine requirement.
- List of required environmental, construction, and other regulatory permits and timeline for acquisition.
- Proposed water usage quantity, quality and source.
- Proposed water discharge quantity and quality, plus description of water discharge plan.
- Receiving water body identity and description
- Description of local groundwater quality, quantity, uses, and potential impacts.
- Prevailing noise ordinance at the site and expected sound level (A-weighted) at full load at the site boundary.
- Proposed noise levels and description of noise baffles and stack silencing equipment.
- Proposed site plans, layouts, elevations and other aspects of the facility.
- Types of transportation access required.
- Characterization of the area surrounding the site, including a description of local zoning, flood plain information (100 yr. & 500 yr.), existing land use and setting (woodlands, grasslands, agriculture, etc.).
- Information of fish, wildlife and vegetation inhabiting the area of the Project.
- Proximity to nearest endangered or threatened species which could be potentially impacted.
- Proximity to nearest historical or archaeological resources and all nearby historical or archaeological resources which could potentially be impacted.
- Location and distance to population centers which could be impacted.
- Expected site ambient temperature extremes and verification that freeze protection will be provided as necessary.

Fuel Transportation Route Information – To the extent applicable, the Bidder should clarify any relevant information with respect to fuel transportation route information for any proposed site:

- Proposed new fuel transportation route(s).
- Estimated impact on wetlands (e.g., length of route through wetland).
- Describe land use impacts.
- Descriptions of stream crossings.
- Characterization of the area encompassing the fuel transportation route, including a description of existing land use and setting.

Proposal Format – As mentioned above, Bidders are being asked to submit a “blinded” bid in such a format that the identity of the Bidder is not apparent. In doing so, PacifiCorp is requesting that Bidders confirm to the following format for presenting their bid information:

Section 1 – Executive Summary of Proposal – The Executive Summary section should provide an overall description of the proposal and its key benefits and advantages to PacifiCorp. It should include a general description of the technology, location, and business arrangement for the bid. Bidder shall state the period under which the terms and conditions of their Proposal will remain effective.

Section 2 – Resource Description – This section should include a description of the resource, including:

- Type of generation equipment and description
- Manufacturers of major equipment
- Model number, serial number and age of any previously owned/operated, or “grey market” equipment
- Type of heat rejection equipment (cooling towers, ponds, Air-Cooled Condenser, etc.)
- Source of process and/or cooling water
- Wastewater disposal plan
- Water Balance
- Description of financing plan
- Description of operation and maintenance plan
- Plan for site control
- Site layout description
- Description of technology and configuration
- Net Capacity ratings and net heat rates at ambient conditions as specified in Table C-1.1.
- Primary fuel supply and backup alternatives
- Electrical interconnection (location, transmission provider, and control area)
- Description of emission control technology, including manufacturer
- Any limits on hours of operation in a particular mode (i.e., combined cycle, duct firing, power augmentation, or combination thereof)
- Any limits on emissions
- Project schedule, listing tasks and milestones with estimated completion dates. Bidders shall also complete Exhibit 1 to document technical aspects of their Proposal
- Startup Time for Cold, Warm and Hot Starts. A Cold Start is defined as a shutdown of the generating equipment for 48 hours or longer. A Warm Start is defined as a startup within 48 hours of a shutdown. A Hot Start is defined as a start within 8 hours of a shutdown. Bidder should provide its own definitions if different. For this information Startup Times requested may be

for the time to minimum sustainable load and time to full load, without duct firing or power augmentation.

- Guarantee and expected degradation curves (kW and heat rate)
- Guaranteed availability and reliability
- Long Term Outage Plan
- Anticipated on-site gas compression, if applicable.
- Size and levels of redundancy for all major process equipment and material handling facilities (i.e. major pumps, fans, compressors, storage tanks, mills)
- Design basis for the resource
- Material Balance
- Solid waste disposals.

Section 3 – Pricing Proposal – Describe in detail the pricing proposal, including the use of any index, escalation factors, or other costs to PacifiCorp. Proposed dates, amounts, and detailed milestone descriptions justifying payments are required.

Section 4 – Transmission – Each Proposal must include a description of the location of its proposed transmission facilities, including proposed delivery points, and must specify the transmission provider and all applicable costs.

Section 5 – Environmental and Siting – The Bidder is exclusively and entirely responsible for meeting and satisfying all federal, state, and local permits, licenses, approvals and/or variances that are required to assure physical delivery of capacity and associated energy in accordance with any PPA or Tolling transaction. Bidder must furnish applicable detailed project site, electric transmission, and fuel transportation information, a description of all required permits, and a project timeline so PacifiCorp can assess site suitability, schedule risk and project viability. The proposed site(s) shall clearly be shown on a United States Geological Survey (USGS) 7.5-minute series map.

Section 6 – Other Information

Fuel – Bidders should describe their fuel supply plan and the extent to which they desire to provide fuel and transportation and other fuel-related services, including fuel price management (hedging) or a tolling fee in which PacifiCorp will be responsible for all the fuel and fuel-related costs. PacifiCorp's preference is for proposals that address its need for reliability, management of price risk, and meeting the operations. If the energy cost portion of the Bidder's terms includes a fuel cost component, the Bidder shall explain its proposed fuel supply program.

Dispatchability – Describe any constraints and/or limitations on PacifiCorp's ability to dispatch the generation and any ability of PacifiCorp to utilize the resource for operating reserves.

Technical Data – Technical data as requested in Exhibit 1 of this Appendix.
Section 7 – Contract Terms – Bidder shall provide a comprehensive listing/description of all contract terms in the PacifiCorp PPA or TSA, including appendices, that the Bidder

PacifiCorp
Draft RFP 2012
Responses due January, 2007

would seek to modify during contract negotiations. Bidder to identify any and all PacifiCorp obligations not specifically outlined in the referenced agreements.

EXHIBIT 1

TECHNICAL DATA

Site Location _____

Net Capacity at 95°F, 20% Relative Humidity, and at Site Conditions is _____ MW

Site Elevation: _____ Feet

Maximum water consumption is _____ gallons per minute.

Expected water consumption is _____ acre-feet per year.

Minimum Sustainable Load at above conditions _____ MW

Automatic Generation Control (AGC) capable Yes ____ No _____. If yes then the AGC range at above conditions is _____ MW to _____ MW.

Maximum number of starts per day is _____, per month _____, per year _____.

Maximum continuous period that the facility can operate steam-for-power-augmentation at full load without depleting the demineralized water system is _____ hours. This assumes the demineralized water system is operating at rated capacity.

Weighted Average Raw Water Consumption is _____ gallons per minute.

Time to bring the facility on line, in minutes (specify if this is to synchronization or sustainable minimum load) (Bidder to define "cold", "warm", and "hot starts", if not as stated above)

	Min/Sust.	Full Load
For Cold Start:	_____	_____
For Warm Start:	_____	_____
For Hot Start:	_____	_____

Minimum time on-line (hours from start initiation to stop initiation) _____

Minimum time off-line (hours from stop initiation to start initiation) _____

Normal Ramp Rate within operating range: (MW/Min.) Increase: _____ Decrease: _____

Emergency Ramp Rate: (MW/Minute) Increase: _____ Decrease: _____

Time to transfer from combined cycle to duct firing _____ min.

Duct Firing Ramp Rate: (MW/Min.) Increase: _____ Decrease: _____

PacifiCorp
Draft RFP 2012
Responses due January, 2007

Time to transfer from combined cycle to power augmentation _____ min.

Power Augmentation Ramp Rate: (MW/Min.) Increase: _____ Decrease: _____

Anticipates Number of Starts per CT to reach Commercial Operation (CO): _____

Anticipated quantity of natural gas consumed through CO: _____ dth.

Additional Information

Bidder to provide partial load performance curves, including minimum load, showing heat rate and load at varying temperatures.

To the extent that pricing and/or availability vary based on specific characteristics of the facility and/or ambient conditions, the Bidder shall clearly identify that relationship in tabular form, including the relationship between temperature and capacity over the local ambient range inclusive of -10°F to 105°F. Bidder to fill out Table C-1.1 below:

Table C-1.1

Temp in °F	% RH	Evap or Chiller	Duct Burners	Power Aug.	Heat Rate	Net Output	Min. Load
-10	100						
-10	100		On				NA
0	100						
10	100						
15	84						
20	86						
20	86		On				NA
20	86			On			NA
20	86		On	On			NA
30	75						
40	55						
50	49						
52	46						
52	46	On					
60	40	On					
60	40		On				NA
60	40			On			NA
60	40		On	On			NA
70	33	On					
75	29	On					
75	29		On				NA
75	29			On			NA
75	29		On	On			NA
80	25	On					
90	16	On					
95	15	On					
95	15		On				NA
95	15			On			NA
95	15		On	On			NA
105	11						
105	11	On	On	On			NA

Appendix C-2, BOT Contract (APSA) Bids

Information Required in Bid Proposals

In general, PacifiCorp expects Bidders to provide any information that could impact the cost, reliability, dispatch frequency, or output capability of a resource. PacifiCorp believes these resource attributes largely consist of, but may not be limited to, the following information categories:

Impact of Temperature on Output – If Project output will vary with ambient conditions, capacity, and any associated performance impact, should be stated in terms of conditions expected during a summer day, with ambient air conditions of 95°F and 20% relative humidity, and a winter day with ambient conditions of 20°F and 75% relative humidity. The Bidder will complete Table C-2.1 showing output at specific ambient conditions, with and without duct firing and/or power augmentation. To the extent pricing, capacity and/or availability vary based on specific characteristics of the facility, the Bidder shall clearly identify those relationships in tabular form.

Impact of Other Factors on Output – PacifiCorp prefers generation facilities designed, permitted, and operated so that, to the extent practicable, the proposed capacity and any related energy provided to PacifiCorp is not restricted by:

- Environmental permits or other environmental limitation or environmental forfeitures
- Hours of operation
- Any other factor relevant to the technology (noise, agreements with neighbors, etc.
- Bidders shall describe in detail any such limitations in their Proposal
- Ability to provide additional capacity over the net capable rating
- Non-environmental or technology factors that could encumber the facility
- Water availability

Build Own Transfer (BOT) Option – Bidders may propose a fixed-price, lump-sum sale of new generation assets to PacifiCorp, either at an existing PacifiCorp site or propose other sites. Such proposals must include the following information in addition to any technical information:

- Markup of Asset Purchase and Sale Agreement (APSA), including appendices. Quantity and impact of proposed changes are a nonprice factor in selecting Bidders for further discussions.
- Amounts and dates of milestone-based payments, including descriptions, required of PacifiCorp.
- Information regarding location and transmission availability.
- Information regarding fuel and transportation availability.

- Capacity on summer design day in compliance with all regulatory requirements.
- Efficiency (Heat Rate) in compliance with all regulatory requirements.
- Proposed facilities will only contain “OEM-certified new major equipment”. This being defined as OEM equipment that has not been previously installed or operated and has the same warranties and guarantees as equipment delivered directly from the OEM’s production line, and all reliability and design TILS and/or Service Bulletins have been implemented.

Siting – Bidders are responsible for all construction and coordination with the applicable service provider(s) for any new electrical transmission and fuel transportation facilities required in response to this RFP. Bidders are responsible for satisfying all zoning and environmental requirements.

Facility Information – To the extent applicable, the Bidder should clarify the following information with respect to any proposed facility:

- Proposed air emissions (all criteria pollutants and air toxics), description of emission controls, description of plan to acquire any required emission offsets, and description of criteria used to determine requirement.
- List of required environmental, construction, and other regulatory permits and timeline for acquisition.
- Proposed water usage quantity, quality and source.
- Proposed water discharge quantity and quality, plus description of water discharge plan.
- Receiving water body identity and description
- Description of local groundwater quality, quantity, uses, and potential impacts.
- Prevailing noise ordinance at the site and expected sound level (A-weighted) at full load at the site boundary.
- Proposed noise levels and description of noise baffles and stack silencing equipment.
- Proposed site plans, layouts, elevations and other aspects of the facility.
- Types of transportation access required.
- Characterization of the area surrounding the site, including a description of local zoning, flood plain information (100 yr. & 500 yr.), existing land use and setting (woodlands, grasslands, agriculture, etc.).
- Information regarding fish, wildlife and vegetation inhabiting the area of the Project.
- Proximity to nearest endangered or threatened species which could be potentially impacted.
- Proximity to nearest historical or archaeological resources and all nearby historical or archaeological resources which could potentially be impacted.

- Location and distance to population centers which could be impacted.
- Expected site ambient temperature extremes and verification that freeze protection will be provided as necessary.

Fuel Transportation Route Information – To the extent applicable, the Bidder should clarify any relevant information with respect to fuel transportation route information for any proposed site:

- Proposed new fuel transportation route(s).
- Estimated impact on any wetlands (e.g., length of route through wetlands or other sensitive lands).
- Describe land use impacts.
- Descriptions of stream crossings.
- Characterization of the area encompassing the fuel transportation route, including a description of existing land use and setting.

Proposal Format – As mentioned above, Bidders are being asked to submit a “blinded” bid in such a format that the identity of the Bidder is not apparent. In doing so, PacifiCorp is requesting that Bidders confirm to the following format for presenting their bid information:

Section 1 – Executive Summary of Proposal – The Executive Summary section should provide an overall description of the proposal and its key benefits and advantages to PacifiCorp. It should include a general description of the technology, location, and business arrangement for the bid. Bidder shall state the period under which the terms and conditions of their Proposal will remain effective.

Section 2 – Resource Description – This section should include a description of the resource, including:

- Type of generation equipment and description
- Manufacturers of major equipment
- Type of heat rejection equipment (cooling towers, ponds, ACC, etc.)
- Source of process and/or cooling water
- Wastewater disposal plan
- Description of financing plan
- Description of operation and maintenance plan
- Plan for site control
- Site layout description
- Description of technology and configuration
- Net Capacity ratings and net heat rates at ambient conditions as specified in Table C-2.1.
- Primary fuel supply and backup alternatives
- Electrical interconnection (location, transmission provider, and control area)

- Description of emission control technology, including manufacturer
- Project schedule, listing tasks and milestones with estimated completion dates. Bidders shall also complete Exhibit 1 to document some of the technical aspects of their Proposal
- Startup Time for Cold, Warm and Hot Starts. A Cold Start is defined as a shutdown of the generating equipment for 48 hours or longer. A Warm Start is defined as a startup within 48 hours of a shutdown. A Hot Start is defined as a start within 8 hours of a shutdown. Bidder should provide its own definitions if different. For this information Startup Times requested may be for the time to minimum sustainable load and time to full load, without duct firing or power augmentation.
- Size and levels of redundancy for all major process equipment and material handling facilities (i.e. major pumps, fans, compressors, storage tanks, mills)
- Design basis for the resource
- Material Balance
- Solid waste disposals.

Section 3 – Pricing Proposal – Describe in detail the pricing proposal, including the use of any index, escalation factors, or other costs to PacifiCorp. Proposed dates, amounts, and detailed milestone descriptions justifying payments are required.

Section 4 – Transmission – Each Proposal must include a description of the location of its proposed transmission facilities, including proposed delivery points, and must specify the transmission provider and all applicable costs.

Section 5 – Environmental and Siting – The Bidder is exclusively and entirely responsible for meeting and satisfying all federal, state, and local permits, licenses, approvals and/or variances that are required to assure physical delivery of capacity and associated energy in accordance with any BOT transaction. Bidder must furnish applicable detailed project site, electric transmission, and fuel transportation information, a description of all required permits, and a project timeline so PacifiCorp can assess site suitability, schedule risk and project viability. The proposed site(s) shall clearly be shown on a United States Geological Survey (USGS) 7.5-minute series map.

Section 6 – Other Information –

Fuel – Bidders should describe their fuel supply plan and the extent to which they desire to provide fuel and transportation and other fuel-related services, including fuel price management (hedging) or a tolling fee in which PacifiCorp will be responsible for all the fuel and fuel-related costs. PacifiCorp's preference is for proposals that address its need for reliability, management of price risk, and meeting the Base Load operations. If the energy cost portion of the Bidder's terms includes a fuel cost component, the Bidder shall explain its proposed fuel supply program.

Dispatchability – Describe any constraints and/or limitations on PacifiCorp’s ability to dispatch the generation and any ability of PacifiCorp to utilize the resource for operating reserves.

Technical Data – Technical data as requested in Exhibit 1 of this Appendix.

Section 7 – Contract Terms – The Bidder will provide a comprehensive listing/description of all modifications to the APSA terms and conditions, including the appendices, which the Bidder would seek during contract negotiations.

These may include, but are not limited to:

- Items to be provided by the Owner, including a schedule of timing for the provision of these items and impact on Bidder of any delays.
- Land requirements for construction of the facility, including laydown areas
- Laydown plan for construction.
- Commissioning & Startup Plan with Owner’s requirements.

EXHIBIT 1

TECHNICAL DATA

Site Location _____

Net Capacity at 95°F, 20% Relative Humidity, and at Site Conditions is _____ MW

Site Elevation: _____ Feet

Maximum water consumption is _____ gallons per minute.

Expected water consumption is _____ acre-feet per year.

Minimum Sustainable Load at above conditions _____ MW

Automatic Generation Control (AGC) capable Yes ___ No _____. If yes, then the AGC range at above conditions is _____ MW to _____ MW.

Maximum number of starts per day is _____, per month _____, per year _____.

Maximum continuous period that the facility can operate steam-for-power-augmentation at full load without depleting the demineralized water system is _____ hours. This assumes the demineralized water system is operating at rated capacity.

Weighted Average Raw Water Consumption is _____ gallons per minute.

Time to bring the facility on line, in minutes (specify if this is to synchronization or sustainable minimum load) (Bidder to define "cold", "warm", and "hot starts", if not as stated above)

	Min/Sust.	Full Load
For Cold Start:	_____	_____
For Warm Start:	_____	_____
For Hot Start:	_____	_____

Minimum time on-line (hours from start initiation to stop initiation) _____

Minimum time off-line (hours from stop initiation to start initiation) _____

Normal Ramp Rate within operating range: (MW/Min.) Increase: _____ Decrease: _____

Emergency Ramp Rate: (MW/Minute) Increase: _____ Decrease: _____

Time to transfer from combined cycle to duct firing _____ min.

Duct Firing Ramp Rate: (MW/Min.) Increase: _____ Decrease: _____

PacifiCorp
Draft RFP 2012
Responses due January, 2007

Time to transfer from combined cycle to power augmentation _____ min.

Power Augmentation Ramp Rate: (MW/Min.) Increase: _____ Decrease: _____

Anticipates Number of Starts per CT to reach Commercial Operation (CO): _____

Anticipated quantity of natural gas consumed through CO: _____ dth.

Additional Information

Bidder to provide partial load performance curves, including minimum load, showing heat rate and load at varying temperatures.

To the extent that pricing and/or availability vary based on specific characteristics of the facility and/or ambient conditions, the Bidder shall clearly identify that relationship in tabular form, including the relationship between temperature and capacity over the local ambient range inclusive of -10°F to 105°F. Bidder to fill out Table C-2.1 below:

Table C-2.1

Temp in °F	% RH	Evap or Chiller	Duct Burners	Power Aug.	Heat Rate	Net Output	Min. Load
-10	100						
-10	100		On				NA
0	100						
10	100						
15	84						
20*	86						
20	86		On				NA
20	86			On			NA
20*	86		On	On			NA
30	75						
40	55						
50	49						
52	46						
52	46	On					
60	40	On					
60	40		On				NA
60	40			On			NA
60	40		On	On			NA
70	33	On					
75*	29	On					
75	29		On				NA
75	29			On			NA
75*	29		On	On			NA
80	25	On					
90	16	On					
95*	15	On					
95	15		On				NA
95	15			On			NA
95*	15		On	On			NA
105	11						
105	11	On	On	On			NA

- Indicates Water Balance Sheet Required

Appendix C-3, Engineer Procure Construct (EPC) Contract Bids

Information Required in Bid Proposals

PacifiCorp will only entertain EPC contract bids on the two sites being offered as part of the RFP. In general, PacifiCorp expects Bidders to provide any information that could impact the cost, reliability, dispatch frequency, or output capability of a resource. PacifiCorp believes these resource attributes largely consist of, but may not be limited to, the following information categories:

Impact of Temperature on Output – If Project output will vary with ambient conditions, capacity, and any associated performance impact, should be stated in terms of conditions expected during a summer day, with ambient air conditions of 95°F and 20% relative humidity, and a winter day with ambient conditions of 20°F and 75% relative humidity. The Bidder will complete Table C-3.1 showing output at specific ambient conditions, with and without duct firing and/or power augmentation. To the extent pricing, capacity and/or availability vary based on specific characteristics of the facility, the Bidder shall clearly identify those relationships in tabular form.

Impact of Other Factors on Output – PacifiCorp prefers generation facilities designed, permitted, and operated so that, to the extent practicable, the proposed capacity and any related energy provided to PacifiCorp is not restricted by:

- Environmental permits or other environmental limitation or environmental forfeitures
- Hours of operation
- Any other factor relevant to the technology (noise, agreements with neighbors, etc.
- Bidders shall describe in detail any such limitations in their Proposal
- Ability to provide additional capacity over the net capable rating
- Non-environmental or technology factors that could encumber the facility
- Water availability

Engineer Procure Construct (EPC) Contract Option – Bidders may propose a fixed-price, lump-sum EPC contract option, but only for the two PacifiCorp sites currently being offered. Such proposals must include the following information in addition to any technical information:

- Markup of Asset Purchase and Sale Agreement (APSA), including appendices. Quantity and impact of proposed changes are a nonprice factor in selecting Bidders for further discussions.
- Amounts and dates of **milestone-based** payments, including milestone descriptions, required of PacifiCorp.
- Proposed facilities will only contain OEM-certified “OEM-certified new major equipment”. This being defined as OEM equipment that has not

been previously installed or operated and has the same warranties and guarantees as equipment delivered directly from the OEM's production line, and all reliability and design TILS and/or Service Bulletins have been implemented.

Siting – Bidders are responsible for all construction and coordination with the applicable service provider(s) for any new electrical transmission and fuel transportation facilities required in response to this RFP.

Facility Information – To the extent applicable, the Bidder should clarify the following information with respect to any proposed facility:

- Proposed air emissions (all criteria pollutants and air toxics), description of emission controls, description of plan to acquire any required emission offsets, and description of criteria used to determine requirement.
- Proposed site plans, layouts, elevations and other aspects of the facility.
- Types of transportation access required.

Proposal Format – As mentioned above, Bidders are being asked to submit a “blinded” bid in such a format that the identity of the Bidder is not apparent. In doing so, PacifiCorp is requesting that Bidders confirm to the following format for presenting their bid information:

Section 1 – Executive Summary of Proposal – The Executive Summary section should provide an overall description of the proposal and its key benefits and advantages to PacifiCorp. It should include a general description of the technology, location, and business arrangement for the bid. Bidder shall state the period under which the terms and conditions of their Proposal will remain effective.

Section 2 – Resource Description – This section should include a description of the resource, including:

- Type of generation equipment and description
- Manufacturers of major equipment
- Type of heat rejection equipment (cooling towers, ponds, ACC, etc.)
- Source of process and/or cooling water
- Wastewater disposal plan
- Description of financing plan
- Plan for site control
- Site layout description
- Description of technology and configuration
- Net Capacity ratings and net heat rates at ambient conditions as specified in Table C-3.1.
- Description of emission control technology, including manufacturer

- Project schedule based on latest Notice to Proceed Date necessary for a June 1, 2012 Substantial Completion Date, listing latest, tasks and milestones with estimated completion dates. Bidders shall also complete Exhibit 1 to document some of the technical aspects of their Proposal.
- Startup Time for Cold, Warm and Hot Starts. A Cold Start is defined as a shutdown of the generating equipment for 48 hours or longer. A Warm Start is defined as a startup within 48 hours of a shutdown. A Hot Start is defined as a start within 8 hours of a shutdown. Bidder should provide its own definitions if different. For this information Startup Times requested may be for the time to minimum sustainable load and time to full load, without duct firing or power augmentation.
- Size and levels of redundancy for all major process equipment and material handling facilities (i.e. major pumps, fans, compressors, storage tanks, mills)
- Design basis for the resource
- Material Balance
- Solid waste disposals.

Section 3 – Pricing Proposal – Describe in detail the pricing proposal, including the use of any index, escalation factors, or other costs to PacifiCorp. Proposed dates, amounts, and detailed milestone descriptions justifying payments are required.

Section 4 – Transmission – Not Applicable to this Appendix.

Section 5 – Environmental and Siting – Under the EPC proposal, PacifiCorp is exclusively and entirely responsible for meeting and satisfying all federal, state, and local permits, licenses, approvals and/or variances that are required to physical construction and operation of the Facility in accordance with any EPC transaction.

Section 6 – Other Information –
Fuel – Not Applicable to this Appendix

Dispatchability – Not Applicable to this Appendix.

Technical Data – Technical data as requested Exhibit 1 of this Appendix.

Section 7 – Contract Terms – Bidder shall provide a comprehensive listing/description of all modifications to the APSA terms and conditions, including the appendices, which the Bidder would seek during contract negotiations.

These may include, but are not limited to:

PacifiCorp
Draft RFP 2012
Responses due January, 2007

- Descriptions of items to be provided by the Owner, including a schedule of timing for the provision of these items and impact on Bidder of any delays.
- Land requirements for construction of the facility, including laydown areas
- Laydown plan for construction.
- Commissioning & Startup Plan with Owner's requirements.

EXHIBIT 1

TECHNICAL DATA

Site Location _____

Net Capacity at 95°F, 20% Relative Humidity, and at Site Conditions is _____ MW

Site Elevation: _____ Feet

Maximum water consumption is _____ gallons per minute.

Expected water consumption is _____ acre-feet per year.

Minimum Sustainable Load at above conditions _____ MW

Automatic Generation Control (AGC) capable Yes ____ No _____. If yes then the AGC range at above conditions is _____ MW to _____ MW.

Maximum number of starts per day is _____, per month _____, per year _____.

Maximum continuous period that the facility can operate steam-for-power-augmentation at full load without depleting the demineralized water system is _____ hours. This assumes the demineralized water system is operating at rated capacity.

Weighted Average Raw Water Consumption is _____ gallons per minute.

Time to bring the facility on line, in minutes (specify if this is to synchronization or sustainable minimum load) (Bidder to define "cold", "warm", and "hot starts", if not as stated above)

	Min/Sust.	Full Load
For Cold Start:	_____	_____
For Warm Start:	_____	_____
For Hot Start:	_____	_____

Minimum time on-line (hours from start initiation to stop initiation) _____

Minimum time off-line (hours from stop initiation to start initiation) _____

Normal Ramp Rate within operating range: (MW/Min.) Increase: _____ Decrease: _____

Emergency Ramp Rate: (MW/Minute) Increase: _____ Decrease: _____

Time to transfer from combined cycle to duct firing _____ min.

Duct Firing Ramp Rate: (MW/Min.) Increase: _____ Decrease: _____

PacifiCorp
Draft RFP 2012
Responses due January, 2007

Time to transfer from combined cycle to power augmentation _____ min.

Power Augmentation Ramp Rate: (MW/Min.) Increase: _____ Decrease: _____

Anticipates Number of Starts per CT to reach Commercial Operation (CO): _____

Anticipated quantity of natural gas consumed through CO: _____ dth.

Additional Information

Bidder to provide partial load performance curves, including minimum load, showing heat rate and load at varying temperatures.

To the extent that pricing and/or availability vary based on specific characteristics of the facility and/or ambient conditions, the Bidder shall clearly identify that relationship in tabular form, including the relationship between temperature and capacity over the local ambient range inclusive of -10°F to 105°F. Bidder to fill out Table B-3.1 below:

Table C-3.1

Temp in °F	% RH	Evap or Chiller	Duct Burners	Power Aug.	Heat Rate	Net Output	Min. Load
-10	100						
-10	100		On				NA
0	100						
10	100						
15	84						
20*	86						
20	86		On				NA
20	86			On			NA
20*	86		On	On			NA
30	75						
40	55						
50	49						
52	46						
52	46	On					
60	40	On					
60	40		On				NA
60	40			On			NA
60	40		On	On			NA
70	33	On					
75*	29	On					
75	29		On				NA
75	29			On			NA
75*	29		On	On			NA
80	25	On					
90	16	On					
95*	15	On					
95	15		On				NA
95	15			On			NA
95*	15		On	On			NA
105	11						
105	11	On	On	On			NA

- Indicates Water Balance Sheet Required

Appendix C-4, Existing Asset Purchase (in whole or in part)

Information Required in Bid Proposals

If the Bidder's Proposal is for an interest in an existing facility where PacifiCorp holds an interest, or operates the facility, any information requested under this RFP that would reasonably be expected to already be in the possession of PacifiCorp, may be so stated in the Bidder's response package. If the Bidder's asset is not currently involved with PacifiCorp, the below requirements are to be met as outlined.

In general, PacifiCorp expects Bidders to provide any information that could impact the cost, reliability, dispatch frequency, output capability or performance of a resource. PacifiCorp believes these resource attributes largely consist, but may not be limited to, the following information categories:

Impact of Temperature on Output – If Project output will vary with ambient conditions, capacity, and any associated performance impact, should be stated in terms of conditions expected during a summer day, with ambient air conditions of 95°F and 20% relative humidity, and a winter day with ambient conditions of 20°F and 75% relative humidity. The Bidder will complete Table C-4.1 showing output at specific ambient conditions, with and without duct firing and/or power augmentation. To the extent pricing, capacity and/or availability vary based on specific characteristics of the facility, the Bidder shall clearly identify those relationships in tabular form.

Impact of Other Factors on Output – PacifiCorp prefers generation facilities designed, permitted, and operated so that, to the extent practicable, the proposed capacity and any related energy provided to PacifiCorp is not restricted by:

- Environmental permits or other environmental limitation or environmental forfeitures
- Hours of operation
- Sales of capacity or energy to other parties
- Interruption of primary fuel supply
- Sale of thermal energy
- Any other factor relevant to the technology (noise, agreements with neighbors, etc.
- Bidders shall describe in detail any such limitations in their Proposal
- Ability to provide additional capacity over the net capable rating
- Non-environmental or technology factors that could encumber the facility
- Water availability

Ownership Purchase Option – Bidders may propose a sale, either whole or in part, of existing generation assets to PacifiCorp. Such proposals must include the following information in addition to any technical information:

- Ownership percentage and whether a divided or undivided interest
- Amounts and dates of payments required of PacifiCorp.
- Current and projected annual fixed and variable O&M costs associated with the generation facility.
- Any long term service or maintenance agreements, including scope and costs that are in excess of \$25,000 in annual costs. (i.e. CTs, water, O&M, parts, inspections, ash disposal, CEMs)
- Startup costs (i.e., the period of time from when a start is initiated to the time the unit reaches minimum sustainable load)
- Operating Limits – Any limits imposed on the number of startups that may be performed per year or per unit of time. Any limits on the number of hours that a unit may per operated per year or per unit of time. Any annual limits on the number of hours of duct firing or power augmentation.
- Emissions (air, liquid and solid wastes) in pounds per hour per pollutant and/or waste product at 100% load and tons per year of pollutant and/or waste product at a specified capacity factor as selected by the Bidder.
- Annual unit availability and any guaranteed minimum annual availability.
- Information regarding location and transmission.
- Information regarding fuel and transportation.
- Capacity on summer design day in compliance with all regulatory requirements.
- Efficiency (Heat Rate) in compliance with all regulatory requirements.
- Terms of remaining warranties and/or guarantees on major equipment.
- Costs to incorporate into PacifiCorp Fleet (Future capital or maintenance).

Significant due diligence may be necessary prior to finalizing any acquisition by PacifiCorp. A list of due diligence items will be provided to a Bidder should they be short-listed.

Siting – Not Applicable to this Appendix.

Facility Information – To the extent applicable, the Bidder should clarify the following information with respect to the facility:

- Air emissions (all criteria pollutants and air toxics), description of emission controls and existing emission offsets
- List of environmental and other regulatory permits
- Water usage quantity, quality and source(s).
- Water discharge quantity and quality, plus water discharge plan.
- Receiving water body identity and description
- Description of local groundwater quality, quantity and uses.
- Site plans, layouts, elevations and other aspects of the facility.

Fuel Transportation Route Information – To the extent applicable, the Bidder should clarify any relevant information with respect to fuel transportation route information for the site.

Proposal Format – As mentioned above, Bidders are being asked to submit a “blinded” bid in such a format that the identity of the Bidder is not apparent. In doing so, PacifiCorp is requesting that Bidders confirm to the following format for presenting their bid information:

Section 1 – Executive Summary of Proposal – The Executive Summary section should provide an overall description of the proposal and its key benefits and advantages to PacifiCorp. It should include a general description of the technology, location, and business arrangement for the bid. Bidder shall state the period under which the terms and conditions of their Proposal will remain effective.

Section 2 – Resource Description – This section should include a description of the resource, including:

- Type of generation equipment and description
- Manufacturers of major equipment
- Model number, serial number and age of any previously owned/operated equipment
- Type of heat rejection equipment (cooling towers, ponds, ACC, etc.)
- Source of process and/or cooling water
- Wastewater disposal plan
- Description of financing plan
- Description of operation and maintenance plan
- Plan for site control
- Site layout description
- Description of technology and configuration
- Net Capacity ratings and net heat rates at ambient conditions as specified in Table C-4.1.
- Primary fuel supply and backup alternatives
- Electrical interconnection (location, transmission provider, and control area)
- Description of emission control technology, including manufacturer
- Any limits on hours of operation in a particular mode (i.e., combined cycle, duct firing, power augmentation, or combination thereof)
- Any limits on emissions
- Project schedule, listing tasks and milestones with estimated completion dates. Bidders shall also complete Exhibit 1 to document some of the technical aspects of their Proposal.
- Startup Time for Cold, Warm and Hot Starts. A Cold Start is defined as a shutdown of the generating equipment for 48 hours or longer. A Warm Start is defined as a startup within 48 hours of a shutdown. A Hot Start is defined as a start within 8 hours of a shutdown. Bidder should provide its own definitions if different. For this information Startup Times requested may be for the time to minimum sustainable load and time to full load, without duct firing or power augmentation.
- Size and levels of redundancy for all major process equipment and material handling facilities (i.e. major pumps, fans, compressors, storage tanks, mills)
- Design basis for the resource

- Material Balance
- Solid waste disposals.

Section 3 – Pricing Proposal – Describe in detail the pricing proposal, including the use of any index, escalation factors, or other costs to PacifiCorp. Also required is a detailed accounting of ownership interest, whether divided or undivided, in the facility, inventory, spare parts, ongoing agreements, or any continuing obligations resulting from PacifiCorp’s ownership, or acquisition of an interest in the asset. Proposed dates, amounts, and detailed milestone descriptions justifying payments are required.

Section 4 – Transmission – Each Proposal must include a description of the location of its transmission facilities, including delivery points, and must specify the transmission provider and all applicable costs.

Section 5 – Environmental and Siting –Bidder must furnish applicable detailed project site, electric transmission, and fuel transportation information, and a description of all permits, so PacifiCorp can assess site suitability and project viability. The site shall clearly be shown on a United States Geological Survey (USGS) 7.5-minute series map.

Section 6 – Other Information –

Dispatchability – Describe any constraints and/or limitations on PacifiCorp’s ability to dispatch the generation and any ability of PacifiCorp to utilize the resource for operating reserves.

Technical Data – Technical data as requested Exhibit 1 of this Appendix.

Section 7 – Contract Terms – Bidder shall provide a sample purchase and sale agreement outlining the terms and conditions of the proposed acquisition.

EXHIBIT 1

TECHNICAL DATA

Site Location _____

Net Capacity at 95°F, 20% Relative Humidity, and at Site Conditions is _____ MW

Site Elevation: _____ Feet

Maximum water consumption is _____ gallons per minute.

Expected water consumption is _____ acre-feet per year.

Minimum Sustainable Load at above conditions _____ MW

Automatic Generation Control (AGC) capable Yes _____ No _____. If yes then the AGC range at above conditions is _____ MW to _____ MW.

Maximum number of starts per day is _____, per month _____, per year _____.

Maximum continuous period that the facility can operate steam-for-power-augmentation at full load without depleting the demineralized water system is _____ hours. This assumes the demineralized water system is operating at rated capacity.

Weighted Average Raw Water Consumption is _____ gallons per minute.

Time to bring the facility on line, in minutes (specify if this is to synchronization or sustainable minimum load) (Bidder to define "cold", "warm", and "hot starts", if not as stated above)

	Min/Sust.	Full Load
For Cold Start:	_____	_____
For Warm Start:	_____	_____
For Hot Start:	_____	_____

Minimum time on-line (hours from start initiation to stop initiation) _____

Minimum time off-line (hours from stop initiation to start initiation) _____

Normal Ramp Rate within operating range: (MW/Min.) Increase: _____ Decrease: _____

Emergency Ramp Rate: (MW/Minute) Increase: _____ Decrease: _____

Time to transfer from combined cycle to duct firing _____ min.

Duct Firing Ramp Rate: (MW/Min.) Increase: _____ Decrease: _____

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Responses due January, 2007

Time to transfer from combined cycle to power augmentation _____ min.

Power Augmentation Ramp Rate: (MW/Min.) Increase: _____ Decrease: _____

Anticipates Number of Starts per CT to reach Commercial Operation (CO): _____

Anticipated quantity of natural gas consumed through CO: _____ dth.

Additional Information

Bidder to provide partial load performance curves, including minimum load, showing heat rate and load at varying temperatures.

To the extent that pricing and/or availability vary based on specific characteristics of the facility and/or ambient conditions, the Bidder shall clearly identify that relationship in tabular form, including the relationship between temperature and capacity over the local ambient range inclusive of -10°F to 105°F. Bidder to fill out Table B-4.1 below:

Table C-4.1

Temp in °F	% RH	Evap or Chiller	Duct Burners	Power Aug.	Heat Rate	Net Output	Min. Load
-10	100						
-10	100		On				NA
0	100						
10	100						
15	84						
20*	86						
20	86		On				NA
20	86			On			NA
20*	86		On	On			NA
30	75						
40	55						
50	49						
52	46						
52	46	On					
60	40	On					
60	40		On				NA
60	40			On			NA
60	40		On	On			NA
70	33	On					
75*	29	On					
75	29		On				NA
75	29			On			NA
75*	29		On	On			NA
80	25	On					
90	16	On					
95*	15	On					
95	15		On				NA
95	15			On			NA
95*	15		On	On			NA
105	11						
105	11	On	On	On			NA

- Indicates Water Balance Sheet Required

2012 RFP
Appendix D
Fuel Supply Form

Appendix D
RFP 2012
Fuel Supply Form

Site Location _____

Primary Source of Fuel _____

Secondary Source of Fuel (if any) _____

Supplier of Primary Fuel _____

Firm Supply Contract Anticipated? (Yes) (No) Term _____ years

Supplier of Secondary Fuel (if any) _____

Supply Contract Anticipated? (Yes) (No) Term _____ years

Contemplated Natural Gas Transportation:

LDC (if necessary) _____ Firm Transport? (Yes) (No)
Quantity _____ decatherms (mmBtu) Term _____

Pipeline 1 _____ Firm Transport? (Yes) (No)
Quantity _____ decatherms (mmBtu) Term _____

Pipeline 2 _____ Firm Transport? (Yes) (No)
Quantity _____ decatherms (mmBtu) Term _____

If transportation is not firm, please clarify the contemplated terms for transport.

Copy of Coal contract supply Attached (Yes) (No)
If (No) indicate what the Coal contract strategy will be in you proposal

Coal Quality _____
Lime and/or Limestone for Air Quality Control System provided. _(Yes) (No)

Rail/Truck Transport Coal/Oil

Firm 1 _____
Firm 2 _____

Provide all relevant Information on the projects.

RFP 2012
APPENDIX E
Officer Certification Form

Officer Certification Form- Appendix E

The undersigned Bidder executes and submits this form with each Proposal it submits in PacifiCorp's RFP 2012, and hereby certifies in each instance that all of the statements and representations made by it in its proposal are true to the best of the Bidder's knowledge, and agrees to be bound by the representations, terms, and conditions contained in the 2012 RFP. The Bidder accepts the contract attached to the 2012 RFP and indicated therein as applicable to its Proposal, except as specifically noted in writing by Bidder. This proposal is firm and will remain in effect until the later of December 10, 2007 or that date which is 300 days after the proposal due date provided in the RFP, as such due date may be extended from time to time by PacifiCorp.

Submitted by: _____
(Exact legal name of the entity submitting Proposal)

Signature of an authorized officer: _____

Print or type name of officer: _____

Title: _____

Date signed: _____

RFP 2012
APPENDIX F
SFAS No. 13 Form

This is an example of the SFAS No. 13 Form.

Each Bidder is required to fill in **only** the cells that are highlighted in yellow for each Eligible Resource. When you type in the yellow cells it will prompt you for a password, the password is RFP2012. Each Bidder is required to copy the excel spreadsheet and resave it with their bid number and submit it on a CD or Diskette. Appendix F can be downloaded from either PacifiCorp website and or the IE website for Bidders to save on a CD or Diskette. (www.pacificorp.com)

*YELLOW CELLS REQUIRE USER INPUT.

**Please note, the conclusion in cell B28 assumes that the contract has been deemed a lease by EITF 01-08.

***Protected cell(s) password: RFP2009

CAPITAL LEASE IF:							
FAIL	The lease transfers ownership to the lessee by the end of the lease term. "Fail" equates to "No". "Pass" equates to "Yes".						
FAIL	The lease contains a bargain purchase option. "Fail" equates to "No". "Pass" equates to "Yes".						
FAIL	The lease term is equal to 75% or more of the estimated economic life of the leased property, and the beginning of the lease term does not fall within the last 25% of the total economic life of the leased property.						
	Original Economic Plant Life (yrs)	Years into Economic Plant Life	Remaining Economic Plant Life (yrs)	Term of Deal (yrs)	% of Life	Trigger	Test
	35	0	35	20	57%	75%	FAIL
	Beginning of Plant	Ending of Plant	Life (yrs)	Last 25% Date	Beginning of Lease		Test
	6/1/2009	5/31/2044	35	9/1/2035	6/1/2009		FAIL
FAIL	The present value of the minimum lease payments at the beginning of the lease term is 90% or more of the fair value to the lessor less any investment credit retained by the lessor. This requirement cannot be used if the lease's inception is in the last 25% of the useful economic life of the leased asset. The interest rate, used to compute the PV, is the incremental borrowing rate of the lessee unless the implicit rate is available and lower.						
	Percentage of Capacity PMT that is Executory Costs (%)	Cost to Build \$/KW	MW	FMV	\$ PV Minimum Lease Pmts (Non-Executory Costs)	Trigger (90% of FMV)	Test
	25%	\$700	420	\$294,000,000	\$209,583,165	\$264,600,000	FAIL
Designation:							
OPERATING LEASE							

RFP 2012
APPENDIX G
Bidder Site Control Form

Appendix G
RFP 2012
Bidder Site Control Form

Project Name: _____

Site Location: _____

Street Address or Nearest Intersection: _____

Acres: _____

Distance to Fuel Supply: _____

Transportation _____

Railway _____

Distance to Water Supply (if not using ACC): _____

Check items that are applicable:

Property is owned by Bidder.

Property is leased by Bidder, with an Option to buy.

▪ Lease/Option Expires: _____

Property is Optioned by Bidder through (date): _____

▪ Option is Exclusive _____ or Non-Exclusive _____

▪ Option is to Purchase _____ or Lease _____

Site is selected, but not formally secured.

Site will require zoning change as part of permitting process.

APPENDIX G

Bidder Site Control Form Submittals

Bidder shall submit to Buyer drawings, plans, specifications, and other documents necessary to document the design engineering and construction of the Plant and the content of the Work, including but not limited to those items herein listed below. Additionally, Bidder shall submit to the Buyer those drawings, plans, specifications, and other documents as required by the State of Utah or any other regulatory body or agency having authority over the Plant.

Ninety (90) days after the Notice To Proceed, the Bidder shall provide to Buyer a schedule for submittal of such documents, which schedule shall (1) be consistent with the schedule for the Project and (2) provide Buyer with the greatest practicable opportunity to review such documents and make comments thereon within fourteen (14) days from the transmittal date or as mutually agreed upon provided that the comment period does not unduly affect the progress of the Work. Submittals shall be in duplicate.

Engineering Lists

- Equipment List

Engineering Specifications and Drawings

- Plot/Site Plan
- Switchyard Single Line, Three Line and Metering and Protection Design

Construction

- Site Utilization Plan, including laydown

Commissioning and Startup

- System Descriptions
- Performance and Emissions Test Procedures
- Performance Test Results
- Reports Required for Regulatory Compliance

Plans, Manuals, & Reports

- Level 2 Schedule
- Commissioning Schedule
- Monthly Progress Reports

All specifications and drawings for the Project and submitted by Bidder or Subcontractor to Bidder hereunder shall include the following data:

Name:	PacifiCorp
Project Name:	Buyer's Power Plant
Spec. or drawing number, if applicable:	Bidder or Subcontractor to Provide
Bidder or Subcontractor's name:	Bidder or Subcontractor
Revision Number and Date	Bidder or Subcontractor to Provide

Buyer shall have the right to reasonably request other information and Bidder shall use reasonable efforts to supply this information.

Documents submitted to Buyer are provided for information only. However, if Buyer identifies discrepancies or areas of non-conformance with the Agreement requirements, Buyer has the right to notify Bidder of the discrepancy/non-conformance and require that the document be revised and resubmitted.

Monthly Progress Report

The Monthly Progress Report shall address all aspects of the Plant through the Commercial Operation and shall include, but not be limited to the following:

- (a) An "Executive Summary" containing:
 - A written summary of events and progress accomplished during the previous reporting period.
 - Unresolved Changes.
 - Critical Concerns and Intended Actions.

- (b) A "Schedule Section":
 - Will be updated on a monthly basis and will consider the aforementioned item b. An updated Level 2-time schedule will be provided (paper/electronic). Critical path analysis will also be provided.

- (c) A list of the status of Bidder permits

RFP 2012
APPENDIX H
Construction Coordination Agreement

PacifiCorp
Draft RFP 2012
Responses due January, 2007

CONSTRUCTION COORDINATION AGREEMENT
BETWEEN
PACIFICORP
AND
BIDDER

CONSTRUCTION COORDINATION AGREEMENT

This Construction Coordination Agreement (the "Agreement") is made and entered into as of the Effective Date (as defined below), by and between PacifiCorp, an Oregon corporation ("PacifiCorp"), and _____, a _____ [limited liability company] ("[NAME]") (PacifiCorp and [NAME] are individually referred to herein as a "Party" and collectively as the "Parties").

RECITALS

WHEREAS, PacifiCorp is an investor owned electric utility company subject to regulation by the Public Service Commission of Utah;

WHEREAS, PacifiCorp owns, operates and maintains Unit 1 at its generation facility located in _____, Utah.

WHEREAS, [NAME] desires to construct Unit 2, to be located adjacent to Unit 1 at the Facility;

WHEREAS, PacifiCorp and [NAME] have entered into a [Power Purchase Agreement ("PPA") / Tolling Services Agreement ("TSA")] providing for the purchase by PacifiCorp of certain of the energy and capacity generated by Unit 2 following Unit 2's reaching Commercial Operation;

WHEREAS, there is a need to coordinate the activities of [NAME] and its contractor(s) and subcontractors during construction, testing and commissioning of Unit 2 to avoid potential interference with the operation of Unit 1;

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Party, the Parties hereto agree as follows:

ARTICLE I Definitions; Headings

1.1 Definitions

Unless the context shall otherwise require, capitalized terms used in this Agreement shall have the meanings assigned to them in the Glossary of Defined Terms attached hereto as Exhibit "A", which also contains rules as to usage that shall be applicable herein.

ARTICLE II Term and Governing Provisions

2.1 Term.

The Term of this Agreement shall become effective on the Effective Date and, unless earlier terminated pursuant to provisions hereof, shall continue in effect until PacifiCorp has accepted the [PPA/TSA] or has achieved Commercial Operation. Date.

2.2 Governing Provisions.

As a matter of general priority, in the event of any conflict between the provisions of this Agreement or the [PPA/TSA], the provisions of this Agreement shall govern. Disputes related to the matters to be performed pursuant to this Agreement and not involving the [PPA/TSA] or work performed by or at the direction of the [PPA/TSA], shall nonetheless be governed by Section 15 (“Disagreements”) in the [PPA/TSA].

ARTICLE III Construction Interfaces

3.1 Construction Control.

[NAME] and its contractors shall be responsible for and have sole control over the construction of Unit 2, except for interconnections with the Common Facilities. [NAME] shall coordinate with PacifiCorp all activities to be performed in connection with the construction, testing and commissioning of Unit 2 pursuant to this Agreement, particularly if such activities may require taking Unit 1 off-line or have a substantial possibility of causing an outage at Unit 1.

[NAME] shall be responsible for erecting a temporary and movable construction fence (the “Construction Fence”) on the Site for the purpose of separating the Unit 2 construction area (the “Construction Area”), which is initially depicted by the cross-hatched area on Exhibit “C” attached hereto, from the rest of the Facility, including Unit 1, the switchyard and the Common Facilities. The Construction Fence may be moved and relocated as necessary with the prior written consent of PacifiCorp following the completion of certain phases of construction for the purpose of accessing other areas of the Facility, all as set out in the Project Schedule. During the Term, [NAME] will be in control of the Construction Area and will maintain a separate gate for access to the Construction Area. Prior to the Commercial Operation Date, the Construction Area will be reduced to [NAME]’s staging and laydown area and separate gate, and shall not include any Facilities necessary for operation of Unit 1, Unit 2 or the Common Facilities. Following the Commercial Operation Date [NAME] shall, and shall cause its contractors and subcontractors to, promptly remove all construction materials and equipment from the staging and laydown area, to remove the Construction Fence, and to erect suitable permanent fencing and related access roads to separate PacifiCorp’s facilities from [NAME]’s facilities, all as approved in writing by PacifiCorp.

[NAME] shall at all times utilize and cause its contractors, subcontractors, personnel and other persons allowed at any part of the Facility by [NAME] to utilize only [NAME]’s separate gate to the Construction Area.

3.2 [NAME]’s Access to PacifiCorp’s Area.

[NAME] shall provide PacifiCorp with reasonable notice of its need to access PacifiCorp’s Area for performance of work activities associated with the Common

Facilities. [NAME] and PacifiCorp shall agree on a schedule for the performance of all work activities in PacifiCorp's Area consistent with the Project Schedule. PacifiCorp shall arrange for any safety instruction and workplace policy training deemed appropriate by PacifiCorp for [NAME]'s personnel prior to [NAME]'s personnel being allowed in PacifiCorp's Area. PacifiCorp shall arrange for escorts for [NAME]'s personnel accessing PacifiCorp's Area to the extent PacifiCorp reasonably deems such escorts necessary. In the event [NAME] needs to work on a system that could be used by PacifiCorp for the operation of Unit 1, [NAME] shall provide PacifiCorp with written notice and receive authorization from PacifiCorp that the system has been deactivated before commencing work on the system and [NAME] shall notify PacifiCorp once it completes work on the system so PacifiCorp can inspect and reactivate the system in accordance with PacifiCorp's Tagging and Safety Program.

3.3 PacifiCorp Access to the Construction Area.

At all times prior to the Commercial Operation Date [NAME] shall provide PacifiCorp and PacifiCorp's personnel access to the Construction Area upon PacifiCorp's request. [NAME] and PacifiCorp shall agree on a schedule for the performance of work activities by PacifiCorp's personnel in the Construction Area. PacifiCorp's personnel shall comply with [NAME]'s published safety program requirements while in the Construction Area. [NAME] may arrange for escorts for any PacifiCorp personnel accessing the Construction Area to the extent [NAME] reasonably deems such escorts necessary. The above notwithstanding, PacifiCorp may access the Construction Area without notice for the purpose of carrying out activities required for the operation of Unit 1 or responding to an Emergency.

3.4 Project Schedule and Coordination of PacifiCorp Support.

[NAME] shall (a) schedule all activities that will require or may result in the shutdown of or inability to dispatch Unit 1, and all work activities performed on or affecting the Common Facilities in accordance with the Project Schedule, (b) notify PacifiCorp in writing of such schedule(s) at the earliest practicable time, and (c) update such schedules in writing as necessary. [NAME] shall not undertake the foregoing Work activities until PacifiCorp has agreed in writing with such schedule and plan for performing the identified work.

3.5 Unit 1 and PacifiCorp's Area Control.

PacifiCorp shall have sole control over the operation of Unit 1 and the remainder of PacifiCorp's Area at all times.

3.6 Restrictions During Construction.

- (a) Except as otherwise provided in this Agreement, [NAME] shall perform or cause to be performed all construction activities with respect

to Unit 2 in a manner that will avoid interference with PacifiCorp's operation of Unit 1.

- (b) [NAME] shall restrict construction workers and other personnel not employed by PacifiCorp from access to PacifiCorp's Area except as authorized in advance by PacifiCorp's Representative. Upon the reasonable request of [NAME], PacifiCorp shall authorize access to PacifiCorp's Area for the purpose of undertaking activities necessary to integrate Unit 2 into the Common Facilities, and after the Substantial Completion Date to perform any work activities required under the [PPA/TSA], in accordance with the Project Schedule and the work plan required under Section 3.4 above.

3.7 Transportation Routes and Lay-Down Areas.

[NAME] shall designate adequate transportation routes and lay-down areas for the construction work and materials for Unit 2, and, prior to commencing construction obtain PacifiCorp's written approval of all such proposed routes and laydown areas. In granting its approval PacifiCorp shall not be deemed to have recommended or confirmed the adequacy or suitability of such routes and laydown areas, and shall have no liability with respect to [NAME]'s selection of, use of or inability to use such routes and laydown areas.

3.8 Employee Discipline.

[NAME] shall adopt and enforce policies for disciplining construction employees if the employees' actions affect or are likely to affect Unit 1 or the Common Facilities other than as provided in the work plan and in Section 3.4 above. Any construction employee found to have violated PacifiCorp's security requirements regarding escorting and physical access to certain PacifiCorp's Areas described in the attached Exhibit "D" shall, at the request of PacifiCorp be assigned to work outside PacifiCorp's Area and shall be disciplined to the full extent permissible under [NAME]'s project labor agreement (if any), including without limitation terminated at PacifiCorp's request.

3.9 Security and Safety Requirements.

In addition to the requirements of [PPA/TSA] [NAME] shall, consistent with good and generally accepted construction practices and Prudent Industry Practice, undertake all commercially reasonable efforts to protect any and all parallel, converging and intersecting electric lines and poles, telephone lines and poles, highways, waterways, railroads, sewer lines, natural gas pipelines, drainage ditches, culverts, Unit 1 facilities and any and all property of others related to the Facility, and shall indemnify PacifiCorp from any and all Claims with respect to [NAME]'s actions or failures to act in connection with such facilities and property in connection with the Work.

3.8 Transition from Construction to Operation.

PacifiCorp shall provide oversight and consent of activities necessary for the connection of the Unit 2 systems with the Common Facilities. PacifiCorp shall provide [NAME] and its employees and contractors with reasonable controlled access to all Common Facilities, to enable [NAME] and its contractors to interconnect Unit 2 with the Common Facilities, all in accordance with the Project Schedule provided pursuant to Section 3.4 above, and upon receipt of notice from [NAME].

ARTICLE IV Construction Damage

4.1 Construction Damage.

In the event any activities undertaken in connection with the development, construction, commissioning or testing of Unit 2 cause any physical damage (“Construction Damage”) to Unit 1, to the Common Facilities or to any portion of PacifiCorp’s Area:

- (a) [NAME] shall be responsible for the full cost of rebuilding, restoring and/or repairing all Construction Damage.
- (b) [NAME] shall promptly, and in any event no later than one (1) day after the date on which the Construction Damage occurred, consult with PacifiCorp regarding the extent of the Construction Damage and possible approaches to remedying the Construction Damage.
- (c) [NAME] shall promptly, and in any event no later than five (5) days after the date on which the Construction Damage occurred, submit to PacifiCorp a detailed written proposal for rebuilding, restoring or replacing, at [NAME]’s expense, such Construction Damage.
- (d) PacifiCorp shall promptly evaluate any proposal submitted by [NAME] for, rebuilding, restoring or replacing, at [NAME]’s expense, such Construction Damage.
- (e) If PacifiCorp determines that [NAME] possesses the demonstrated qualifications and capability to timely perform the remedial actions set out in the proposal, PacifiCorp will cooperate with [NAME] to promptly undertake the rebuilding, restoration or replacement of the Construction Damage set out in the proposal to PacifiCorp’s satisfaction, subject to such terms, conditions and restrictions as PacifiCorp may deem appropriate to ensure that the proposed activities comply with PacifiCorp’s safety programs and practices and that the remedial actions will not result in further damage or loss of generation with respect to Unit 1 operations.

- (f) If PacifiCorp concludes that [NAME] lacks the demonstrated qualifications and capability or otherwise is not in a position to timely perform the remedial actions set out in the proposal, if [NAME] does not agree with PacifiCorp's terms, conditions and restrictions described in paragraph (d) above, or if [NAME] does not promptly undertake such remedial actions, then PacifiCorp shall be entitled to promptly commence repairs to any Construction Damage to Unit 1, the Common Facilities or other portion of the PacifiCorp Area at [NAME]'s sole expense.
- (g) In the event that [NAME] does not reimburse PacifiCorp for any cost of rebuilding, restoration or replacement activities related to the Construction Damage incurred by PacifiCorp (including without limitation the reasonable cost of PacifiCorp's consultants and internal personnel and resources) within thirty (30) days of PacifiCorp's invoice for the same, then PacifiCorp may set off any amounts owing to PacifiCorp from [NAME] from any payments owed by PacifiCorp to [NAME] under the [PPA/TSA];
- (h) Nothing in this Article IV is intended to be nor shall operate as a limitation on PacifiCorp's right or ability to recover damages from [NAME] pursuant to the [PPA/TSA], this Agreement or otherwise at law or in equity.

ARTICLE V

Shutdowns

5.1 Scheduled Shutdowns of Unit 1.

The Parties recognize that Unit 1 must be temporarily shut down for interconnection of Unit 2 to the Common Facilities and for other defined construction-related activities as identified in the Project Schedule. All scheduled shutdowns shall be scheduled, to the extent possible, during weekends and holiday periods.

IN NO EVENT SHALL ANY SCHEDULED SHUTDOWNS BE SCHEDULED DURING THE MONTHS OF JUNE, JULY, AUGUST OR SEPTEMBER, except and to the extent that Unit 1 has scheduled maintenance outages scheduled during such period.

[NAME] shall schedule and provide to PacifiCorp, at least 7 days prior to any necessary shutdown, written notice of the next upcoming outage and of any proposed changes to the outage periods set out in the Project Schedule.

[NAME] shall coordinate with PacifiCorp to balance the need to reduce these shutdown periods and to utilize other times of economic shutdown of Unit 1 to perform the required work under the [PPA/TSA] with the need to utilize these shutdown periods to perform work activities that have a reasonable probability of causing an unplanned shutdown of Unit 1.

If the Scheduled Shutdown of Unit 1 occurs at a time when Unit 1 is not otherwise scheduled by PacifiCorp to be shutdown and non-dispatchable, then [NAME] shall pay to PacifiCorp Replacement Power Costs calculated in the same manner as set forth in Section 5.2(c) as though the Scheduled Shutdown were an Unscheduled Shutdown.

5.2 Unscheduled Shutdowns of Unit 1.

- (a) [NAME] shall be responsible for conducting its development, construction, commissioning, testing and startup activities in a manner that minimizes the impact of Unit 2 construction on the operation of Unit 1.
- (b) In the event activities performed by [NAME] or its contractors causes Unit 1 to experience an unscheduled shutdown or loss of power generation capability (each an "Unscheduled Shutdown"), [NAME] shall be liable to PacifiCorp for all damages incurred by PacifiCorp in connection with such Unscheduled Shutdown. Damages associated with an Unscheduled Shutdown shall include, without limitation, (i) \$12,000, multiplied by the Unit 1 OEM's equivalent start ratio for the affected unit(s) per Unscheduled Shutdown occurrence, (ii) the cost of all physical damage to any Unit 1 equipment that is demonstrated to have occurred due to the Unscheduled Shutdown, and (iii) the cost of replacement power ("Replacement Power Costs") for the period of the Unscheduled Shutdown.
- (c) Replacement Power Costs shall be calculated as follows, and shall be payable whether or not PacifiCorp actually purchases replacement power for the applicable period as liquidated damages for the lost generation portion of damages only:
- (i) If an Unscheduled Shutdown occurs during work scheduled pursuant to Section 5.2(e)(i) while Unit 1 is operating, replacement power costs shall be calculated as the product of **(1) the Dow Jones SP15 Daily Firm On-Peak Index for the day of delivery, expressed in \$/MWh, multiplied by (2) the provided Hourly Scalar for each hour, multiplied by (3) the loss factor of 1.112, plus (4) the basis of \$13/MWh** during each hour or portion of hour of the Unscheduled Shutdown, **minus (5) Unit 1's incremental cost of generating power (i.e., the product of a given plant's then effective net heat rate multiplied by midpoint of the Kern River, Opal Plant Platt's Daily Gas Index at the time of the Unscheduled Shutdown expressed in units of \$/mmBtu)**

_____ = Market Price – Incremental Cost

$$\text{Replacement Power} = (1 \times 2 \times 3 + 4) - 5$$

- (d) After an Unscheduled Shutdown of Unit 1, any such future work that is to be performed by [NAME] or its contractors of the same or similar nature to that which caused the Unscheduled Shutdown shall proceed as follows:
- (i) PacifiCorp and [NAME] shall develop a plan designed to accomplish the necessary work in a manner that will avoid reoccurrence of the Unscheduled Shutdown.
 - (ii) Such work plan shall provide that such work may, at PacifiCorp's election:
 - (1) be rescheduled to begin within, and end not less than five (5) hours before the end of, a subsequent Off-Peak Hourly Periods, during which Unit 1 may continue to operate; or
 - (2) PacifiCorp may elect to schedule a shutdown of Unit 1 during any subsequent Off-Peak Hourly Periods and such work may be performed during such shutdown beginning within, and ending no less than two (2) hours before the end of, such Off-Peak Hourly Periods.
- (e) PacifiCorp shall provide [NAME] with not less than eight (8) hours' advance notice (to be confirmed in writing) of any election to schedule a shutdown of Unit 1 pursuant to Section 5.2(d)(ii)(2).
- (f) Nothing in this Article V is intended to be nor shall operate as a limitation on PacifiCorp's right or ability to recover damages from [NAME] pursuant to the [PPA/TSA], this Agreement or otherwise at law or in equity.

5.3 Testing and Initial Firing of Combustion Turbines.

[NAME] shall conduct testing and initial firing of the Unit 2 combustion turbine generator during Off-Peak Hourly Periods.

ARTICLE VI
Notices and Miscellaneous Provisions

6.1 Notices, Consents and Approvals

Contact information for notices, requests, demands and other communications required or permitted hereunder is as follows:

if to [NAME], to:

with copies to:

or to such other person or address as [NAME] shall furnish to PacifiCorp;

if to PacifiCorp, to:

PacifiCorp
825 NE Multnomah, Suite 600
Portland, Oregon 97232-2315
Attn: _____

Tel: _____

Fax: _____

with copies, in connection with default notices, to:

or to such other person(s) or address(es) as PacifiCorp furnishes to [NAME] from time to time.

All notices, including, acceptances, consents, approvals, agreements, deliveries of information, designations, requests, demands and other communications required or permitted hereunder shall be in writing, properly addressed as provided in paragraph (a) above, and given by (i) hand delivery, (ii) a national overnight courier service, (iii) confirmed facsimile transmission, followed by a hard copy, or (iv) certified or registered mail, return receipt requested, and postage prepaid. Any such notice or other communication shall be deemed to have been duly given as of the date delivered if by hand delivery, national overnight courier service or confirmed facsimile

transmission (provided a hard copy promptly follows by other means provided herein), or five (5) calendar days after mailing if by certified or registered mail.

6.2 Entire Agreement

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

6.3 Amendment; Waiver

No amendment or other modification of any provision of this Agreement shall be valid or binding unless it is signed by each of the Parties. No waiver of any provision of this Agreement shall be valid or binding unless it signed by the Party waiving compliance with such provision. No delay on the part of either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver or any partial exercise of any such right, power or privilege preclude any further exercise thereof or the exercise of any other such right, power or privilege. No waiver of any breach, term or condition of this Agreement by any Party shall constitute a subsequent waiver of the same or any other breach, term or condition.

6.4 Successors and Assigns

Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the Parties hereto and, to the extent permitted by this Agreement, their respective successors and assigns.

6.5 Third Party Beneficiaries

The provisions of this Agreement shall only be for the benefit of, and enforceable by, the Parties hereto and shall not inure to the benefit of or be enforceable by any third party.

6.6 Severability

In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

6.7 Further Assurances

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

6.8 Publicity

Except as required by law, [NAME] agrees that they will not issue or release for external publication any press release, article, advertising or other publicity matter in any form (including print, electronic, or interview) relating to the Project, or to this Agreement without first consulting with and obtaining the prior consent of PacifiCorp, which consent shall not be unreasonably withheld or delayed. Except as required by law, PacifiCorp agrees that it will not issue or release for external publication any press release, article, advertising or other publicity matter in any form (including print, electronic, or interview) relating to this Agreement without first consulting with and obtaining the prior consent of [NAME], which consent shall not be unreasonably withheld or delayed. To the extent reasonably possible, the releasing Party will accommodate the concerns of the other Party. This requirement does not, however, restrict [NAME] from identifying its involvement in the Project in its marketing of products and services to others.

6.9 Independent Contractor

[NAME] is an independent contractor with respect to the Work, and each part thereof, and in respect of all work to be performed hereunder. Neither [NAME], the contractor, nor any subcontractor, the employees of any of such entities, employed in connection with the work shall be deemed to be agents, representatives, joint ventures, employees or servants of PacifiCorp by reason of their performance hereunder or in any manner dealt with herein. Neither Party shall perform any act or make any representation to any Person to the effect that [NAME], or any of its agents, representatives, the contractor or subcontractors, is the agent of PacifiCorp.

6.10 Survival

The provisions of Article 4 (“Construction Damage”), Article 5 (“Shutdowns”), and Sections 2.2 (“Governing Provisions”), 3.1 (“Construction Control”), 3.3 (“PacifiCorp Access to the Construction Area”), 3.9 (“Security and Safety Requirements”), 6.9 (“Independent Contractor”) and 6.11 (“Governing Law; Waiver of Jury Trial”) of this Agreement shall survive the expiration or earlier termination of this Agreement indefinitely, provided that the foregoing enumeration shall not be interpreted to bar survival of any other provision hereof which would otherwise be deemed to survive by operation of law.

6.11 Governing Law; Waiver of Jury Trial

THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH (WITHOUT GIVING EFFECT TO THE PRINCIPLES THEREOF RELATING TO CONFLICTS OF LAW).

EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT OR ANY MATTER ARISING HEREUNDER OR THEREUNDER. 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 TRANSACTION DOCUMENT OR ANY MATTER ARISING HEREUNDER OR THEREUNDER IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

6.12 Counterparts

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

6.13 Captions

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

6.14 Costs and Expenses.

All Parties have jointly drafted this Agreement. Presumptions regarding the interpretation of documents against the persons drafting same shall not apply to this Agreement. Each Party hereto will pay all costs and expenses incident to its negotiation and preparation of this Agreement and, except as set forth herein, to its performance and compliance with all agreements and conditions contained herein on its part to be performed or complied with, including the fees, expenses and disbursements of its counsel and accountants. In the event of default hereunder, the Parties agree that the defaulting Party shall pay the fees, expenses and disbursements of counsel for the non-defaulting Party in enforcing this Agreement.

6.14 No Waiver.

Except as otherwise provided herein, no provision of this Agreement may be waived except in writing. No failure by either Party to exercise, and no delay in exercising, any right, power, or remedy under this Agreement shall operate as a waiver thereof. Any waiver at any time by a Party of its right with respect to default under this Agreement, or the respect to other

matter arising in connection therewith, shall not be deemed a waiver with respect to any subsequent default or matter.

6.15 Liquidated Damages.

TO THE EXTENT ANY PAYMENT REQUIRED TO BE MADE UNDER THIS AGREEMENT IS AGREED BY THE PARTIES TO CONSTITUTE LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THAT SUCH PAYMENT CONSTITUTES A REASONABLE APPROXIMATION OF SUCH DAMAGES, AND NOT A PENALTY.

6.16 Limitation of Liability.

I. BUYER SHALL NOT BE LIABLE TO SELLER 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 UNDER OR IN CONNECTION WITH THIS AGREEMENT.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

By [NAME]:

Title:

By:

Title:

EXHIBIT A TO CONSTRUCTION COORDINATION AGREEMENT Glossary of Defined Terms

Except as otherwise defined in the body of this Agreement, of which this Exhibit is a part, capitalized terms shall have the meanings set forth below:

- (1) “Action” shall mean any lawsuit, action, proceeding, investigation or complaint before any Governmental Authority, mediator or arbitrator.
- (2) “Agreement” shall have the meaning given to it in the Recitals of this Agreement.
- (3) “[PPA/TSA]” shall have the meaning set forth in the Recitals.
- (4) “PacifiCorp’s Area” means the entirety of the Site that is not included in the Construction Area, as the same may exist from time to time.
- (5) “Claims” means any liabilities, fines, penalties or assessments other damages at law or in equity for the payment of money or for specific performance by or on behalf of PacifiCorp, including without limitation claims for injury or death to persons or damage to property, together with costs and attorneys fees associated therewith.
- (6) “Commercial Operation Date” shall have the meaning set forth in the [PPA/TSA].
- (7) “Common Facilities” means those tangible assets, contracts, and permits owned by PacifiCorp in connection with Unit 1 and utilized in common by PacifiCorp and [NAME] for the construction, startup, commissioning and operation of Unit 2, identified on Exhibit “B”.
- (8) “Construction Area” shall have the meaning given to it in Section 3.2 of this Agreement
- (9) “Construction Damage” shall have the meaning given to it in Section 4.1 of this Agreement.
- (10) “Construction Fence” shall have the meaning given to it in Section 3.2 of this Agreement.
- (11) “Effective Date” has the meaning set forth in the [APSA / EPC Contract]
- (12) “Emergency” means any situation which is likely to impose an immediate threat of injury to any Person or of material property damage or material economic loss to all or any part of the Facility.
- (13) “Facility” or “Facilities” shall mean Unit 1, Unit 2 and the Common Facilities, and all energy producing equipment and auxiliary equipment, fuel storage and handling facilities and equipment, electrical transformers, interconnection facilities and metering facilities,

- associated with Unit 1 or Unit 2 as may be required for receipt of fuel and for delivery of electricity, and all other improvements related solely to the Units and located on the Site.
- (14) "Governmental Authority" means any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States, any foreign country or any domestic or foreign state, county or other political subdivision.
- (15) "NERC" shall mean the North American Electric Reliability Council, and any successor entity.
- (16) "Off-Peak Hourly Period" means those periods of time measured by hours ending 0100 through 0600 and hours ending 2300 through 2400 Monday through Saturday, and all hours on Sunday and NERC Holidays.
- (17) "PacifiCorp" shall have the meaning set forth in the Recitals.
- (18) "PacifiCorp's Area" shall have the meaning given to it in Section 3.2 of this Agreement.
- (19) "Party" shall have the meaning given to it in the Recitals of this Agreement.
- (20) "Performance Testing" shall have the meaning given to it in the [PPA/TSA].
- (21) "Person" means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization or Governmental Authority.
- (22) "Prudent Industry Practice" shall have the meaning given to it in the [PPA/TSA].
- (23) "Project Schedule" shall mean a detailed schedule setting forth milestones for key stages of the construction, testing and commissioning of Unit 2, including without limitation provisions regarding necessary interfaces with the Common Facilities, provided by [NAME] to PacifiCorp and updated to reflect material changes in such schedule from time to time.
- (24) "Replacement Power Costs" shall have the meaning given to it in Section 5.2(b) of this Agreement.
- (25) "Shutdown Periods" shall have the meaning given to it in Section 6.1 of this Agreement.
- (26) "Site" means the real property on which the Facilities are located.
- (27) "Tagging and Safety Program" shall mean that tagging and safety program in effect and maintained by PacifiCorp at the Facility from time to time and provided to [NAME].
- (28) "Term" shall have the meaning given to it in Section 2.1 of this Agreement.
- (29) "Unit" shall mean an individual generating facility consisting of the gas turbine, heat recovery system generator, steam turbine, auxiliary boilers and other associated facilities

and equipment owned by individually by PacifiCorp or [NAME] not included as Common Facility.

- (30) "Unit 1" means the power plant located in _____, Utah, owned by PacifiCorp and the related facilities, real property and property rights related thereto including all necessary permits and licenses, but excluding the Common Facilities.
- (31) "Unit 2" means the proposed power plant to be located in _____ under development by [NAME] adjacent to Unit 1 and the related facilities, real property and property rights related thereto including all necessary permits and licenses, but excluding the Common Facilities.
- (32) "Unscheduled Shutdown" shall have the meaning given to it in Section 6.2(b) of this Agreement.

Rules as to Usage

1. The terms defined above have the meanings set forth above for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined.
 - (i) The singular includes the plural and vice versa;
 - (ii) Reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement;
 - (iii) Reference to a Person in a particular capacity excludes such Person in any other capacity;
 - (iv) Any gender reference includes the other gender;
 - (v) Reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof;
 - (vi) References used in any Article, Section, Schedule, Exhibit or clause refer to this agreement;
 - (vii) "Hereunder," "hereof," "hereto," "herein," and words of similar import are references to this Agreement as a whole not any particular part of provision hereof or thereof;
 - (viii) "Including" ("include") means including without limiting the generality of any description preceding such term;

- (ix) Relative to any period of time, “from” means “from and including,” “to” means “to but not including,” and “through” means “through and including;” and
- (x) Reference to any law (including statutes and ordinances) means such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated there under.

**EXHIBIT B TO
CONSTRUCTION COORDINATION AGREEMENT**

Common Facilities

EXHIBIT C
CONSTRUCTION COORDINATION AGREEMENT

Site Plan Designation of Construction Area

**EXHIBIT D
CONSTRUCTION COORDINATION AGREEMENT**

Security Requirement

RFP 2012
ATTACHMENT 1
COMPANY BENCHMARK BASE
LOAD RESOURCE BY YEAR OVER
THE TERM

**2012 COMPANY BENCHMARK
BASE LOAD RESOURCE
Hunter 4 and
Intermountain Power Plant 3**

ATTACHEMENT 1
PacifiCorp Energy 2012 Benchmark
2012 Company Benchmark 600MW at Hunter Unit 4

PacifiCorp Energy's planned 2012 benchmark is the addition of a 4th Unit at the Hunter Plant with a nominal net rating of 600 MW. The primary fuel will be pulverized coal with light oil used for startup and boiler stabilization.

Hunter Unit 4 will employ supercritical boiler-steam turbine technology with main steam conditions of 3600 psig and a nominal steam temperatures of 1050°F (main steam) and 1100°F (reheat steam). The boiler itself will be either tangentially-fired or wall-fired. The boiler combustion system will use low-NOx burners combined with state-of-the-art over-fire air systems to minimize the formation of nitrogen oxides (NOx) in the furnace. The boiler will be equipped with an integral selective catalytic reduction (SCR) system for additional removal of NOx using aqueous ammonia. The boiler construction will be outdoor with at least 75% sided. The steam turbine will consist of a multi-casing design consisting of HP/IP and multiple LP casings. The steam turbine cycle will be based on eight stages of feedwater heaters in a Heater above Reheat Point (HARP) cycle. The condenser and feedwater heater tubing shall be titanium and stainless steel, respectively.

The unit will be equipped with a state-of-the-art air quality control system (AQCS) that will include a lime-based wet flue gas desulfurization (FGD) system that will remove a minimum of 95% of the sulfur oxides (SO₂) from the boiler flue gas. The AQCS will also consist of a pulse-jet fabric filter (baghouse) for the removal of ash. The Unit 4 stack will be designed and constructed to good engineering practices with a stack height of no less than the height of the existing stacks (600').

Hunter Unit 4 will be located at the Hunter Plant. The Hunter Plant is a three unit coal-fired power plant located in Emery County, Utah. The facility is located on State Highway 10 approximately 3 miles south of Castle Dale, Utah. The site consists of about 1000 acres at an elevation of 5644 feet above sea level. The nearest railroad access is the Utah Railway Company which is 20 miles from the plant by paved road. The design outdoor temperature range is -10F to 100F with a design 64F wet bulb temperature.

Hunter Unit 4 will burn predominantly local Utah bituminous coals but will have the capability to also burn Wyoming coals. Coal storage and handling facilities will be added to provide for up to 45 days of storage and coal blending. The existing fuel oil storage tanks will be used for startup and stabilization fuel.

A cross-flow or counter-flow cooling tower will provide cooling for the unit. Raw water for Unit 4 will be pumped from the existing raw basin southeast of the plant site. This basin receives makeup water from a surface reservoir and pipeline system. Water treatment equipment will be installed to process the raw water to meet the needs of the various process needs of the boiler and cooling systems. The Unit 4 demineralized water tie in

point will be at the existing Unit 3 demineralized water tank. The boiler will be equipped with an on-line condensate polisher to meet the high quality water standards necessary for a supercritical boiler. The Unit 4 potable water will be tied into the existing Unit 3 potable water tank. Potable water is piped from the city of Castle Dale.

The existing fire protection system will be extended and modified. Some fire protection piping will be demolished and replaced with new fire protection piping where it interferes with the construction of Unit 4.

The Hunter Plant is a zero liquid discharge (ZLD) plant. Cooling tower blowdown will be used as makeup to the FGD system and ash handling systems. The balance of the water is evaporated from a pond or used for irrigation of hay crops. Plant sewage is treated and discharged to the evaporation pond. Bottom ash and fly ash will be land-filled on the plant site.

Site upgrades will include new warehouse facilities, plant roads, site lighting, fencing, security, and communications equipment.

Power from Hunter Unit 4 will connect into existing 345 kV transmission lines that connect to the Camp Williams substation, Huntington substation, and the Sigurd substation. An evaluation is in process to determine the need to add transmission lines to avoid generator tripping in the event of multiple transmission line outages.

PacifiCorp Energy 2012 Benchmark 2012 -340MW Intermountain Power Project Unit 3

PacifiCorp Energy is participating as a development partner in the construction of the Intermountain Power Project (IPP) Unit 3. IPP Unit 3 has a planned commercial operation date in the summer of 2012. IPP Unit 3 will have a nominal net rating of 900 MW. PacifiCorp Energy has 340 MW (or 37.8%) share of the unit's output. The primary fuel will be pulverized coal with light oil used for startup and boiler stabilization.

IPP Unit 3 is currently permitted as a hybrid subcritical boiler with expected main steam conditions of 2520 psig and nominal steam temperatures of 1050°F (main steam) and 1050°F (reheat steam). The participants are currently evaluating the use of supercritical boiler design. If the studies confirm that a supercritical design is cost effective and that a change can be made administratively, then the participants will pursue construction on a supercritical design. The boiler will be either tangentially-fired or wall-fired. The boiler combustion system will use low-NOx burners combined with state-of-the-art over-fire air systems to minimize the formation of nitrogen oxides (NOx) in the furnace. The boiler will be equipped with an integral selective catalytic reduction (SCR) system for additional NOx reduction using anhydrous ammonia. Unit 3 will meet a NOx emission limit of 0.07 lb/mmBtu on a 24 hour average basis. The boiler will be totally enclosed.

The steam turbine will be a tandem-compound six-flow machine consisting of HP/IP and multiple LP casings. The steam turbine cycle will be based on eight stages of feedwater heaters in a Heater above Reheat Point (HARP) cycle. The condenser and feedwater heater tubing shall be titanium and stainless steel, respectively.

The unit will be equipped with a state-of-the air quality control system (AQCS) that will include a wet limestone forced-oxidation flue gas desulfurization (FGD) system that will remove a approximately 95% of the sulfur oxides (SO₂) from the boiler flue gas to comply with the air permit allowable emission level of 0.09 lb/mmBtu SO₂ on a 24 hour average basis. The AQCS will also consist of a reverse-air fabric filter (baghouse) for the removal of particulate. The Unit 3 stack will have a minimum height of 712' and will be designed for wet operation.

IPP Unit 3 will be located on the site of the existing Intermountain Power Agency's Intermountain Generating Station that consists of two 900 MW (net) units. Unit 3 will be located next to Unit 2. The Intermountain Generating Station is located in Millard County, Utah. The facility is located approximately 10 miles west of Lynddyl, Utah, off Utah State Highway 132. The site consists of approximately 4,600 acres at an elevation of 4670 feet above sea level. The plant site has both rail and road access for deliveries of coal. Deliveries by rail are provided by Union Pacific. The design outdoor temperature range is 0°F to 100°F with a design wet bulb temperature of 65°F wet bulb temperature.

IPP Unit 3 will burn predominantly local Utah bituminous coals but will have the capability to burn sub-bituminous coals. Modifications will be made to the existing coal storage piles to facilitate coal blending. Upgrades to the existing coal conveyors and conveyor motor drives will be made to improve fuel loading the units. A new transfer tower and conveyor will be installed for Unit 3. The existing fuel oil storage tanks will be used for startup and stabilization fuel. Additional limestone storage and transfer equipment will be provided for Unit 3.

A mechanical draft cooling tower will provide cooling for Unit 3. Raw water for Unit 3 will be pumped from the existing plant raw water reservoir. The plant reservoir receives makeup water from the DMAD surface reservoir and pipeline system. Additional pumps will be installed at the DMAD reservoir to meet the water requirements of the additional unit. No modifications to the pipeline are expected since the makeup water supply system was sized for 3,000 MW of generation at the site. The existing water treatment equipment will be used to process the additional raw water to meet the needs of the service and cooling water systems. Demineralized water will be provided by the existing demineralized water system. The boiler will be equipped with an on-line condensate polisher. The potable water needs of Unit 3 will be provided by extending the existing potable water system.

The existing fire protection system will be extended and modified to meet the needs of Unit 3.

The Intermountain Power Project is a zero liquid discharge (ZLD) facility. Cooling tower blowdown will be used as makeup to the FGD system and boiler seals. Excess waste water will be treated with a brine concentrator. High quality effluent from the brine concentrator will be used as makeup to the demineralizer system. Plant sewage is treated in a tile field. Fly ash will be marketed to the extent possible. Bottom ash and unsold fly ash will be land-filled on the plant site.

Site upgrades will include plant roads, site lighting, fencing, security, controls, and communications equipment. Unit 3 will use existing warehouses and shop facilities.

Power from IPP Unit 3 will connect the 345kV IPP AC switchyard. Power from the AC switchyard is connected to IPA's existing 345 kV Northern Transmission System which connects directly to PacifiCorp's Mona substation.

**2013 COMPANY BENCHMARK
BASE LOAD RESOURCE
BRIDGER 5**

PacifiCorp Energy 2013 Benchmark 2013 Benchmark 750MW at Jim Bridger Unit 5

PacifiCorp Energy's planned 2013 benchmark is the addition of a 5th Unit at the Jim Bridger Plant with a nominal net rating of approximately 750MW. The primary fuel will be pulverized coal with light oil used for startup and boiler stabilization.

Jim Bridger Unit 5 will employ supercritical boiler-steam turbine technology with main steam conditions of 3600 psig and nominal steam temperatures of 1050°F (main steam) and 1100°F (reheat steam). The boiler itself will be either tangentially-fired or wall-fired. The boiler combustion system will use low-NO_x burners combined with a state-of-the-art over-fire air system to minimize the formation of nitrogen oxides (NO_x) in the furnace. The boiler will be equipped with an integral selective catalytic reduction (SCR) system for additional removal of NO_x using anhydrous ammonia. The boiler construction will be outdoor with at least 75% sided. The steam turbine will consist of a multi-casing design consisting of high pressure/intermediate pressure and multiple low pressure casings. The steam turbine cycle will be based on eight stages of feedwater heaters in a Heater above Reheat Point (HARP) cycle. The condenser and feedwater heater tubing shall be titanium and stainless steel, respectively.

The unit will be equipped with a state-of-the-art air quality control system (AQCS) that will include a wet or dry flue gas desulfurization (FGD) system that will remove a minimum of 90% of the sulfur oxides (SO₂) from the boiler flue gas. Limestone will be FGD reagent if a wet system is selected. A dry FGD system will use lime. The AQCS will also consist of a pulse-jet fabric filter (bathhouse) for the removal of particulate. The Unit 5 stack will be designed and constructed to good engineering practices with a stack height of no less than the height of the existing stacks (500').

Jim Bridger Unit 5 will be located at the Jim Bridger Plant; the existing plant consists of four 530 MW (net) units. The Jim Bridger Plant is located in Sweetwater County, Wyoming. The facility is located on Sweetwater County Road 4-15 approximately 8 miles north of Point of Rocks. Point of Rocks is on Interstate 80 which is 24 miles east of the city of Rock Springs. The site consists of about 1000 acres at an elevation of 6,670 feet above sea level. Rail access to the plant is from Union Pacific rail lines. The design outdoor temperature range is -40°F to 100°F with a 62°F wet bulb temperature.

Jim Bridger Unit 5 will burn predominantly local sub-bituminous coals but will be designed to also burn Powder River Basin (PRB) coals. Coal storage and handling facilities will be added to provide for up to 45 days of storage and coal blending. The existing fuel oil storage tanks will be used for startup and stabilization fuel.

A cross-flow or counter-flow cooling tower will provide cooling for the unit. Makeup water for the cooling tower and other plant processes will be drawn from the plant's surge pond. Water for plant use is pumped into the surge pond from the pumping station

located on at Green River which is located 42 miles west of the plant site. Modifications to the Green River pumping station, pipeline, and surge pond will be required to meet the increased water needs of the plant. Water treatment equipment will be installed to process the raw water to meet the needs of the various process needs of the boiler and cooling systems. Jim Bridger Unit 5 will be equipped with a new treated and demineralized water storage tanks. The boiler will be equipped with an on-line condensate polisher to meet the high quality water standards necessary for a supercritical boiler. The requirements of potable water will be met by the existing potable water system. The existing fire protection system will be extended and modified.

The Jim Bridger Plant is a zero liquid discharge (ZLD) plant. Cooling tower blowdown will be used as makeup to the FGD system and ash handling systems. Handling of the balance of any remaining wastewater is currently under review but may include use of the existing evaporation pond system, deep well injection, a brine concentrator, or a combination of these options. Plant sewage is treated and discharged to the evaporation pond. A new storm water pond will be constructed.

Site upgrades will include new warehouse/machine shop facilities, plant roads, site lighting, fencing, security, and communications equipment.

PacifiCorp Transmission is currently evaluating transmission options and paths for power delivery from the new unit. Power will be transmitted from the plant via a new high voltage transmission line operating at either 345 kV or 500 kV. The new line will most likely parallel the existing 345kV Jim Bridger-Kinport transmission lines.

**2014 COMPANY BENCHMARK
BASE LOAD RESOURCE
IGCC PROJECT**

PacifiCorp Energy 2014 Benchmark IGCC Benchmark

PacifiCorp Energy's 2014 IGCC benchmark is a coal gasification facility together with its associated auxiliaries necessary to provide syn-gas to fuel a "2 x1" combined cycle configuration using either General Electric's 7FB or Siemens Power SGT-5000F gas turbines. The 2014 IGCC benchmark may consist of up to three gasifiers as necessary to provide 90% availability on coal alone. The primary fuel will be pulverized coal with either natural gas or light oil for startup.

Potential gasifier technologies would include Conoco-Philips, General Electric, and Shell. Potentially, Siemens' newly acquired Sustec gasifier technology may also be considered as potential gasifier technology supplier provided adequate scale-up and target availability levels are demonstrated. Since the designs of the gasifiers and the associated reference plants are unique, specific details on the selected benchmark design will depend on future project specific scoping studies and Front End Engineering Design (FEED) studies. The designs are also dependent on coal composition and location, as a general guideline, the benchmark IGCC plant will be based on the standard reference plant configuration as supplied by the selected technology suppliers consistent with fuel specific requirements. The benchmark design requirements would also be supplemented as necessary by the findings and recommendations of Electric Power Research Institute's (EPRI) Coal fleet IGCC User Design Basis Specification.

The design basis for environmental performance for the 2014 IGCC benchmark is the EPRI Coal fleet IGCC User Design Basis Specification Environmental Design Level II. In order to achieve NO_x emissions levels associated with Coal Fleet's Environmental Design Level II, a Selective Catalytic Reduction (SCR) system would be required. As a consequence of using an SCR additional H₂S would need to be removed from the syngas in order to reduce the potential of fouling of the SCR catalyst. A refrigerated amine, Selexol™, or similar high-efficiency system would be used to reduce the H₂S levels to the necessary levels. The 2014 benchmark would not incorporate an oxidation catalyst.

The 2014 IGCC plant benchmark would be designed and constructed to allow for future CO₂ capture equipment in that sufficient space and interconnections would be provided to allow for future installation of CO₂ capture equipment. The CO₂ capture equipment, such as humidification towers, shift reactors, CO₂ absorbers/strippers, and compressors would not be installed as part of the original design. Depending on the results of further study, it is possible the IGCC benchmark would include a mitigation provision for future CO₂ capture by over-sizing certain components as part of the original design. This will minimize the performance impacts associated with any later installation of CO₂ capture equipment. Installation of CO₂ capture equipment for enhanced oil recovery would be a site specific consideration.

The air separation unit of 2014 IGCC benchmark would need to have a guaranteed availability level of 98% or better. Sufficient on-site nitrogen storage would be required to meet purge gas requirements. The need for liquid or gaseous oxygen storage would be evaluated depending on the expected duration and frequency of unexpected outages of the vendor's proposed air separation system. The 2014 IGCC benchmark would be designed such that the air separation unit would receive a portion of the air supply requirement from the gas turbine compressor. An auxiliary air separation unit compressor would provide the remaining compressed air requirement. The degree of integration would be a parameter to be determined during the FEED study.

The location of the 2014 IGCC benchmark will be identified prior to the Independent Evaluator locking down the 2014 benchmark. The Company has examined the feasibility of IGCC resources at both its Hunter and Jim Bridger sites; these sites may be candidate locations. In addition the Company is now considering other potential brown-field sites include the Naughton and the Dave Johnston plants. Site specific considerations would dictate the balance of plant requirements which includes water supply needs, water supply improvements, water treatment systems, coal storage and handling, and waste water and waste disposal facilities.

Project Characteristics

Characteristics of how the Proxy is modeled in the 2006 RFP

	Hunter 4 Supercritical	Bridger 5 Supercritical	Inter Mountain Power Project 3 Supercritical	Integrated Gasification Combined Cycle Resource Utah Wyoming	
Starts per Day	Base Load Unit not expected to cycle on & off on a daily basis				
Start Up Cost (2006\$)	\$15,907 / Start	\$19,884 / Start	\$15,907 / Start	\$13,380 / Start	\$13,380 / Start
Variable O&M (2006\$)	\$2.41 / MWh	\$2.08 / MWh	\$2.41 / MWh	\$1.10 / MWh	\$1.08 / MWh
Minimum Up Time	16 Hours	16 Hours	16 Hours	16 Hours	16 Hours
Minimum Down Time	12 Hours	12 Hours	12 Hours	30 Hours	30 Hours
Ramp Rate (warm start)	30 MW / minute	30 MW / minute	30 MW / minute	12.5 MW / minute	12.5 MW / minute
Run-Up Rate (cold start)	212 MW / Hour	212 MW / Hour	212 MW / Hour	48 MW / Hour	48 MW / Hour

**RFP 2012
ATTACHMENT 2
QF BIDDER INFORMATION**



ELECTRIC SERVICE SCHEDULE NO. 38 - Continued

II. B. Procedures (continued)

Generally, the interconnection process involves (1) initiating a request for interconnection, (2) completion of studies to determine the system impacts associated with the interconnection and the design, cost, and schedules for constructing any necessary interconnection facilities, (3) execution of an Interconnection Facilities Agreement to address facility construction, testing and acceptance and (4) execution of an Interconnection Operation and Maintenance Agreement to address ownership and operation and maintenance issues.

Consistent with PURPA, the owner is responsible for all interconnection costs assessed by the Company on a nondiscriminatory basis.

ELECTRIC SERVICE SCHEDULE NO. 38 - Continued

II. Process for Negotiating Interconnection Agreements (continued)

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 power delivery function.

A. Communications

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

Utah Power & Light Company
Manager-QF Contracts
825 NE Multnomah St, Suite 600
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 power delivery

function that 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

The Company will follow the procedures for generation interconnection described in Part IV of the Company's Open Access Transmission Tariff (Tariff) on file with the Federal Regulatory Commission. A copy of the Tariff is available on-line at <http://www.oasis.pacificorp.com>

ELECTRIC SERVICE SCHEDULE NO. 38 - Continued

B. Procedures

1. The Company's proposed generic power purchase agreement may be obtained from the Company's website at 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. To obtain an indicative pricing proposal with respect to a proposed project, the owner must provide in writing to the Company, general project information reasonably required for the development of indicative pricing, including, but not limited to:
 - a) generation technology and other related technology applicable to the site
 - b) design capacity (MW), station service requirements, and net amount of power to be delivered to the Company's electric system
 - c) quantity and timing of monthly power deliveries (including project ability to respond to dispatch orders from the Company)
 - d) proposed site location and electrical interconnection point
 - e) proposed on-line date and outstanding permitting requirements
 - f) demonstration of ability to obtain QF status
 - g) fuel type (s) and source (s)
 - h) plans for fuel and transportation agreements
 - i) proposed contract term and pricing provisions (i.e., fixed, escalating, indexed)
 - j) status of interconnection arrangements

3. The Company shall not be obligated to provide an indicative pricing proposal until all information described in Paragraph 2 has been received in writing from the QF owner. Within 30 days following receipt of all information required in Paragraph 2, the Company will provide the owner with an indicative pricing proposal, which may

ELECTRIC SERVICE SCHEDULE NO. 38 - Continued

B. Procedures (continued)

include other indicative terms and conditions, tailored to the individual characteristics of the proposed project. Such proposal may be used by the owner to make determinations regarding project planning, financing and feasibility. However, such prices are merely indicative and are not final and binding. Prices and other terms and conditions are only final and binding to the extent contained in a power purchase agreement executed by both parties and approved by the Commission. The Company will provide with the indicative prices a description of the methodology used to develop the prices.

4. If the owner desires to proceed forward with the project after reviewing the Company's indicative proposal, it may request in writing that the Company prepare a draft power purchase agreement to serve as the basis for negotiations between the parties. In connection with such request, the owner must provide the Company with any additional project information that the Company reasonably determines to be necessary for the preparation of a draft power purchase agreement, which may include, but shall not be limited to:
 - a) updated information of the categories described in Paragraph B.2,
 - b) evidence of adequate control of proposed site
 - c) identification of, and timelines for obtaining any necessary governmental permits, approvals or authorizations

ELECTRIC SERVICE SCHEDULE NO. 38 - Continued

B. Procedures (continued)

- d) assurance of fuel supply or motive force
 - e) anticipated timelines for completion of key project milestones
 - f) evidence that any necessary interconnection studies have been completed and assurance that the necessary interconnection arrangements are being made in accordance with Part II.
5. The Company shall not be obligated to provide the owner with a draft power purchase agreement until all information required pursuant to Paragraph 4 has been received by the Company in writing. Within 30 days following receipt of all information required pursuant to paragraph 4, the Company shall provide the owner with a draft power purchase agreement containing a comprehensive set of proposed terms and conditions, including a specific pricing proposal for purchases from the project. Such draft shall serve as the basis for subsequent negotiations between the parties and, unless clearly indicated, shall not be construed as a binding proposal by the Company
6. After reviewing the draft power purchase agreement, the owner may prepare an initial set of written comments and proposals regarding the draft power purchase agreement and forward such comments and proposals to the Company. The Company shall not be obligated to commence negotiations with a QF owner until the Company has received an initial set of written comments and proposals from the QF owner. Following the Company's receipt of such comments and proposals, the owner may contact the Company to schedule contract negotiations at such times and places as are mutually agreeable to the parties. In connection with such negotiations, the Company:
- a) will not unreasonably delay negotiations and will respond in good faith to any additions, deletions or modifications to the draft power purchase agreement that are proposed by the owner

ELECTRIC SERVICE SCHEDULE NO. 38 - Continued

B. Procedures (continued)

- b) may request to visit the site of the proposed project if such a visit has not previously occurred
 - c) will update its pricing proposals at appropriate intervals to accommodate any changes to the Company's avoided-cost calculations, the proposed project or proposed terms of the draft power purchase agreement may request any additional information from the owner necessary to finalize the terms of the power purchase agreement and satisfy the Company's due diligence with respect to the Project.
7. 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 a final, executable version of the agreement. The Company reserves the right to condition execution of the power purchase agreement upon simultaneous execution of an interconnection agreement between the owner and the Company's power delivery function, as discussed in Part II. 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 and approved by the Commission.

II. Process for Negotiating Interconnection Agreements

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 all necessary interconnection arrangements being consummated.

It is recommended that the owner initiate its request for interconnection as early in the planning process as possible, to ensure that necessary interconnection arrangements proceed in a timely manner on a parallel track with negotiation of the power purchase agreement.

ELECTRIC SERVICE SCHEDULE NO. 38 - Continued

II. Process for Negotiating Interconnection Agreements (continued)

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 power delivery function.

A. Communications

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

Utah Power & Light Company
Manager-QF Contracts
825 NE Multnomah St, Suite 600
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 power delivery function that 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

The Company will follow the procedures for generation interconnection described in Part IV of the Company's Open Access Transmission Tariff (Tariff) on file with the Federal Regulatory Commission. A copy of the Tariff is available on-line at <http://www.oasis.pacificorp.com>

RFP 2012
ATTACHMENT 3
POWER PURCHASE CONTRACT

RFP 2012
ATTACHMENT 4
ROLE AND FUNCTION OF THE INDEPENDENT
EVALUATOR AND THE PROTOCOLS AND
COMMUNICATIONS BETWEEN THE BENCHMARK
TEAM, THE EVALUATION TEAM, THE BIDDERS AND
THE INDEPENDENT EVALUATOR

- 1) The role and function of the Independent Evaluator is outlined below.
 - a. Facilitate and monitor communications between the Soliciting Utility and Bidders.
 - b. Review and validate the assumptions and calculations of any Benchmark Option.
 - c. Analyze the Benchmark Option for reasonableness and consistency with the Solicitation Process.
 - d. Analyze, operate and validate all important models, modeling techniques, assumptions and inputs utilized by the Soliciting Utility in the Solicitation Process, including the evaluation of Bids.
 - e. Receive and “blind” Bid responses.
 - f. Provide input to the Soliciting Utility on:
 - i. the development of screening and evaluation criteria, ranking factors and evaluation methodologies that are reasonably designed to ensure that the Solicitation Process is fair, reasonable and in the public interest in preparing a Solicitation and in evaluating Bids;
 - ii. the development of initial screening and evaluation criteria that take into consideration the assumptions included in the Soliciting Utility’s most recent IRP, any recently filed IRP Update, any Commission order on the IRP or IRP Update and in its Benchmark Option.
 - iii. whether a Bidder has met the criteria specified in any RFQ and whether to reject or accept non-conforming RFQ responses;
 - iv. whether and when data and information should be distributed to Bidders because it is necessary to facilitate a fair and reasonable competitive Bidding process or has been reasonably requested by Bidders;
 - v. whether to reject non-conforming bids or accept conforming changes.
 - g. Ensure that all Bids are treated in a fair and non-discriminatory manner.
 - h. Monitor, observe, validate and offer feedback to the Soliciting Utility and the regulators on all aspects of the Solicitation and Solicitation Process, including:
 - i. content of the Solicitation;
 - ii. evaluation and ranking of Bid responses;
 - iii. creation of a short list(s) of Bidders for more detailed analysis and negotiation;

- iv. Post-Bid discussions and negotiations with, and evaluations of, short list Bidders; and
 - v. negotiation of proposed contracts with successful Bidders.
- i. The IE will independently evaluate the Soliciting Utility's Benchmark Resources and a sample of the bids to determine whether the selections for the initial and final short lists are reasonable.
 - j. The IE will evaluate the unique risks and advantages associated with Benchmark Resources, including the regulatory treatment of costs or benefits related to actual constructions cost and plant operation differing from what was projected for the RFP.
 - k. Once the competing bids and Benchmark Resources have been evaluated by the Soliciting Utility and the IE the two should compare results.
 - l. Offer feedback to the Soliciting Utility on possible adjustments to the scope or nature of the Solicitation or requested resources in light of Bid responses;
 - m. Solicit additional information on Bids necessary for screening and evaluation purposes.
 - n. Advise the Commission at all stages of the process of any unresolved disputes or other issues or concerns that could affect the integrity or outcome of the Solicitation Process.
 - o. Analyze and attempt to mediate disputes that arise in the Solicitation Process with the Soliciting Utility and/or Bidders, and present recommendations for resolution of unresolved disputes to the Commission.
 - p. Participate in and testify at Commission hearings on approval of the Solicitation and Solicitation Process and/or approval of a Significant Energy Resource Decision.
 - q. Coordinate as appropriate and as directed by the Commission with staff or evaluators designated by regulatory authorities from other states served by the Soliciting Utility.
 - r. Perform such other evaluations and tasks as the Commission may direct.

2). The Communications between the Independent Evaluator, the Company and the Bidders shall be conducted in the following manner:

- a. Communications between a Soliciting Utility and potential or actual Bidders shall be conducted only through or in the presence of the Evaluator. Bidder questions and Soliciting Utility or Evaluator responses shall be posted on an appropriate website. The Evaluator shall protect or redact competitively sensitive information from such questions or responses to the extent necessary.

b. The Soliciting Utility may not communicate with any Bidder regarding the Solicitation Process, the content of the Solicitation or Solicitation documents, or the substance of any potential response by a Bidder to the Solicitation, except through or in the presence of the Evaluator.

c. The Soliciting Utility shall provide timely and accurate responses to any request from the Evaluator, including requests from Bidders submitted by the Evaluator, for information regarding any aspect of the Solicitation or the Solicitation Process.

3) The Independent Evaluator will provide the following Reports.

The Evaluator shall prepare at least the following confidential reports and provide them to the Regulators and the Soliciting Utility:

i. Monthly progress reports on all aspects of the Solicitation Process as it progresses;

ii. Final Reports as soon as possible following the completion of the Solicitation Process. Final reports shall include analyses of the Solicitation, the Solicitation Process, the Soliciting Utility's evaluation and selection of Bids and resources, the final results and whether the selected resources are in the public interest.

4) Communication between the Evaluation Team and the Benchmark Team:

a. The Evaluation Team, including Non-blinded Personnel, may not be members of the Benchmark Team, nor communicate with members of the Benchmark Team during the Solicitation Process about any aspect of the Solicitation Process, except as authorized herein.

b. The names and titles of each member of the Benchmark Team, the Non-blinded Personnel and Evaluation Team shall be provided in writing to the Evaluator.

c. The Evaluation Team may solicit written comments on matters of technical expertise from the members of the Benchmark Team. All such communications to or from the Benchmark Team must be in writing. The Evaluator must participate in all such communications between members of the Benchmark Team and Evaluation Team and must retain a copy of all such correspondence to be made available in future Commission proceedings. The Evaluator must also make available to the Bidder about whose bid the Benchmark Team's technical expertise was sought a written copy of the correspondence between the Evaluation and Benchmark Teams. Any response to such correspondence from the Bidder must be in writing to the Evaluator and must be conveyed to the Evaluation Team. The Evaluator must provide its own or third party verification of the reasonableness of any technical information solicited from the Benchmark Team or Bidder before it may be used in any evaluation.

d. There shall be no communications regarding blinded Bid information, either directly or indirectly, between the Nonblinded Personnel and other Evaluation Team members until

the final short list is determined except as authorized herein, which communications shall be done in the presence of the Evaluator. The Non-blinded Personnel must not reveal to other Evaluation Team members, either directly or indirectly in any form, any blinded information regarding the identity of any of the Bidders.

e. The Evaluation Team shall have no direct or indirect contact or communication with any Bidder other than through the Evaluator until such time as a final short list is selected by the Soliciting Utility.

f. Should any Bidder or a member of the Benchmark Team, attempt to contact a member of the Evaluation Team, such Bidder or member of the Benchmark Team shall be directed to the Evaluator for all information and such communication shall **promptly** be reported to the Evaluator by the Evaluation Team.

**RFP 2012
ATTACHMENT 5
TOLLING SERVICE AGREEMENT
CONTRACT**

**RFP 2012
ATTACHMENT 6
ASSET PURCHASE AND SALE
AGREEMENT (APSA) WITH
APPENDICES**

**RFP 2012
ATTACHMENT 7
LAKE SIDE APSA
RIGHTS AND FACILITIES**

ATTACHMENT 7 LAKE SIDE RIGHTS AND FACILITIES PPA AND TSA BIDDERS ONLY

Easements

PacifiCorp will grant a non-exclusive easement on PacifiCorp's property between Bidder's switchyard to the new 345kV substation serving Bidder's Facility. Easement will be determined based on Bidder's routing of Bidder's cable.

PacifiCorp will grant a non-exclusive easement to allow for the connection of Bidder's Facility to a natural gas supply line located on PacifiCorp property, if required. As an alternative, PacifiCorp, in its sole discretion, may convey such property as required for Bidder's natural gas pipeline and metering station to Bidder as part of the Site Purchase Agreement for Lake Side shown as Attachment 19 to this RFP. Specific details of the interconnection are provided in Appendix B to the APSA.

Water Rights

PacifiCorp does not hold any Water Rights that can be acquired by the Bidder. Bidder will be responsible for acquiring such rights.

Emission Reduction Credits (ERCs)

PacifiCorp has ERCs that can be acquired by the Bidder. Pricing is shown in the Site Purchase Agreement for Lake Side. The available Utah County ERCs are (in tons):

PM-10	46.8
SO ₂	4.6
NO _x	22.4

Bidder is responsible for obtaining all ERCs necessary for the operation of the Project.

Facilities Interconnections

Bidder will be entitled to connect, at its own expense with PacifiCorp's raw water connection as specified in Appendix B to the APSA. Supply is limited to water used for construction purposes.

Bidder will acquire, under the Site Purchase Agreement for Lake Side (Attachment 16), rights to one half of the currently available capacity contracted for by PacifiCorp from Questar. Terms of this contract are to be found in the Site Purchase Agreement.

RFP 2012
ATTACHMENT 8
CURRENT CREEK APSA
RIGHTS AND FACILITIES

ATTACHMENT 8 CURRANT CREEK RIGHTS AND FACILITIES PPA AND TSA BIDDERS ONLY

Easements

PacifiCorp will grant a non-exclusive easement on PacifiCorp's property between Bidder's switchyard to the 345kV substation serving Bidder's Facility. Easement will be determined based on Bidder's routing of Bidder's cable.

PacifiCorp will grant a non-exclusive easement to allow for the connection of Bidder's Facility to a natural gas supply line located on PacifiCorp property, if required. As an alternative, PacifiCorp, in its sole discretion, may convey such property as required for Bidder's natural gas pipeline and metering station to Bidder as part of the Site Purchase Agreement for Currant Creek shown as Attachment 17 to this RFP. Specific details of the interconnection are provided in Appendix B to the APSA.

Water Rights

PacifiCorp has Water Rights that can be acquired by the Bidder. Quantities and pricing are shown in the Site Purchase Agreement for Currant Creek shown as Attachment 21 to this RFP.

Emission Reduction Credits (ERCs)

PacifiCorp does not believe that ERCs will be required for this project at this time. Bidder shall be required to perform air quality analysis and permitting to determine need for ERS. If ERCs are required, Bidder shall be responsible to obtain ERCs.

Facilities Interconnections

Bidder will be entitled to connect, at its own expense with PacifiCorp's raw water connection as specified in Appendix B to the APSA.

Bidder will acquire, under the Site Purchase Agreement for Currant Creek (Attachment 17), rights to one half of the currently available capacity contracted for by PacifiCorp from Questar. Terms of this contract are to be found in the Site Purchase Agreement.

RFP 2012
ATTACHMENT 9
OWNER'S COSTS UNDER
APSA AND EPC

ATTACHMENT 9 OWNER'S COST ASSUMPTIONS UNDER AN APSA

Costs for both Lakeside and Currant Creek:

ESTIMATED OWNER COSTS	CURRANT CREEK	LAKE SIDE
Project Management	\$ 1,000,000	\$ 1,000,000
Plant Labor	\$ 682,500	\$ 682,500
Misc. Consultants	\$ 100,000	\$ 100,000
Owners Legal Counsel	\$ 100,000	\$ 100,000
Regulation, PR & Communication	\$ 100,000	\$ 200,000
C&T Charges for PSC Hearings	\$ 20,000	\$ 20,000
Legal Costs for PSC Hearings	\$ 200,000	\$ 200,000
Computer Hardware	\$ 150,000	\$ 150,000
Permitting & License Fees	\$ 200,000	\$ 200,000
Startup / Fuel and Testing ¹	\$ 965,400	\$ 965,400
Site Surveys/Studies	\$ 50,000	\$ 50,000
Site Security	\$ 250,000	\$ 250,000
Operating Spare Parts	\$ 6,600,000	\$ 6,600,000
Permanent Plant Equipment, Tools, & Furnishings	\$ 300,000	\$ 300,000
Builders All Risk Insurance	TBD	TBD
Training	\$ 250,000	\$ 250,000
Escalation Owner's Costs	TBD	TBD
Sales Tax & Duties ²	Bidder to Supply	Bidder to Supply
Owner Contingency ³	TBD	TBD
Capital Surcharge	\$ 500,000	\$ 500,000
Capitalized Property Taxes ⁴	TBD	TBD
Interest During Construction (AFUDC ⁵) (Based on payment schedule)	TBD	TBD
PROJECT TOTALS	\$ 11,467,900	\$ 11,567,900

The above cost figures were developed by PacifiCorp as estimates to be used by PacifiCorp for its own purposes, including but not limited to evaluation of proposals submitted pursuant to the RFP. In no event shall PacifiCorp be responsible for errors or omissions in the above figures or any cost estimates developed by respondents to the RFP. Notes:

¹ Actual costs will depend on then current fuel costs and startup and commissioning schedule.

² Costs over and above those stated in Attachment 7 and 8 "Owner's Development Costs"

³ Bidder shall divide proposal into taxable and non-taxable items.

⁴ Owner's Contingency will be the same on both sites.

- ⁵ Current Effective Rate for Currant Creek is 0.86%, for Lake Side, 1.10%. Both are subject to change.
- ⁶ The Current Effect Rate for AFUDC is 7.5%. This is subject to change.

RFP Analysis Guidelines for AFUDC and Capitalized Property Tax

For purposes of analyzing resource RFP responses which require PacifiCorp to assume a progress payment obligation during the construction phase for a resource that will be transferred to and owned by PacifiCorp, the total capitalized cost shall include:

- (1) a capitalized financing cost as applied through the application of Allowance for Funds Used During Construction (AFUDC), pursuant to Regulatory Commissions' guidelines, and
- (2) an amount for capitalized property taxes, pursuant to PacifiCorp's property tax capitalization policy.

AFUDC

Monthly AFUDC shall be calculated by multiplying the average balance of Construction Work in Progress (CWIP) by the applicable projected AFUDC rate in use by PacifiCorp. CWIP shall include all applicable construction overheads, AFUDC from prior months, and capitalized property taxes that are associated with the final capitalized cost of such resource until such resource is projected to be placed in service.

This rate is currently 7.5% annually. The actual rate in effect at the time of the bid evaluation will be the one used.

Property Tax

If the projected CWIP balance is greater than \$50 million as of the first day of each calendar year, the amount of capitalized property taxes that will be added to CWIP will be equal to each year's beginning CWIP balance multiplied by an estimated property tax rate applicable for the resource under consideration.

The standard (non-site specific) rate for PacifiCorp is currently 1.2% of the CWIP balance. The actual rate in effect when the final RFP is issued in September, will be the one used.

**RFP 2012
ATTACHMENT 10
OWNER'S DEVELOPMENT COST
ASSUMPTIONS**

ATTACHMENT 10 OWNER'S DEVELOPMENT COST ASSUMPTIONS

Lake Side Development Costs:

Permitting and License Fees	\$200,000
Regulation, PR and Communications	\$200,000
Owner's Legal Counsel	\$100,000
Surveys/Studies	\$50,000
Water Rights ¹	\$12,048,000
ERCs ¹	\$1,065,169
Miscellaneous Consultants	\$125,000
Total	\$13,288,169

Currant Creek Development Costs

Permitting and License Fees	\$200,000
Regulation, PR and Communications	\$200,000
Owner's Legal Counsel	\$100,000
Surveys/Studies	\$50,000
Water Rights ^{2,3}	Obtained with Block 1
⁴	
Miscellaneous Consultants	\$125,000
Total	\$675,000

The above development cost figures were developed by PacifiCorp as estimates to be used by PacifiCorp for its own purposes, including but not limited to evaluation of proposals submitted pursuant to the RFP. Each entity responding to the RFP shall not rely on these figures, and each respondent shall be solely responsible for developing its own estimates of development costs. In no event shall PacifiCorp be responsible for errors or omissions in the above figures or any development cost estimates developed by respondents to the RFP.

Notes:

¹ See Site Purchase Agreement for Lake Side for specific acreages and quantities

² See Site Purchase Agreement for Currant Creek for specific acreages and quantities

³ Currant Creek's design utilizes an Air-Cooled Condenser (ACC)

⁴ Currently assumed that no ERCs will be required; Air Quality modeling will be revised to determine RC requirements, if any.

RFP 2012
ATTACHMENT 11
FORM OF LETTER OF CREDIT

Attachment 11 to RFP 2012
Requirements for a Letter of Credit

A 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 there under, which letter(s) of credit:

(1) is issued by a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a net worth of at least \$1,000,000,000 and a credit rating on its senior unsecured debt of:

(a) "A2" or higher from Moody's; or

(b) "A" or higher from S&P;

(2) on the terms provided in the letter(s) of credit, permits PacifiCorp to draw up to the face amount thereof for the purpose of paying any and all amounts owing by Seller hereunder.

(3) if a letter of credit is issued by a foreign bank with a U.S. branch, permits PacifiCorp to draw upon the U.S. branch;

(4) permits PacifiCorp to draw the entire amount available there under if such letter of credit is not renewed or replaced at least thirty (30) Business Days prior to its stated expiration date;

(5) permits PacifiCorp to draw the entire amount available there under if such letter(s) of credit are not increased, replaced or replenished as and when provided where applicable;

(6) is transferable by PacifiCorp to any party to which PacifiCorp may assign;

(7) shall remain in effect for at least ninety (90) days after the end of the Term.

RFP 2012
ATTACHMENT 12
STANDARD AND POOR'S
INFERRED DEBT
METHODOLOGY ARTICLE

RFP 2012
ATTACHMENT 13
PACIFICORP COSTS ASSOCIATED
WITH INTEGRATION

Preliminary Assessment of Transmission Impacts Associated with RFP Points of Delivery

1. Overview of Points of Delivery

PacifiCorp is interested in resources that are capable of delivery into or in a portion of the Company's network transmission system in PACE. Specifically, the point(s) of delivery of primary interest to PacifiCorp are:

- Salt Lake Valley
- PacifiCorp Sites
 - Currant Creek
 - Lake Side
- Mona 345 kV
- Glen Canyon 230 kV
- Nevada/Utah Border:
 - Gonder-Pavant 230 kV line known as "Gonder 230 kV"
 - Sigurd – Harry Allen 345 line known as "NUB" or Red Butte 345 kV
 - Crystal 500 kV
- West of Naughton

The Company is generally not interested in resources delivered to the following areas:

- Wyoming, unless the resource(s) electrically reside south of the Naughton-Monument 230 kV line and the cost of the upgrade is included.
- Borah, Brady or Kinport unless such resource is interconnected to the Company's Southeast Idaho electrical system near the Goshen area.

2. Transmission Assumptions Associated with the Points of Delivery

PacifiCorp may need to increase transmission import capability and upgrade its network system capacity in order to integrate a resource delivered to the preferred points of delivery. The table below indicates what possible additions might be necessary and the indicative cost associated with the upgrade. These indicative costs are based on assessments done by the PacifiCorp Transmission group for RFP 2003B, the 2004 Integrated Resource Plan and System Impact Studies. These cost estimates will be used for the purpose of evaluating bids and may be refined if better estimates are received prior to issuance of the RFP.

Point of Delivery	Description of Possible Transmission Additions / Upgrades¹	Path(s) to Upgrade and Voltage Support	Estimated Cost of Upgrades
Salt Lake Valley 138 kV 600 MW	Upgrades to existing lines	Unknown location	\$30 M
Lake Side 345 kV 600 MW	Transmission line, substation	Lake Side to Salt Lake Valley	\$60 M
Mona/ Currant Creek 345 kV 600 MW	Transmission line, substation	Mona to PACE	\$70 M
Glen Canyon 345 kV 600 MW	Transmission line(s), substation, phase shifter	Glen Canyon to Sigurd and Mona to PACE	\$220 M
Gonder 345 kV 600 MW	Transmission line(s), substation	Gonder/Nev Border to Sigurd and Mona to PACE	\$210 M
NUB (Harry Allen 345 kV) 600 MW	Transmission line, substation, phase shifter	H.Allen to RButte + RButte-Sigurd + Mona to PACE	\$310 M
Crystal 345 kV 600 MW	Transmission line(s), substation, transformer, phase shifter	Crystal to RButte + RButte-Sigurd + Mona to PACE	\$330 M
West of Naughton 230 kV 600 MW	New line, substation	Naughton to Evanston + Evanston to Salt Lake Valley	\$180 M
Four Corners 345kV 600 MW	New line, terminations, phase shifter	F.Corners to Mona + Mona to PACE	\$360 M
Path C up to 600 MW	New line, substation	Populus to Terminal	\$160 M

Two SVCs are needed for imports from any location. Cost is not included in any POD.

¹ Two SVCs are needed for imports from any location. Cost is not included in any POD.

RFP 2012
ATTACHMENT 14
CONFIDENTIALITY AGREEMENT

CONFIDENTIALITY AGREEMENT

This CONFIDENTIALITY AGREEMENT (this "Agreement") is entered into as of the ____ day of _____, 2005, by and between PacifiCorp, an Oregon corporation ("PPW"), and _____ (collectively with all its subsidiaries, officers, directors, members, managers, employees, agents, accountants and attorneys, "Recipient"); with reference to the following:

WHEREAS, PPW and Recipient are discussing a potential transaction relating to PPW's Request for Proposals 2012, and in connection therewith Recipient wishes to receive certain Confidential Information (as hereinafter defined), but requires as a condition precedent Recipient's execution of this Agreement;

NOW, THEREFORE, in consideration of the above and the mutual promises herein contained, the parties hereto agree as follows:

1. Confidential Information. "Confidential Information" means any oral or written information which is made available to Recipient by PPW or any of its corporate affiliates or its or their officers, directors, employees, agents, accountants or attorneys (a "Disclosing Party") before or after the date hereof, regardless of the manner furnished, and includes without limitation: (i) compilations and analyses prepared by Recipient; (ii) names of current and potential manufacturers, suppliers, customers and marketing relationships of any Disclosing Party, (iii) the nature, terms, conditions or other facts respecting any discussions between PPW and Recipient (including their existence and status). Confidential Information does not include information which at the time of disclosure is generally available to the public (other than as a result of disclosure by Recipient) or was available to Recipient on a nonconfidential basis from a source other than a Disclosing Party not under a duty of confidentiality to a Disclosing Party.

2. Confidentiality; Disclosure. The Confidential Information will be kept confidential by each Recipient and will not be used for any purpose by its Recipient other than for the purpose set forth above. Recipient will be responsible for any breach of this Agreement by any of its officers, directors, employees, agents, accountants and attorneys. Recipient shall restrict the dissemination of the Confidential Information to its employees who have a need to see it, and shall cause any agent, accountant or other non-employee to whom it wishes to show the Confidential Information sign an agreement in the form hereof in advance thereof. Recipient will keep confidential any Confidential Information contained in any analyses, compilations, studies or other documents prepared by Recipient that contain or reflect any Confidential Information. Upon request from PPW, Recipient promptly will return all copies of the Confidential Information.

3. Protective Order. If Recipient becomes legally compelled to disclose any Confidential Information, it shall provide PPW with prompt prior written notice so that PPW may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained, Recipient shall (i) furnish only that portion of the Confidential Information which, in accordance with the advice of its own counsel, is

legally required to be furnished, and (ii) exercise reasonable efforts to obtain assurances that confidential treatment will be accorded the Confidential Information so furnished.

4. No Representation or Warranty. Recipient acknowledges that no Disclosing Party is making any representation or warranty as to the accuracy or completeness of any information furnished (except specifically to the extent and only to such extent as shall be expressly set forth in an executed and delivered definitive agreement). No Disclosing Party or any of its officers, directors, employees, agents or controlling persons (including, without limitation, parent and subsidiary companies) shall have any liability to a Recipient or any other person relating to or arising from the use of the Confidential Information provided by a Disclosing Party.

5. Conduct of Process. Except for any confidentiality agreements, none of PPW or any Disclosing Party is under any obligation to Recipient, and PPW is free to elect not to consummate an agreement or to furnish or receive information. Nothing contained in this Agreement shall prevent PPW from negotiating with or entering into a definitive agreement with any other person or entity without prior notice to Recipient. Until PPW and Recipient enter into a definitive agreement, no contract or agreement or other investment or relationship shall be deemed to exist between any Disclosing Party or any Recipient as a result of this Agreement, the issuance of a term sheet, the issuance, receipt, review or analysis of information, the negotiation of definitive documentation, or otherwise, and none of the foregoing shall be relied upon as the basis for an implied contract or a contract by estoppel.

6. Intellectual Property Rights. Nothing contained herein grants any rights respecting any intellectual property (whether or not trademarked, copyrighted or patented) or uses thereof.

7. Costs and Expenses. Except as otherwise provided in any other written agreement between the parties, the parties shall bear their own costs and expenses, including without limitation fees of counsel, accountants and other consultants and advisors.

8. Remedies. PPW shall be entitled to equitable relief, including injunction and specific performance, in the event of any breach hereof, in addition to all other remedies available to PPW at law or in equity. No failure or delay by PPW in exercising any right, power or privilege hereunder will operate as a waiver, nor will any single or partial exercise or waiver of a right, power or privilege preclude any other or further exercise thereof.

9. Venue and Choice of Law. This Agreement **is governed by the laws of the State of Oregon**. Any suit, action or proceeding arising out of the subject matter hereof, or the interpretation, performance or breach hereof, shall be instituted in any State or Federal Court in Multnomah County, Oregon (the "Acceptable Forums"). Each party agrees that the Acceptable Forums are convenient to it, and each party irrevocably submits to the jurisdiction of the Acceptable Forums, and waives any and all objections to jurisdiction or venue that it may have any such suit, action or proceeding.

10. Miscellaneous. This Agreement constitutes the entire agreement of the parties relating to its subject matter, and supersedes all prior communications, representations, or agreements, verbal or written. This Agreement may only be waived or amended in writing. Notices hereunder shall be in writing and be effective when actually delivered. This Agreement may be executed in counterparts, each of which, when taken together, shall constitute one and the same original instrument. Neither party may assign or otherwise transfer its rights or delegate its duties hereunder without prior written consent, and any attempt to do so is void.

IN WITNESS WHEREOF, the undersigned parties have executed this Confidentiality Agreement as of the date first written above.

PACIFICORP
an Oregon corporation

a _____

By: _____
Its: _____

By: _____
Its: _____

**RFP 2012
ATTACHMENT 15
NON-RELIANCE LETTER**

Date

[Name]
[Address]

Re: RFP 2012

Dear [_____]:

This letter clarifies PacifiCorp's rights relating to its further evaluation and discussion of your possible involvement with _____ ("Counterparty") proposal submitted in response to PacifiCorp's Request for Proposals (RFP) 2012 (collectively with Counterparty's proposal and all matters relating thereto, the "Project") and any subsequent negotiations regarding the terms of any agreement or agreements entered into with you or any other party in connection with the Project. PacifiCorp will agree to enter into further discussions with you only upon your prior acknowledgement of these rights. "You" and similar words (whether or not capitalized) refer to the addressee of this letter, Counterparty, and any Project development entity or other affiliate of the addressee in any way involved in the Project.

PacifiCorp is committed to following a fair process in selecting the winning proposal. However, PacifiCorp reserves the right, in its sole discretion, to terminate the consideration of the Project and any discussions with you or any other parties (such as your lenders) relating to the Project at any time and for any reason without incurring any liability for costs or expenses incurred by you in the course of, or as a result of, your participation in the bidding process or negotiations respecting the Project, including but not limited to any costs or expenses related to or arising from the preparation or submission of your proposal, your legal fees, transmission or environmental studies or reviews, expenses of any third party incurred at your behest, your participation in discussions with PacifiCorp, the Project, or any development costs incurred by you in connection with this process. The submission of a proposal by [Counterparty] and PacifiCorp's decision to engage in further discussions with you does not constitute acceptance of the Project, and shall not obligate PacifiCorp to accept or to proceed further with the Project. The acceptance of any proposal and the commencement of the Project are contingent on a number of factors, including but not limited to financial and creditworthiness considerations, strategic decisions, resource planning, regulatory approvals, and the approval of PacifiCorp's board of directors and/or shareholders.

PacifiCorp makes no representation as to the likelihood of [Counterparty]'s proposal being accepted or of the Project being commenced and, if PacifiCorp decides not to accept [Counterparty]'s proposal or the Project, you hereby fully and forever release and discharge PacifiCorp of all liability whatsoever, whether arising from your alleged reliance on PacifiCorp's acceptance of the Project or any part thereof or whether based upon any other action or claim in tort, contract, promissory estoppel, equity, negligence or intentional conduct, and PacifiCorp shall not be liable for any amount of liability or damages, including but not limited to any amounts for incidental, special, consequential or punitive damages.

PacifiCorp reserves the right to engage in discussions with multiple parties simultaneously with respect to RFP 2012 or any other matter, and to accept or reject any type of proposal of any party in its sole discretion. PacifiCorp also reserves the rights to reject all proposals relating to RFP 2012, and to pursue any other course it deems appropriate, including without limitation the development of a cost-base self build alternative.

PacifiCorp shall have no obligations to you with respect to the Project unless and until the execution by all applicable parties of one or more definitive written agreements (the "Definitive Agreements") in form and substance satisfactory to the parties entering into such Definitive Agreements and then only to the extent stated therein. No contract will nor will be deemed to exist, whether by estoppel or otherwise, in any other way than execution and delivery (if ever) of the Definitive Agreements. The execution (if any) of any Definitive Agreements would be subject, among other things, to the satisfactory completion of due diligence by such parties as well as the satisfaction of applicable financial, environmental and other regulatory requirements as determined by PacifiCorp. If PacifiCorp selects the Project, then except as specifically set forth in the Definitive Agreements, PacifiCorp shall have no obligations to you in the event that the Project or any part thereof is discontinued, cancelled, stopped, or terminated for any reason whatsoever, including without limitation financial or creditworthiness considerations concerning you or any contemplated source of Project-related funds, third-party delay or failure (with PacifiCorp's transmission function constituting a third party for purposes hereof), regulatory restrictions, gas or transmission infrastructure restrictions, environmental or community challenges, or the Project is embargoed, restrained, subject to labor strike or lockout, destroyed, subject to terrorist attack or any other force beyond your control, is incapable of receiving required gas or electricity transmission or network service, or is otherwise rendered impossible to complete by the times set forth in the Definitive Agreements for any other reason, whether your fault or not.

Whether or not the Project is commenced and Definitive Agreements executed, you will be responsible to pay your own fees and expenses, including without limitation legal fees and expenses, incurred in connection with the preparation, discussion and negotiation of the Project as well as the preparation, negotiation, execution and delivery of the Definitive Agreements and any other agreements or documents contemplated thereby, and PacifiCorp will not be responsible for any of those fees and expenses.

If the foregoing is acceptable, please indicate so by executing and dating both originals of this letter in the space indicated below, returning one original to the undersigned within three days of the date hereof and retaining the other original for your files.

Sincerely,

PacifiCorp

By: _____

Name: _____

Title: _____

Date: _____

ACCEPTED AND AGREED:

[Insert Name of Party]

By: _____

Name: _____

Title: _____

Date: _____

RFP 2012
ATTACHMENT 16
SITE PURCHASE AGREEMENT
FOR LAKE SIDE

**AGREEMENT FOR SALE AND PURCHASE
OF REAL PROPERTY**

This Agreement for Sale and Purchase of Real Estate (the "Agreement") is entered into as of the ___ day of _____, 20 ____, by and between _____ ("Buyer") and PacifiCorp, an Oregon corporation ("Seller").

RECITALS

A. Seller is the owner of approximately _____ acres of real property situated within Utah County, _____ and more particularly described on the attached Exhibit "A" (the "Property").

B. Buyer wishes to purchase the Property for;

C. Seller is willing to sell the Property on the terms and conditions stated herein.

NOW, THEREFORE, in consideration of the amounts to be paid and the mutual promises contained herein, Buyer and Seller agree as follows:

**ARTICLE I
AGREEMENT TO PURCHASE AND SELL; PURCHASE PRICE**

1.1 Purchase and Sale. Upon the terms and conditions set forth in this Agreement, Seller agrees to convey to Buyer, and Buyer agrees to purchase and take from Seller, fee title interest in and to that certain parcel of real property, as more particularly described on Exhibit "A", attached hereto and by this reference made part of this Agreement, together with all appurtenances, rights, privileges and easements belonging thereto (collectively referred to herein as the "Property"), unless otherwise expressly stated in this Agreement.

(a) The description of the Property contained in Exhibit "A" is approximate. The exact acreage of the Property will be determined by a survey (the "Survey") to be prepared by Seller, at its sole cost, and provided to Buyer no later than ninety (90) days after the date of this Agreement. The Survey shall be attached to this Agreement as Exhibit "B" upon its completion.

(b) Any water rights associated with the Property are not included as part of this Agreement.

(c) Emissions Reduction Credits associated with the Property are included as part of this Agreement. Details of the Credits are provided in Exhibit "C".

(d) An assignment and transfer from Seller to Buyer, and the acceptance and assumption by Buyer, of fifty percent (50%) of Seller's rights and obligations under that certain Agreement for Firm Transportation to PacifiCorp – Lakeside Generation Facilities dated February 4, 2005, as amended May 3, 2005 between Seller and Questar Gas Company is being entered into in connection with this Agreement. The terms of such assignment, transfer and assumption are included in a separate Assignment and Assumption Agreement between Seller and Buyer of even date herewith, and the effectiveness of such agreement constitutes an express condition for the effectiveness of this Agreement.

1.2 Purchase Price. The purchase price for the Property (the "Purchase Price") shall be _____ (\$ _____).

1.3 Payment of Purchase Price. Buyer shall pay the Purchase Price to Seller in cash, by cashier's check, or other immediately available funds on the Closing Date, as adjusted for prorations on the Closing Date as provided herein.

ARTICLE II TITLE INSURANCE

2.1 Commitment of Title Insurance.

(a) Within thirty (30) days after the date of this Agreement, Seller shall deliver to Buyer a commitment for title insurance covering the Property (the "Commitment"), issued by the Title Company and dated on or after the date of this Agreement.

(b) Buyer shall have ten (10) days following receipt of the Commitment to provide any written objections to any matter set forth on Schedule B of the Commitment. If Buyer does not timely deliver written notice of objection to Seller, Buyer shall be deemed to have approved of all matters set forth in the Commitment. Matters which Seller has agreed to discharge pursuant to Section 2.1 (c) and any encumbrances or other title exceptions to which Buyer does not object shall be deemed to be "Permitted Exceptions" and shall not be considered objections to any matter contained in the Commitment.

(c) If Buyer provides a written notice of objections in accordance with Section 2.1 (b), then Seller shall have the option to: (i) cure such objections at Seller's sole cost; or (ii) terminate this Agreement.

(d) Buyer's sole remedy for Seller's inability to convey title subject only to the Permitted Exceptions or to cure Buyer's objections in accordance with Section 2.1 (c) shall be to terminate this Agreement. In that case, Seller shall have no other obligation to Buyer in connection with this Agreement or the Property.

2.2 Delivery of Title Insurance. Except as otherwise stated in Section 2.1, Seller shall obtain and deliver to Buyer within ten (10) days after the Closing Date an ALTA Standard Owner's Policy of title insurance in the amount of the Purchase Price, effective as of the Closing Date and containing no exceptions other than the Permitted Exceptions.

ARTICLE III REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of Seller. Seller makes the following representations and warranties to Buyer, as of the date of this Agreement and as of the Closing Date, each of which representations and warranties shall extend beyond the Closing Date and delivery of the Special Warranty Deed.

(a) Seller has and on the Closing Date will have good and marketable fee simple title to the Property to be conveyed, free and clear of all encumbrances, liens, claims, or reservations, except as specifically approved by Buyer under this Agreement.

(b) Seller has the right, power and authority to execute, deliver, and perform this Agreement and the execution, delivery, and performance of this Agreement have been duly authorized by all necessary corporate action on the part of Seller, and upon execution and delivery this Agreement shall constitute valid and binding obligations of Seller enforceable against Seller in accordance with its terms and except as enforceability may be limited by bankruptcy, insolvency, and other similar laws affecting claims and rights generally or be general equitable principles.

(c) Seller has not received written notice of any judgment, suit, claim, action, arbitration, legal, administrative, or other proceeding or governmental investigation pending or threatened with respect to any of the Property that would materially adversely affect the Property, and no activities or events have occurred on or in connection with the Property that could give rise to any such claims or proceedings.

(d) Seller has not received any written notices, demands or deficiency statements from any mortgagee of the Property or from any state, municipal or county government or agency or any insurer relating to the Property and which have not been cured or remedied except property valuation and tax notices issued by Utah County.

(e) Except as otherwise expressly disclosed in the Commitment, the Property is not subject to any proposed special assessment or to any existing special assessment lien arising as a result of any works or improvements completed, installed or contemplated at or before the Closing Date.

(f) Seller has paid and shall pay all liens, charges, taxes and assessments for the Property arising prior to the Closing Date.

(g) No person, broker or entity, whether or not affiliated with Seller, is entitled to a commission, finder's fee or other compensation arising from this Agreement, as regarding Seller. Seller shall indemnify defend and hold Buyer harmless from and against any and all claims, loss or damage relating to or arising out of any claim for compensation by any broker, person or entity claiming by or through Seller.

3.2 Representations and Warranties of Buyer. Buyer makes the following representations and warranties to Seller, as of the date of this Agreement and as of the Closing Date, each of which representations and warranties shall survive the Closing and delivery of the Special Warranty Deed.

(a) Buyer has the right, power and authority to execute, deliver and perform this Agreement.

(b) No person, broker or entity, whether or not affiliated with Buyer, is entitled to a commission, finder's fee or other compensation arising from this Agreement as regarding Buyer. Buyer shall indemnify, defend and hold Seller harmless form and against any and all claims, loss or damage relating to or arising out of any claim for compensation by any broker, person or entity claiming by or through Buyer.

3.3 Acknowledgment by Buyer Regarding Seller's Representations and Warranties. Except as expressly set forth in other portions of this agreement, Buyer hereby affirms that neither Seller nor its agents, employees or attorneys have made, nor has Buyer relied upon any representation, warranty, or promise (either express or implied) with respect to the Property or any other subject matter of this Agreement including, without limitation:

(a) the general plan designation, zoning, value, use, tax status or physical condition of any part of the Property or the improvements to the Property;

(b) the flood elevations, drainage patterns and soil and subsoils composition and compaction levels and other conditions at the Property;

(c) the existence or nonexistence of any hazardous or toxic substance, waste or material (as defined or regulated by any federal, state or local law or regulation);

(d) the accuracy of any soils reports or any other plans or reports regarding the Property;

(e) the suitability of the Property for Buyer's intended purpose; or

(f) the status, suitability or sufficiency of any Emissions Reduction Credits associated with the Property.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING AND EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER ACCEPTS THE PROPERTY FROM THE SELLER “AS IS”, SUBJECT TO “ALL FAULTS” INCLUDING, BUT NOT LIMITED TO, BOTH LATENT AND PATENT DEFECTS, AND THE ENVIRONMENTAL CONDITION OR DEFECTS THEREOF. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER HEREBY WAIVES ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE CONDITIONS AND THE USE OF THE SUBJECT PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE IV USE OF PROPERTY

4.1 Seller’s Use of the Property Prior to Closing Date. From and after Seller’s execution of this Agreement and except in the ordinary course of administering its general mortgage, Seller shall not grant or convey any easement, lease, license, permit or any other legal or beneficial interest in or to the Property or engage in any contract with any party other than Buyer regarding the purchase or sale of the Property, without the prior written consent of Buyer. Further, except as otherwise provided for herein, Seller agrees to pay, as and when the same are due, all payments on any encumbrances presently affecting the Property and any and all taxes, assessments and levies in respect of the Property through the Closing Date.

4.2 Buyer’s Right to Enter Property Prior to the Closing Date. Buyer or its employees or agents may enter the Property at any time prior to the Closing Date upon twenty-four (24) hours notice to Seller to inspect the Property and perform surveys or tests as Buyer may elect; provided, however, that such entry shall not unreasonably interfere with the activities of Seller on the Property, and Buyer shall indemnify and hold Seller harmless from, all liabilities and all consequences of any interruption of Seller’s operation of Seller’s generation facilities located adjacent to the Property associated with Buyer’s activities on the Property.

ARTICLE V EASEMENTS

5.1 Seller’s Use of the Property After the Closing Date. Seller reserves the right to continue to use those portions of the Property identified in Attachment A for the purpose of owning, operating and maintaining electrical distribution and transmission lines and related facilities, including communications and other facilities, whether above or underground, and also for access to Seller’s existing substation located adjacent to the Property. On or before the Closing Date, Buyer shall grant to Seller one or more easements, in a form acceptable to Seller, which will allow for such continued use and access or future related uses and access by Seller.

5.2 Existing Easements. Buyer purchases the Property subject to all existing easements identified as Permitted Exceptions under Section 2 above.

5.3 New Easements. On or before the Closing Date, Seller shall grant to Buyer one or more easements for access to Seller's existing, or future, electrical and/or natural gas interconnection points (to be) located near the Property, which will allow for such continued use and access or future related uses and access by Buyer.

ARTICLE VI CLOSING

6.1 Time and Place of Closing. The Purchase and sale transaction contemplated by this Agreement shall be consummated through a closing conference (the "Closing") which shall be held at the Title Company on or before _____, (the "Closing Date"), or at such earlier time and place as the parties may mutually agree in writing.

6.2 Actions at Closing. At the Closing, the following events shall occur and each being declared to have occurred simultaneously with the other:

(a) All documents to be recorded and funds to be delivered hereunder shall be delivered to the Title Company in escrow, to hold, deliver, record and disburse in accordance with supplemental escrow instructions, the form and content of which shall be agreed to by the parties prior to Closing.

(b) At the Closing or sooner as otherwise stated in the escrow instructions, the following shall occur:

(i) Seller shall deliver or cause to be delivered in accordance with the escrow instructions:

(1) Special Warranty Deed conveying the Property to Buyer, duly executed and acknowledged by Seller and in proper form generally for recording in _____; and

(2) All other documents required to be executed by Seller pursuant to the terms of this Agreement.

(ii) Buyer shall deliver or cause to be delivered in accordance with the escrow instructions:

(1) The Purchase Price to be; and

(2) All other documents required to be executed by Buyer pursuant to the terms so this Agreement.

(c) Buyer and Seller shall each deliver to the other, two executed copies of the Buyer's and Seller's Statement of Settlement setting forth all prorations, credits provided in this Agreement, disbursements of the purchase price, and expenses of the Closing.

(d) Seller shall bear any and all Closing or escrow charges of the Title Company.

6.3 Seller's Remedies. In the event this transaction fails to close due to Buyer's fault or inability to close, Seller may elect either to seek specific performance of this Agreement by suit in equity, to seek damages from Buyer.

6.4 Buyer's Remedies. In the event this transaction fails to close due to Seller's fault, this Agreement shall be declared void and of no effect.

ARTICLE VII PRORATIONS

7.1 Prorations Between Seller and Buyer. The following prorations shall be made between Seller and Buyer as of the Closing Date:

(a) Real property taxes and assessments on the Property for the year of Closing shall be prorated between Seller and Buyer based on the number of days each owned the Property. In the event the Property constitutes some portion of a larger tract of land, such proration shall be based upon the average of the Property as a percentage of the acreage of the entire tract. If, as of the Closing Date, the actual tax bills for the year or years in question are not available and the amount of taxes to be prorated cannot be ascertained, then the most recent known rates, millages and assessed valuations (which amounts shall relate to the same tax year) shall be used, and such proration shall be repeated when the final tax bill is available and either Buyer and Seller, as the case may be, shall promptly pay to the other the net amount owing as a result of such redetermination.

(b) Other Closing costs shall be apportioned between the parties in accordance with the normal and customary practice of commercial real estate transactions in Utah County, Utah.

ARTICLE VIII RELEASE, ASSUMPTION AND INDEMNITY

8.1 Seller shall indemnify, hold harmless and defend Buyer against all claims, suits, losses and damages made against or incurred by Buyer relating to the condition of the Property prior to the Closing Date or any activity in connection with the Property which occurred prior to the Closing Date. Buyer shall indemnify, hold harmless and defend Seller against all claims, suits, losses and damages incurred by Seller relating to the condition of the Property after the Closing Date or any activity in connection with the Property which occurs after the Closing Date.

ARTICLE IX MISCELLANEOUS

9.1 Entire Agreement. This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements, which

written or oral, between the parties respecting such matters. Any amendments or modifications hereto in order to be effective shall be in writing and executed by the parties hereto. Notwithstanding the foregoing, Buyer's use and occupancy of this Agreement shall be subject at all times to the terms and conditions of that certain Construction Coordination Agreement dated [DATE] between Seller and Buyer.

9.2 Amendments. This Agreement may be amended or modified only by mutual written agreement.

9.3 Survival. All warranties, representations, covenants and agreements contained in this Agreement shall survive the execution and delivery of this Agreement and all documents delivered in connection with this Agreement and shall survive the Closing of the transactions contemplated by this Agreement and all performances in accordance with this Agreement.

9.4 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, administrators, and assigns; provided, however, that notwithstanding the foregoing, neither party's interest under this Agreement may be assigned, encumbered, or otherwise transferred, whether voluntarily, involuntarily, by operation of law or otherwise.

9.5 Notices. Any notice, demand or document which any party is required or any party desires to give or deliver to or make upon any other party shall be in writing, and may be personally delivered or given or made by recognized overnight courier service or by United States registered or certified mail, return receipt requested, with postage prepaid, addressed as follows:

To Seller:

To Buyer:

Any party may designate a different address for itself by notice similarly given. Unless provided herein, any such notice, demand or document so given shall be effective upon delivery of the same to the proper address of the party or parties to whom the same is to be given.

9.6 Time of Essence. Time is of the essence in the performance of each and every term, condition, and covenant of this Agreement.

9.7 Counterparts. This Agreement may be executed in any number of counterparts which together shall constitute the contract of the parties.

9.8 Paragraph Headings. The paragraph headings herein contained are for purposes of identification only and shall not be considered in construing this Agreement.

9.9 Attorneys' Fees. The prevailing party in any legal proceeding brought to enforce rights hereunder shall recover from the other party its reasonable attorneys' fees and costs. As used herein in the term "prevailing party" means the party entitled to recover

the costs in any suit, whether or not brought to judgment, and whether or not incurred before or after the filing of suit.

9.10 Waiver. Except as herein expressly provided, no waiver by a party of any breach of this Agreement or any warranty or representation under this Agreement by another party shall be deemed to be a waiver of any other breach of any kind or nature (whether preceding or succeeding and whether or not of the same or similar nature) and no acceptance of payment or performance by a party after any such breach by another party shall be deemed to be a waiver of any further breach of this Agreement or of any representation or warranty by such other party whether or not the first party knows of such a breach at the time it accepts such payment or performance. No failure on the part of a party to exercise any right it may have by the terms of this Agreement or by law upon the default of another party, and no delay in the exercise of any such right by the first party at any time when such other party may be in default, shall operate as a waiver of any default, or as a modification in any respect of the provision of this Agreement.

9.11 Exhibits. Any and all exhibits attached or to be attached hereto are hereby incorporated and made a party of this Agreement by reference.

9.12 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Utah.

9.13 No Recording. This Agreement shall not be recorded in the real property records.

9.14 Further Instruments. Each party hereto shall from time to time execute and deliver such further documents or instruments as the other party, its counsel or the Title Company may reasonably request to effectuate the intent of this Agreement, including without limitation documents necessary for compliance with the laws, ordinances, rules and regulations of any applicable governmental authorities.

9.15 Confidentiality. The purchase price and terms of this Agreement are intended by both parties to be confidential. Therefore, except as directed by a court, administrative authority or required by subpoena, neither party shall disclose the purchase price or terms of this Agreement or any other non-public information related thereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date and year first above written.

PACIFICORP

By: _____

Its: _____

Date Signed:

[BUYER]

By: _____

Its: _____

Date Signed:

EXHIBIT A

**PROPERTY DESCRIPTION TO BE COMPLETED
PRIOR TO CLOSING**

EXHIBIT B
SURVEY TO BE ATTACHED

EXHIBIT C

EMISSIONS REDUCTION CREDITS

Buyer shall receive the following credits (in tons) as part of the transaction:

- PM-10 46.8
- SO₂ 4.6
- NO_x 22.4

**RFP 2012
ATTACHMENT 17
SITE PURCHASE AGREEMENT
FOR CURRANT CREEK**

**AGREEMENT FOR SALE AND PURCHASE
OF REAL PROPERTY**

This Agreement for Sale and Purchase of Real Estate (the “Agreement”) is entered into as of the ___ day of _____, 20____, by and between _____ (“Buyer”) and PacifiCorp, an Oregon corporation (“Seller”).

RECITALS

- A. Seller is the owner of approximately _____ acres of real property situated within Juab County, _____ and more particularly described on the attached Exhibit “A” (the “Property”).

- B. Buyer wishes to purchase the Property for;

- C. Seller is willing to sell the Property on the terms and conditions stated herein.

NOW, THEREFORE, in consideration of the amounts to be paid and the mutual promises contained herein, Buyer and Seller agree as follows:

**ARTICLE I
AGREEMENT TO PURCHASE AND SELL; PURCHASE PRICE**

1.1 Purchase and Sale. Upon the terms and conditions set forth in this Agreement, Seller agrees to convey to Buyer, and Buyer agrees to purchase and take from Seller, fee title interest in and to that certain parcel of real property, as more particularly described on Exhibit “A”, attached hereto and by this reference made part of this Agreement, together with all appurtenances, rights, privileges and easements belonging thereto (collectively referred to herein as the “Property”), unless otherwise expressly stated in this Agreement.

(a) The description of the Property contained in Exhibit “A” is approximate. The exact acreage of the Property will be determined by a survey (the “Survey”) to be prepared by Seller, at its sole cost, and provided to Buyer no later than ninety (90) days after the date of this Agreement. The Survey shall be attached to this Agreement as Exhibit “B” upon its completion.

(b) Water rights associated with the Property are included as part of this Agreement. These rights are defined in Exhibit “C” to this agreement.

(c) An assignment and transfer from Seller to Buyer, and the acceptance and assumption by Buyer, of fifty percent (50%) of Seller’s rights and obligations under that certain Firm Transportation Contract—Rate Schedule

T-1 dated March 31, 2005, between Seller and Questar Pipeline Company is being entered into in connection with this Agreement. The terms of such assignment, transfer and assumption are included in a separate Assignment and Assumption Agreement between Seller and Buyer of even date herewith, and the effectiveness of such agreement constitutes an express condition for the effectiveness of this Agreement.

1.2 Purchase Price. The purchase price for the Property (the "Purchase Price") shall be _____ (\$_____).

1.3 Payment of Purchase Price. Buyer shall pay the Purchase Price to Seller in cash, by cashier's check, or other immediately available funds on the Closing Date, as adjusted for prorations on the Closing Date as provided herein.

ARTICLE II TITLE INSURANCE

2.1 Commitment of Title Insurance.

(a) Within thirty (30) days after the date of this Agreement, Seller shall deliver to Buyer a commitment for title insurance covering the Property (the "Commitment"), issued by the Title Company and dated on or after the date of this Agreement.

(b) Buyer shall have ten (10) days following receipt of the Commitment to provide any written objections to any matter set forth on Schedule B of the Commitment. If Buyer does not timely deliver written notice of objection to Seller, Buyer shall be deemed to have approved of all matters set forth in the Commitment. Matters which Seller has agreed to discharge pursuant to Section 2.1 (c) and any encumbrances or other title exceptions to which Buyer does not object shall be deemed to be "Permitted Exceptions" and shall not be considered objections to any matter contained in the Commitment.

(c) If Buyer provides a written notice of objections in accordance with Section 2.1 (b), then Seller shall have the option to: (i) cure such objections at Seller's sole cost; or (ii) terminate this Agreement.

(d) Buyer's sole remedy for Seller's inability to convey title subject only to the Permitted Exceptions or to cure Buyer's objections in accordance with Section 2.1 (c) shall be to terminate this Agreement. In that case, Seller shall have no other obligation to Buyer in connection with this Agreement or the Property.

2.2 Delivery of Title Insurance. Except as otherwise stated in Section 2.1, Seller shall obtain and deliver to Buyer within ten (10) days after the Closing Date an ALTA Standard Owner's Policy of title insurance in the amount of the Purchase Price, effective as of the Closing Date and containing no exceptions other than the Permitted Exceptions.

**ARTICLE III
REPRESENTATIONS AND WARRANTIES**

3.1 Representations and Warranties of Seller. Seller makes the following representations and warranties to Buyer, as of the date of this Agreement and as of the Closing Date, each of which representations and warranties shall extend beyond the Closing Date and delivery of the Special Warranty Deed.

(a) Seller has and on the Closing Date will have good and marketable fee simple title to the Property to be conveyed, free and clear of all encumbrances, liens, claims, or reservations, except as specifically approved by Buyer under this Agreement.

(b) Seller has the right, power and authority to execute, deliver, and perform this Agreement and the execution, delivery, and performance of this Agreement have been duly authorized by all necessary corporate action on the part of Seller, and upon execution and delivery this Agreement shall constitute valid and binding obligations of Seller enforceable against Seller in accordance with its terms and except as enforceability may be limited by bankruptcy, insolvency, and other similar laws affecting claims and rights generally or be general equitable principles.

(c) Seller has not received written notice of any judgment, suit, claim, action, arbitration. Legal, administrative, or other proceeding or governmental investigation pending or threatened with respect to any of the Property that would materially adversely affect the Property, and no activities or events have occurred on or in connection with the Property that could give rise to any such claims or proceedings.

(d) Seller has not received any written notices, demands or deficiency statements from any mortgagee of the Property or from any state, municipal or county government or agency or any insurer relating to the Property and which have not been cured or remedied except property valuation and tax notices issued by Utah County.

(e) Except as otherwise expressly disclosed in the Commitment, the Property is not subject to any proposed special assessment or to any existing special assessment lien arising as a result of any works or improvements completed, installed or contemplated at or before the Closing Date.

(f) Seller has paid and shall pay all liens, charges, taxes and assessments for the Property arising prior to the Closing Date.

(g) No person, broker or entity, whether or not affiliated with Seller, is entitled to a commission, finder's fee or other compensation arising from this Agreement, as regarding Seller. Seller shall indemnify defend and hold Buyer harmless from and against any and all claims, loss or damage relating to or arising out of any claim for compensation by any broker, person or entity claiming by or through Seller.

3.2 Representations and Warranties of Buyer. Buyer makes the following representations and warranties to Seller, as of the date of this Agreement and as of the Closing Date, each of which representations and warranties shall survive the Closing and delivery of the Special Warranty Deed.

(a) Buyer has the right, power and authority to execute, deliver and perform this Agreement.

(b) No person, broker or entity, whether or not affiliated with Buyer, is entitled to a commission, finder's fee or other compensation arising from this Agreement as regarding Buyer. Buyer shall indemnify, defend and hold Seller harmless from and against any and all claims, loss or damage relating to or arising out of any claim for compensation by any broker, person or entity claiming by or through Buyer.

3.3 Acknowledgment by Buyer Regarding Seller's Representations and Warranties. Except as expressly set forth in other portions of this agreement, Buyer hereby affirms that neither Seller nor its agents, employees or attorneys have made, nor has Buyer relied upon any representation, warranty, or promise (either express or implied) with respect to the Property or any other subject matter of this Agreement including, without limitation:

(a) the general plan designation, zoning, value, use, tax status or physical condition of any part of the Property or the improvements to the Property;

(b) the flood elevations, drainage patterns and soil and subsoils composition and compaction levels and other conditions at the Property;

(c) the existence or nonexistence of any hazardous or toxic substance, waste or material (as defined or regulated by any federal, state or local law or regulation);

(d) the accuracy of any soils reports or any other plans or reports regarding the Property;

(e) the suitability of the Property for Buyer's intended purpose; or

(f) the status, suitability or sufficiency of any water rights associated with the Property.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING AND EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER ACCEPTS THE PROPERTY FROM THE SELLER "AS IS", SUBJECT TO "ALL FAULTS" INCLUDING, BUT NOT LIMITED TO, BOTH LATENT AND PATENT DEFECTS, AND THE ENVIRONMENTAL CONDITION OR DEFECTS THEREOF. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER HEREBY WAIVES ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE CONDITIONS

AND THE USE OF THE SUBJECT PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE IV USE OF PROPERTY

4.1 Seller's Use of the Property Prior to Closing Date. From and after Seller's execution of this Agreement and except in the ordinary course of administering its general mortgage, Seller shall not grant or convey any easement, lease, license, permit or any other legal or beneficial interest in or to the Property or engage in any contract with any party other than Buyer regarding the purchase or sale of the Property, without the prior written consent of Buyer. Further, except as otherwise provided for herein, Seller agrees to pay, as and when the same are due, all payments on any encumbrances presently affecting the Property and any and all taxes, assessments and levies in respect of the Property through the Closing Date.

4.2 Buyer's Right to Enter Property Prior to the Closing Date. Buyer or its employees or agents may enter the Property at any time prior to the Closing Date upon twenty-four (24) hours notice to Seller to inspect the Property and perform surveys or tests as Buyer may elect; provided, however, that such entry shall not unreasonably interfere with the activities of Seller on the Property, and Buyer shall indemnify and hold Seller harmless from, all liabilities and all consequences of any interruption of Seller's operation of Seller's generation facilities located adjacent to the Property associated with Buyer's activities on the Property.

ARTICLE V EASEMENTS

5.1 Seller's Use of the Property After the Closing Date. Seller reserves the right to continue to use those portions of the Property identified in Attachment A for the purpose of owning, operating and maintaining electrical distribution and transmission lines and related facilities, including communications and other facilities, whether above or underground, and also for access to Seller's existing substation located adjacent to the Property. On or before the Closing Date, Buyer shall grant to Seller one or more easements, in a form acceptable to Seller, which will allow for such continued use and access or future related uses and access by Seller.

5.2 Existing Easements. Buyer purchases the Property subject to all existing easements identified as Permitted Exceptions under Section 2 above.

5.3 New Easements. On or before the Closing Date, Seller shall grant to Buyer one or more easements for access to Seller's existing, or future, electrical and/or natural gas interconnection points (to be) located near the Property, which will allow for such continued use and access or future related uses and access by Buyer.

ARTICLE VI CLOSING

6.1 Time and Place of Closing. The Purchase and sale transaction contemplated by this Agreement shall be consummated through a closing conference (the "Closing") which shall be held at the Title Company on or before _____, (the "Closing Date"), or at such earlier time and place as the parties may mutually agree in writing.

6.2 Actions at Closing. At the Closing, the following events shall occur and each being declared to have occurred simultaneously with the other:

(a) All documents to be recorded and funds to be delivered hereunder shall be delivered to the Title Company in escrow, to hold, deliver, record and disburse in accordance with supplemental escrow instructions, the form and content of which shall be agreed to by the parties prior to Closing.

(b) At the Closing or sooner as otherwise stated in the escrow instructions, the following shall occur:

(i) Seller shall deliver or cause to be delivered in accordance with the escrow instructions:

(1) Special Warranty Deed conveying the Property to Buyer, duly executed and acknowledged by Seller and in proper form generally for recording in _____; and

(2) All other documents required to be executed by Seller pursuant to the terms of this Agreement.

(ii) Buyer shall deliver or cause to be delivered in accordance with the escrow instructions:

(1) The Purchase Price to be; and

(2) All other documents required to be executed by Buyer pursuant to the terms so this Agreement.

(c) Buyer and Seller shall each deliver to the other, two executed copies of the Buyer's and Seller's Statement of Settlement setting forth all prorations, credits provided in this Agreement, disbursements of the purchase price, and expenses of the Closing.

Seller shall bear any and all Closing or escrow charges of the Title Company.

6.3 Seller's Remedies. In the event this transaction fails to close due to Buyer's fault or inability to close, Seller may elect either to seek specific performance of this Agreement by suit in equity, to seek damages from Buyer.

6.4 Buyer's Remedies. In the event this transaction fails to close due to Seller's fault, this Agreement shall be declared void and of no effect.

ARTICLE VII PRORATIONS

7.1 Prorations Between Seller and Buyer. The following prorations shall be made between Seller and Buyer as of the Closing Date:

(a) Real property taxes and assessments on the Property for the year of Closing shall be prorated between Seller and Buyer based on the number of days each owned the Property. In the event the Property constitutes some portion of a larger tract of land, such proration shall be based upon the average of the Property as a percentage of the acreage of the entire tract. If, as of the Closing Date, the actual tax bills for the year or years in question are not available and the amount of taxes to be prorated cannot be ascertained, then the most recent known rates, millages and assessed valuations (which amounts shall relate to the same tax year) shall be used, and such proration shall be repeated when the final tax bill is available and either Buyer and Seller, as the case may be, shall promptly pay to the other the net amount owing as a result of such redetermination.

(b) Other Closing costs shall be apportioned between the parties in accordance with the normal and customary practice of commercial real estate transactions in Utah County, Utah.

ARTICLE VIII RELEASE, ASSUMPTION AND INDEMNITY

8.1 Seller shall indemnify, hold harmless and defend Buyer against all claims, suits, losses and damages made against or incurred by Buyer relating to the condition of the Property prior to the Closing Date or any activity in connection with the Property which occurred prior to the Closing Date. Buyer shall indemnify, hold harmless and defend Seller against all claims, suits, losses and damages incurred by Seller relating to the condition of the Property after the Closing Date or any activity in connection with the Property which occurs after the Closing Date.

ARTICLE IX MISCELLANEOUS

9.1 Entire Agreement. This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements, which written or oral, between the parties respecting such matters. Any amendments or modifications hereto in order to be effective shall be in writing and executed by the parties hereto. Notwithstanding the foregoing, Buyer's use and occupancy of this Agreement shall be subject at all times to the terms and conditions of that certain Construction Coordination Agreement dated [DATE] between Seller and Buyer.

9.2 Amendments. This Agreement may be amended or modified only by mutual written agreement.

9.3 Survival. All warranties, representations, covenants and agreements contained in this Agreement shall survive the execution and delivery of this Agreement and all documents delivered in connection with this Agreement and shall survive the Closing of the transactions contemplated by this Agreement and all performances in accordance with this Agreement.

9.4 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, administrators, and assigns; provided, however, that notwithstanding the foregoing, neither party's interest under this Agreement may be assigned, encumbered, or otherwise transferred, whether voluntarily, involuntarily, by operation of law or otherwise.

9.5 Notices. Any notice, demand or document which any party is required or any party desires to give or deliver to or make upon any other party shall be in writing, and may be personally delivered or given or made by recognized overnight courier service or by United States registered or certified mail, return receipt requested, with postage prepaid, addressed as follows:

To Seller:

To Buyer:

Any party may designate a different address for itself by notice similarly given. Unless provided herein, any such notice, demand or document so given shall be effective upon delivery of the same to the proper address of the party or parties to whom the same is to be given.

9.6 Time of Essence. Time is of the essence in the performance of each and every term, condition, and covenant of this Agreement.

9.7 Counterparts. This Agreement may be executed in any number of counterparts which together shall constitute the contract of the parties.

9.8 Paragraph Headings. The paragraph headings herein contained are for purposes of identification only and shall not be considered in construing this Agreement.

9.9 Attorneys' Fees. The prevailing party in any legal proceeding brought to enforce rights hereunder shall recover from the other party its reasonable attorneys' fees and costs. As used herein in the term "prevailing party" means the party entitled to recover the costs in any suit, whether or not brought to judgment, and whether or not incurred before or after the filing of suit.

9.10 Waiver. Except as herein expressly provided, no waiver by a party of any breach of this Agreement or any warranty or representation under this Agreement by another party shall be deemed to be a waiver of any other breach of any kind or nature (whether

preceding or succeeding and whether or not of the same or similar nature) and no acceptance of payment or performance by a party after any such breach by another party shall be deemed to be a waiver of any further breach of this Agreement or of any representation or warranty by such other party whether or not the first party knows of such a breach at the time it accepts such payment or performance. No failure on the part of a party to exercise any right it may have by the terms of this Agreement or by law upon the default of another party, and no delay in the exercise of any such right by the first party at any time when such other party may be in default, shall operate as a waiver of any default, or as a modification in any respect of the provision of this Agreement.

9.11 Exhibits. Any and all exhibits attached or to be attached hereto are hereby incorporated and made a party of this Agreement by reference.

9.12 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Utah.

9.13 No Recording. This Agreement shall not be recorded in the real property records.

9.14 Further Instruments. Each party hereto shall from time to time execute and deliver such further documents or instruments as the other party, its counsel or the Title Company may reasonably request to effectuate the intent of this Agreement, including without limitation documents necessary for compliance with the laws, ordinances, rules and regulations of any applicable governmental authorities.

9.15 Confidentiality. The purchase price and terms of this Agreement are intended by both parties to be confidential. Therefore, except as directed by a court, administrative authority or required by subpoena, neither party shall disclose the purchase price or terms of this Agreement or any other non-public information related thereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date and year first above written.

PACIFICORP

By: _____

Its: _____

Date Signed:

[BUYER]

By: _____

Its: _____

Date Signed:

EXHIBIT A

**PROPERTY DESCRIPTION TO BE COMPLETED
PRIOR TO CLOSING**

EXHIBIT B
SURVEY TO BE ATTACHED

EXHIBIT C

WATER RIGHTS

Buyer shall receive water rights to two hundred (200) acre-feet of ground water as part of this transaction.

**RFP 2012
ATTACHMENT 18
CURRANT CREEK
ENGINEERING, CONSTRUCTION
AND PROCUREMENT CONTRACT
(EPC)**

**RFP 2012
ATTACHMENT 19
DUE DILIGENCE ITEMS FOR THE
ACQUISITION OF AN EXISTING
FACILITY**

The follow is not to be considered a complete listing of due diligence items. The final listing shall be determined, in PacifiCorp's sole discretion, based on the Facility offered by the Bidder.

Due Diligence Items:

Technical Assessment

1.0 Plant General

- 1.1 Request plant organization charts.
- 1.2 Request the Annual Plant Budget (total) Actual for *5 years*. Projected for *5 years*.
- 1.3 Request a summary of the budget. Last 5 years and next 5 years.
 - 1.3.1 Labor expenses.
 - 1.3.2 Maintenance expense.
 - 1.3.3 Equipment expense.
 - 1.3.4 Insurance expense.
 - 1.3.5 Operations expense.
 - 1.3.6 Administrative expense.
 - 1.3.7 Capital escrow.
 - 1.3.8 Major Maintenance Escrow.
 - 1.3.9 Inventory Purchase. Total Value of Inventory. Inventory Value for each division.
 - 1.3.10 Fuel by component.
- 1.4 Request a summary of the maintenance expenses.
 - 1.4.1 Major Maintenance (annual).
 - 1.4.2 Consumables.
 - 1.4.3 Inventory draws.
 - 1.4.4 Maintenance contracts.
 - 1.4.5 Building and grounds.

- 1.4.6 Other.
- 1.5 Request a summary of equipment expenses.
 - 1.5.1 Shop equipment maintenance.
 - 1.5.2 Equipment rental.
 - 1.5.3 Power tools (Leased).
 - 1.5.4 Rolling stock fuel.
 - 1.5.5 Rolling stock maintenance.
 - 1.5.6 Other.
- 1.6 Request a summary of insurance expenses.
 - 1.6.1 Business Interruption.
 - 1.6.2 Property.
 - 1.6.3 General liability.
 - 1.6.4 Vehicle liability.
- 1.7 Request a summary of operating expenses.
 - 1.7.1 Regeneration Cost.
 - 1.7.2 Clarifier Cost.
 - 1.7.3 Boiler water chemicals.
 - 1.7.4 Lubricants.
 - 1.7.5 Consumables.
 - 1.7.6 Electricity purchased.
 - 1.7.7 Hazardous material disposal.
 - 1.7.8 Discharge treatment chemicals
 - 1.7.9 Laboratory supplies.
 - 1.7.10 Emission testing.
 - 1.7.11 Hydrogen and CO₂ for generator.
 - 1.7.12 Ammonia, lime, limestone, other.

- 1.8 Request a summary of administrative expenses.
 - 1.8.1 Telephone expenses.
 - 1.8.2 Postage.
 - 1.8.3 Computer hardware.
 - 1.8.4 Computer software.
 - 1.8.5 Office supplies.
 - 1.8.6 Permits and licenses.
 - 1.8.7 Professional Services.
- 1.9 Request a summary of capital escrow accounts.
 - 1.9.1 Equipment purchases.
 - 1.9.2 Balance of Plant capital.
 - 1.9.3 Dispersion schedule of escrow accounts.
- 2.0 Plant Personnel.
 - 2.1 Request a personnel roster.
 - 2.1.1 Complete list of Classifications.
 - 2.1.2 Number in each classification. Remaining years before retirement.
 - 2.1.3 Annual base salary.
 - 2.1.4 Hourly wage rate.
 - 2.1.5 Straight time additions (%).
 - 2.1.6 Straight time Hourly cost (Hourly rates + additions).
 - 2.1.7 Overtime hourly costs.
 - 2.1.8 Total overtime (% of annual base salary).
 - 2.1.9 Employee age demographics chart.
 - 2.2 Request a summary of payroll additions.
 - 2.2.1 Payroll taxes.
 - 2.2.2 Workman's compensation.

- 2.2.3 Retirement Account.
- 2.2.4 Insurance.
- 2.2.5 Employee Savings.
- 2.2.6 Vacation and Sick Leave.
- 2.2.7 Indirect Additions.
- 2.2.8 Other (Pensions, benefits and welfare Plans).
- 2.3 Labor.
 - 2.3.1 Labor contracts.
 - 2.3.2 Organizing initiatives.
- 3.0 Major maintenance.
 - 3.1 Request a summary of maintenance cost and schedules.
 - 3.1.1 Annual, major and frequency of major outages for:
 - 3.1.1.1 Turbine valves.
 - 3.1.1.2 Coal feeders and scales.
 - 3.1.1.3 Pulverizes.
 - 3.1.1.4 Boiler pressure parts.
 - 3.1.1.5 Boiler auxiliaries.
 - 3.1.1.6 Boiler draft system.
 - 3.1.1.7 Casing and ductwork.
 - 3.1.1.8 Boiler insulation and lagging.
 - 3.1.1.9 Turbine.
 - 3.1.1.10 Condenser.
 - 3.1.1.11 Generator.
 - 3.1.1.12 Pumps.
 - 3.1.1.13 Switchgear.
 - 3.1.1.14 Demineralizer.

3.1.1.15 Precipitators.

3.1.1.16 Flue Gas Desulphurization system.

3.1.1.17 SCR.

Provide the latest overhaul inspection reports and summaries showing the condition of major equipment. These reports are required to show the as found equipment condition, work performed during the overhaul, equipment settings, and test results upon return service. Overhaul reports shall be provided for the following equipment:

- a. steam generation and fuel firing equipment
- b. steam turbine or combustion turbine
- c. generator and excitation equipment
- d. all emissions control equipment
- e. all plant large transformers
- f. all plant large electric motors

Provide list of all OEM service bulletins for the following equipment. Also when correction action was taken and who performed the corrective action:

- a. steam turbine or combustion turbine
- b. generator and excitation equipment
- c. large transformers

Plant Performance:

Provide the following for the design of the plant:

- Summary of plant design and operating conditions,
- P&ID's for the plant
- Heat balance calculations or diagrams with heat balance data
- Fuel specifications
- Design parameters for emissions control equipment

Provide the following actual performance data for the last 5 years:

- Actual fuel consumed quality reports and analysis data
- Plant heat rate data
- Availability data per NERC GADS formulas and codes for calculations and identification of the types of equipment component failure mechanisms.
 - Availability data for the unit
 - Availability data for each piece of major equipment
- Generation summaries, net and gross
- Emission rates and tests reports
- Major equipment performance testing reports
- Plant chemical treatment technologies and systems reports showing chemical treatment activities
- Plant cathodic protection plan and testing reports

- 3.2 Major maintenance escrow.
 - 3.2.1 Request a major maintenance analysis (summary of planned majors and dispersions for the last 5 years and projected for the next 5 years).
- 4.0 Capital expense items.
 - 4.1 Capital expense escrow.
 - 4.1.1 Request a capital escrow analysis (summary of planned capital expenditures and dispersion for the last 5 years and projected for the next 5 years).
- 5.0 Operations.
 - 5.1 How do you track efficiency?
 - 5.2 How do you calculate availability?
 - 5.3 In your opinion what are the major strengths of you department?
 - 5.4 What are the major weaknesses?
 - 5.5 What equipment presents the most problems?
 - 5.6 Are you satisfied with the maintenance efforts?
 - 5.7 Are the existing controls satisfactory?
 - 5.8 How would you rate the knowledge level of your personnel?
 - 5.8.1 Would you be receptive to additional training for your people?
 - 5.8.2 Do you think the training would be cost effective?
 - 5.8.3 What are the existing training methods?
 - 5.8.4 Give a rough estimate of the average experience level of your department (years of experience).
 - 5.8.5 How are operations people utilized during outages?
 - 5.8.6 How would you rate relations with the various unions?
 - 5.9 What is your occurrence of “Operator error”?
 - 5.10 If you owned this plant what would you do to improve it?
 - 5.11 Do you help prioritize and plan work required for efficient plant operation?
- 6.0 Maintenance
 - 6.1 How heavy is the workload for your department?

- 6.1.1 Do you have all the resources needed to complete the defined tasks?
- 6.1.2 How is your maintenance work prioritized?
- 6.1.3 How much maintenance backlog work do you have?
- 6.2 How successful have you been in maintaining the plant within budget forecasts?
- 6.3 How much input do you have in budgeting for maintenance?
- 6.4 How often do you schedule major maintenance outages?
 - 6.4.1 Are you allowed sufficient time to complete planned tasks during outages?
 - 6.4.2 Do you have adequate inventories of spare parts?
 - 6.4.3 Do you have enough tools?
- 6.5 What are the major strengths of your department?
- 6.6 What are the major weaknesses of your department? 6.7 How would you rate the skills level of your technicians?
 - 6.7.1 Would you be receptive to additional *training* for your people? What areas?
- 6.8 What are the boundaries of your responsibilities?
- 6.9 Do you feel that you have sufficient latitude to perform your job efficiently?
- 6.10 Do you have an extended plan for Capital improvements?
 - 6.10.1 How long is the time span for forecasted equipment replacement?
 - 6.10.2 Do you have contingency plans for equipment failure?
 - 6.10.3 Are there any problems with excessive lead-time for equipment purchase?
- 6.11 Do you perform non-destructive testing on you major boiler parts and steam lines?
- 6.12 Have you conducted a comprehensive review of your HT/HP piping systems?
- 6.13 When were the last overhauls of you turbines?
 - 6.13.1 What were the major problems found?
 - 6.13.2 How were these problems corrected?

6.13.3 Do you perform bore inspections?

6.13.4 How often are overspeed trip tests conducted?

6.13.5 Are there any generator problems that you are aware of?

6.14 What is the condition of your electrical switchgear?

6.14.1 Do you perform scheduled switchgear inspections?

6.14.2 Are parts available for the switchgear?

6.15 What is the condition of your water treatment plant?

6.15.1 Are any major maintenance activities planned for the water treatment plant in the foreseeable future?

6.16 Are there any major problems with any existing environmental protection equipment?

6.16.1 Does existing environmental equipment require an inordinate amount of your people's time?

6.17 Do you have adequate on-site transportation to prevent loss of efficiency by your people?

7.0 Controls.

7.1 What type of control systems do you have?

7.2 How old are these systems?

7.3 Do you consider them obsolete?

7.4 Are parts readily available?

7.5 Who sets your work priorities?

7.6 How heavy is your workload and how much "backlog" do you have?

7.7 How would you rate the knowledge of your workforce?

7.7.1 Would you be receptive to additional training for your technicians?

7.7.2 Do you think additional training could be cost justified?

7.8 Do you have sufficient test equipment and tools?

- 7.9 Are there any plans to make major controls system change outs in the foreseeable future?
- 7.10 Is your plant equipped for fire protection?
 - 7.10.1 Who is responsible for testing of fire fighting equipment?
 - 7.10.2 Is there a need for more fire equipment or do you think the existing equipment is sufficient?
- 7.11 How do you handle injuries?
- 7.12 Do you have dangerous chemicals on the plant site? If so, please identify.
 - 7.12.1 Do you have contingency plans for emergencies?
- 8.0 Safety
 - 8.1 Do you have an on-going safety program?
 - 8.2 Please describe your approach to safety?
 - 8.3 In your opinion, does the program work?
 - 8.4 How could the program be improved?
 - 8.5 Provide a description of the health and safety compliance program with respect to the Facility. Include a description of any safety management systems that have been put in place and any safety policies that have been implemented at the Facility.
 - 8.6 All OSHA citations or orders issued to the Facility, or settlements entered into by the Facility, in the last ten (10) years in each case with respect to the Facility.
 - 8.7 All worker-related or third-party lawsuits or claims, including worker's compensation claims, filed within the last ten (10) years or now threatened, pending, or reasonably anticipated by the Facility regarding human exposure to toxic or carcinogenic substances or materials at the Facility.
 - 8.8 All documents describing the Facility's current and past annual employee medical screening and monitoring programs at the Facility, including but not limited to, documents pertaining to current and former employees that have been diagnosed with: (a) asbestosis or any other lung related illness; (b) elevated blood lead levels; or (c) elevated blood PCB levels.
 - 8.9 Provide information on safety performance experienced at the Facility within the last five years. Include OSHA recordable, Lost Time Accident and Restricted Work Day statistics in this information.
- 9.0 Environmental
 - 9.1 What is the prevailing attitude toward environmental matters?
 - 9.2 Do you think environmental concerns should receive more attention?

- 9.3 Provide any copies of environmental audits that have been performed.
- 9.4 Is there any known or suspected environmental contamination of the plant site?
- 9.5 What is your environmental exceedance record for the last 5 years?
- 9.6 Copies of all Phase I, Phase II and other environmental site assessments, risk assessments, site investigations, site remediation plans, closure reports, compliance audits, etc.
- 9.7 Copies of any environmental management systems (“EMS”) policies and procedures (including any documents pertaining to the implementation of the EMS at the facility), EHS compliance policy statement and implementation documents and voluntary disclosure policy statement and implementation documents.
- 9.8 Copies of all current Environmental Health and Safety permits, licenses, consents, registrations or approvals (collectively, “EHS Permits”) that are required by any governmental authorities and necessary ownership/operation of the Facility, including, but not limited to those associated with any types of air emissions, wastewater discharges, storm water runoff, water use, solid waste management, recycling, and/or hazardous materials generation, storage, treatment and/or disposal. In the event that there are applications (including notices/applications for permit renewals) pending for any EHS Permits, provide copies of such applications and any relevant correspondence.
- 9.9 Documents (including EHS Permits) pertaining to the use, development, conservation or disturbance of land, wetlands, natural resources, biota and/or ecologically sensitive receptors.
- 9.10 A list and description of all landfills, disposal areas, surface impoundments, ponds, diversions, dams and other similar structures located at or related in any way to the Facility, together with copies of all associated EHS Permits.
- 9.11 Documents pertaining to compliance with applicable federal, state and local EHS laws and its EHS permits (including but not limited to emission statements, compliance monitoring data, compliance inspection reports, plans and correspondence with governmental authorities) and/or reports and submissions made pursuant to applicable federal, state and local EHS laws.
- 9.12 Documents identifying or describing anticipated capital expenditures required to control pollution, investigate/remediate any environmental conditions, manage waste or achieve/ensure compliance with applicable EHS permit conditions or EHS laws at the Facility.
- 9.13 Documentation of (1) hazardous waste generator status for the Facility; (2) the types(s) and amounts of waste generated; (3) a list and description of all solid waste and hazardous waste transporters used; (4) a list of all off-site treatment, storage or disposal facilities (“TSDFs”) that have received or are receiving solid and/or hazardous waste from the Facility; and (5) copies of all manifests for off-site hazardous waste disposal.

- 9.14 (1) A list and description of current and former surface impoundments, underground storage tanks (“USTs”) and above-ground storage tanks (“ASTs”) located on any properties used, owned or leased in connection with the Facility as well as any information concerning the size, content, age and compliance of such impoundments/tanks; (2) any reports prepared in connection with any leaks or releases from such impoundments or tanks; and (3) closure reports prepared in connection with any closure, removal or abandonment of such impoundments, USTs or ASTs.
- 9.15 Documents relating to: (1) the maintenance, handling, storage or disposal of mercury or mercury-containing equipment; or (2) the testing, disposal and/or abandonment of any pipes, transformers, structures or other PCB-containing equipment or materials, particularly as those relate to compliance with the PCB Mega Rule in connection with the Facility.
- 9.16 Incident reports, notifications and/or other documents relating to any spill or release of hazardous materials, wastes or chemicals at the Facility or as a result of operations at the Facility.
- 9.17 Documents pertaining to: (1) the indoor air quality of the Facility; or (2) the presence, management, removal or abatement of asbestos-containing materials or lead-based paint.
- 10.0 What natural perils could affect this site?
 - 10.1 Give a cost analysis of the last 2 such occurrences.
- 11.0 What licenses, permits or certificates are required at this site? (Air? Noise? Water usage? Storm water discharge? Waste water discharge? Air discharge? Business? Power production? Others?)
- 12.0 Give nameplate data for all units.
 - 12.1 Give start up times, ramp rates for synchronization and total event costs to full load for hot, warm and cold start conditions.
 - 12.2 Give heat rate, reduced load heat rates, availability, forced outage rates, capacity factors, environmental performances, catastrophic failures, obsolescence, etc for each unit.
- 13.0 Request a copy of all collective bargaining units’ agreements.
- 14.0 What other contracts, sub-contracts or leases exist for maintenance services, labor, professional services, materials, parts or other?
- 15.0 Supply details of all fuel purchase, transportation and storage contracts.
- 16.0 Supply details of any waste disposal procedures or contracts.
 - 16.1 What opportunities do you see for “revenues” from your various waste streams?
- 17.0 Title.

- 17.1 Real property.
- 17.2 UCC Filings.
- 18.0 Claims history (both by and against Seller in connection with the Facility)._
 - 18.1 Litigation (including arbitration and other forms of alternative dispute resolution).
 - 18.2 Labor issues.
 - 18.3 Warranty claims.
 - 18.4 Copies of all auditor's letters prepared by law firms with respect to the Facility or with respect to Seller's liability in connection with the Facility.
- 19.0 Contracts.
 - 19.1 Copies of all contracts.
- 20.0 Permits/Licenses.
 - 20.1 Copies of all permits, licenses, easements, etc.
- 21.0 Organizational Documents.
- 22.0 Insurance.
 - 22.1 Copies of all insurance policies that have been in effect at any time with respect to the Facility or under which coverage may have at any time been provided with respect to the Facility.

Technical Evaluation of Potential Acquisition Questions, Documents & Data to be Reviewed

- O&M contract.
- Power Purchase contract.
- Interconnect agreements and terms.
- Fuel purchase, transportation and storage contracts.
- Ash storage, transportation and disposal contracts.
- Production by product sales contracts.
- Steam sales contracts.
- Water supply/sewer agreements.
- All other contracts, subcontracts and leases for maintenance services, labor, professional services, materials, parts or other at each plant.
- Collective bargaining agreements, if any.
- Pension, benefit and welfare plans.
- O&M and capital budgets vs. actuals for last five years. Budgets or budget forecasts for next five years. Status of maintenance escrow accounts,
- Operating & Maintenance plan, and capital improvement plan, for last five years and next five years.
- Staffing plan including organizational chart and salary levels.
- Environmental permits including air, noise, water usage, stormwater discharge and wastewater discharge. Provide documentation to show compliance with permits and/or any violations or citations. Provide reports of any Environmental Audits or Assessments of the projects/sites. Is there any known or suspected environmental contamination of the site of facilities? We may wish to conduct a site assessment.
- A listing of hazardous and non-hazardous wastes which are stored on-site or off-site, or have been disposed of.
- Any federal, state or local licenses, permits and certifications

- Major maintenance requirements at each plant: historical as well as recommended and/or planned major maintenance activities. Maintenance schedules from last five years and projections for next five years.
- Maintenance records - preventative maintenance, corrective maintenance, major maintenance and scheduled maintenance.
- Spare parts inventory - item description, quantity and value.
- Written procedures, programs, policies, records and logs relative to operations, maintenance, safety, environmental, training and others.
- Capacity Factor, EAF and EFOR for each of the last five years. Define terms and method of calculation. History of all scheduled maintenance outages and all significant forced outages.
- Heat rate at each plant: design heat balance; curves of heat rate vs. load; actual average monthly heat rate based on fuel purchases and net energy produced; and results of any heat rate tests.
- Results of tests of Net Maximum Capacity tests.
- Startup times and ramp rates from synchronization to full load for hot, warm, and cold start conditions.
- Data to show compliance with QF requirements (if applicable) for last five years.
- Interviews with Plant Manager and supervisors at each plant.
- Are there any remaining warranties? Are there any warranty claims or issues outstanding?
- Is there potential for efficiency improvement? expansion? repowering?
- Assess the technology employed. Is it proven?
- What are the risks associated with this technology? i.e. startup times, heat rate, heat rate at reduced load, availability, force outage rate, capacity factor, environmental performance, catastrophic failure, obsolescence, etc.
- What Natural perils could affect this site?

RFP 2012
Attachment 20
CODE OF CONDUCT

Code of Conduct Governing PacifiCorp's Intra-Company Relationships for RFP 2012 Process

As part of the RFP 2012 process, PacifiCorp will commit to abide by a self-imposed code of conduct which will govern PacifiCorp's intra-company business relationships in order to ensure a fair and unbiased RFP evaluation and selection process. As part of the RFP process, PacifiCorp has identified various teams and work groups who will be responsible for the evaluation of the proposals and the development of the benchmark resources. The Evaluation Team and the Benchmark Team will have separate responsibilities and be required to adhere to the self-imposed code of conduct.

Bidders will provide a Request for Qualification that will not be blinded; however, in order to ensure the proper treatment of "blinded" and "unblinded" Bidder information once the proposals are submitted and throughout this process, each Bidder is expected to adequately blind its proposal such that the bid number is the only identifying aspect of the bid. Following review and a determination by the Independent Evaluator that the bids are adequately blinded, the bids will be provided to the Evaluation Team for analysis. PacifiCorp will take the steps outlined below to maintain the appropriate "blinded" or "unblinded" nature of the Bidder and benchmark information until the final short list is selected. Once the final short list is selected, the proposals will be unblinded and the Evaluation Team will negotiate with the counterparties. The Evaluation Team and the Benchmark Team will comply with this code of conduct during the RFP evaluation process beginning on the date the Public Service Commission of Utah approves the RFP for issuance.

EVALUATION TEAM

The Evaluation Team will be made up of eight separate work groups. Prior to the selection of the final short list, certain work groups on the Evaluation Team will be considered "Blinded Individuals" and shall not be given access to unblinded Bidder information. Other work groups will be considered "Unblinded Individuals" and shall be given access to unblinded Bidder information; however, these Unblinded Individuals will not share such information with Blinded Individuals prior to the selection of the final short list. Consistent with PacifiCorp's identification of shared employees under FERC's Standards of Conduct, the IRP work group will be treated as a shared resource to perform work for the Evaluation Team and the Benchmark Team. The IRP work group will not share any information it obtains from either Team with the other Team until after the final short list and the IRP work group will not share any non-public transmission system information with either Team at any point in this process.

As set forth below in the Information Status, no members of the Evaluation Team will have contact or communication with any Bidder other than through the Independent Evaluator. If any Bidder or member of the Benchmark Team attempts to contact a member of the Evaluation Team, such Bidder or member of the Benchmark Team shall

be directed to the Independent Evaluator for all information and such communication shall promptly be reported to the Independent Evaluator by the Evaluation Team.

The roles and responsibilities of the members of the Evaluation Team work groups are set forth below, along with the individual member's name and title and information status restrictions for each work group.

Blinded Individuals on Evaluation Team: Origination, Structuring and Pricing, IRP, Transmission Manager and Environmental

1. Origination

Roles: Members of the Origination work group will be responsible for overall coordination of the RFP process, including bid process management for all proposals. The Origination work group will also have responsibility to coordinate with the Independent Evaluator and all of the Evaluation Team work groups. The Origination work group will also perform the evaluation of the non-price components of the bid analysis.

Individual Members and Titles: [tbd]

Information Status: All Bidder information shared with the Origination group will remain blinded prior to the selection of the final short list. No members of the Evaluation Team will have contact or communication with any Bidder other than through the Independent Evaluator.

2. Structuring and Pricing

Roles: Members of the Structuring and Pricing work group will be responsible for the economic analysis and modeling for the initial short list including the validation on the inputs to the risk assessment of the bid.

Individual Members and Titles: [tbd]

Information Status: All Bidder information shared with the Structuring and Pricing group will remain blinded prior to the selection of the final short list. No members of the Evaluation Team will have contact or communication with any Bidder other than through the Independent Evaluator .

3. Integrated Resource Planning (IRP)

Roles: Members of the IRP work group will be responsible for running the capacity expansion model and the planning at risk model to determine the portfolios. The IRP work group will receive inputs from the Benchmark Team which will be required to model the benchmark portfolios subject to the information sharing restrictions set forth

below. The IRP work group will not be responsible for making an economic determination about the bids.

Individual Members and Titles: [tbd]

Information Status: All Bidder information shared with the IRP group will remain blinded prior to the selection of the final short list. Any information the IRP group obtains from the Benchmark Team on benchmark portfolios will not be shared with the Origination or Structuring and Pricing work groups until after the final short list is determined.. No members of the Evaluation Team will have contact or communication with any Bidder other than through the Independent Evaluator.

4. Commercial & Trading Regulated Transmission Manager (Transmission Manager)

Roles: The Transmission Manager will assist Structuring and Pricing and Origination with PacifiCorp's transmission requests and evaluations in determining the appropriate costs and/or agreements required for any bid options.

Individual Member and Title: [tbd]

Information Status: All Bidder information shared with the Transmission Manager will remain blinded prior to the selection of the final short list. No members of the Evaluation Team will have contact or communication with any Bidder other than through the Independent Evaluator.

5. Environmental

Roles: The Environmental work group will be responsible for evaluation and acquisition of necessary air, water supply and discharge, emission credits, and siting and facilities permits.

Individual Members and Titles: [tbd]

Information Status: All Bidder information shared with the Environmental group will remain blinded prior to the selection of the final short list. No members of the Evaluation Team will have contact or communication with any Bidder other than through the Independent Evaluator..

Unblinded Individuals on Evaluation Team: Credit, Legal and Risk Management

6. Credit

Roles: The Credit work group will be responsible for credit screening, evaluation and monitoring throughout the entire RFP process.

Individual Members and Titles: [tbd]

Information Status: All Bidder information shared with the Credit group will be unblinded throughout the entire RFP process. The Credit group must not reveal to other Evaluation Team members any blinded information regarding the identity of any of the Bidders and may not discuss specific bids with the Unblinded Individuals on the Evaluation Team. No members of the Evaluation Team will have contact or communication with any Bidder other than through the Independent Evaluator.

7. Legal

Roles: The Legal work group will be responsible for confirming compliance of bids to the RFP requirements, including the forms, attachments and appendices. The Legal work group will conduct the legal process and due diligence inquiries, and will have responsibility for legal review of any documentation entered into as part of the RFP process.

Individual Members and Titles: [tbd]

Information Status: All Bidder information shared with the Legal group will be unblinded throughout the entire RFP process. The Legal group must not reveal to other Evaluation Team members any blinded information regarding the identity of any of the Bidders and may not discuss specific bids with the Unblinded Individuals on the Evaluation Team. No members of the Evaluation Team will have contact or communication with any Bidder other than through the Independent Evaluator

8. Risk Management

Roles: The Risk Management work group will be responsible for validating the internal modeling of the proposals and the Company benchmark proposal.

Individual Members and Titles: [tbd]

Information Status: All Bidder information shared with the Risk Management group will be unblinded throughout the entire RFP process. The Risk Management group must not reveal to other Evaluation Team members any blinded information regarding the identity of any of the Bidders and may not discuss specific bids with the Unblinded Individuals on the Evaluation Team. No members of the Evaluation Team will have contact or communication with any Bidder other than through the Independent Evaluator

BENCHMARK TEAM

The Benchmark Team will consist of members from PacifiCorp Energy's Generation unit. A third-party engineering consultant may be retained by Generation as needed and if retained, will be considered a member of the Benchmark Team. No member of the Evaluation Team will be a member of the Benchmark Team; however, the Benchmark Team may utilize the IRP work group to model benchmark portfolios. The IRP work group may not share any information received from the Benchmark Team with the

Evaluation Team.

Benchmark Team

Roles: The Benchmark Team will be responsible for development of PacifiCorp's benchmark resources.

Individual Members and Titles: Generation and/or Third Party Engineering Consultant [tbd]

FERC'S STANDARDS OF CONDUCT

In addition to this self-imposed code of conduct, as a transmission provider, PacifiCorp is required to comply with FERC's Standards of Conduct which govern interactions between PacifiCorp's Transmission Function and its Marketing Affiliate. Under the Standards of Conduct, PacifiCorp's Transmission Function employees must function independently of PacifiCorp's Marketing Affiliate employees. Marketing Affiliate employees cannot have access to transmission control center or other transmission facilities or information systems that differ in any way from the access provided to non-affiliated transmission customers. The Standards of Conduct prohibit Marketing Affiliate employees from gaining access to any information about PacifiCorp's transmission system that is not posted on the OASIS or otherwise made publicly-available to all other market participants.

Under the Standards of Conduct, FERC will allow certain non-operating employees to be shared between the Transmission Function and Marketing Affiliate. Under FERC's "no-conduit rule", shared employees may receive confidential transmission system or marketing information, but they are prohibited from sharing such information with Marketing Affiliate employees through any non-public or off-OASIS communications.

Marketing Affiliate Employees

PacifiCorp has identified the following business groups as Marketing Affiliate Business Units of PacifiCorp:

PacifiCorp Energy, Commercial & Trading:

- Energy Trading (includes Regulated Transmission Manager)
- Marketing & Trading Contracts
- Origination
- Structuring and Pricing Valuation
- Structuring and Pricing Model Integration

Transmission Function Employees

PacifiCorp's Transmission Function includes: employees, contractors, consultants or agents of PacifiCorp who conducts transmission system operations or reliability functions, including, but not limited to, those who are engaged in day-to-day duties and responsibilities for planning, directing, or carrying out transmission-related operations.

Shared Employees

PacifiCorp has identified Integrated Resource Planning, Environmental, Credit, Legal, and Risk Management as shared employee functions under FERC's Standards of Conduct.

Information Status

PacifiCorp's Marketing Affiliate (as defined above) will not be involved in a Bidder's transmission interconnection and integration with the control area. PacifiCorp's employees will at all times abide by FERC's Standards of Conduct. If an issue arises about compliance with FERC's Standards of Conduct, PacifiCorp's FERC Standards of Conduct Compliance Officer, Lara Skidmore, should be contacted immediately.

RFP 2012
ATTACHMENT 21
Credit Methodology

RFP 2012 Credit Security Requirements Methodology

Methodology Overview

RFP 2012 (includes eligible resources for 2012-2014) selected resources have the potential to expose PacifiCorp and its ratepayers to credit risk in the event a selected Bidder is unable to fulfill its obligations pursuant to the terms of an executed agreement. The credit risk profile is a function of several factors:

1. Type of eligible resource (see Eligible Resource Key at the end of this paper)
2. Size of eligible resource
3. Expected energy delivery start date
4. Term of underlying contract (would need to be adjusted based on resources less than 10 years in duration)
5. Creditworthiness of Bidder or Bidder's credit support provider

Acquisition of an Asset

For all resources that involve a physical asset with appropriate step-in rights (resources B3-B7), PacifiCorp views potential credit exposure as the cost it would incur in the event the resource failed to come on-line when expected. PacifiCorp believes it could take up to 12 months to either step in and complete the project or cause the project to be completed on its behalf. If the failure occurred near the expected on-line date, PacifiCorp would have to procure energy in the open market at then-prevailing market prices.

Although it may take up to one additional year to get the resource on-line in the event of a Bidder default, PacifiCorp is most concerned about replacing expected energy during the summer months (June-September), specifically the on-peak hours.

In determining where prices for replacement power might be between contract execution and the replacement period (i.e. the future summer months), PacifiCorp employs standard stochastic analysis to estimate future price levels within a certain confidence interval. Once the "stressed" forward price is determined, the expected cost to procure energy, had the project not been delayed, based on contract terms and conditions is subtracted. The difference between these prices is then multiplied by the number of megawatt hours for the replacement period to estimate the expected replacement cost, or damages, PacifiCorp might sustain due to Bidder nonperformance.

To illustrate, for the 2012 resource the forward price for on-peak power delivered at Mona over the four summer months during 2012 as indicated by the market on June 26, 2006 was \$66.26/MWh. Market-implied volatility of prices for those same delivery months was 37.5%¹³ on the same observation date. Using this data, PacifiCorp estimated – with 84% confidence – that prices for that delivery point and replacement period are

¹³ Execution of contracts related to the RFP is expected to occur on June 1, 2007. Therefore, volatility for the 2011 period was used as the best estimate of where volatility levels would be in 2012 as viewed on June 1, 2007.

expected to be no higher than \$155.49/MWh. Subtracting the cost of on-peak power PacifiCorp expects to pay had the resource been operational (e.g. \$66.26/MWh) yields a potential replacement cost to PacifiCorp of \$89.23/MWh, or \$174,185¹⁴ for a 1 MW resource.

Using a similar assessment for the 2013 and 2014 resources, the potential credit exposure was estimated to be \$190,574 and \$220,427, respectively, for a 1 MW resource.

Asset-Backed Agreements

For other eligible resources that are backed by an asset with appropriate step-in rights (resources B1, B2, B8: asset-backed only), PacifiCorp views its potential credit exposure as the cost it would incur in the event the Bidder failed at any time during the life of the contract. However because the resource is backed by an attachable asset, PacifiCorp believes it can have the project operational, or cause to have the project operational on its behalf, within 12-18 months from the date of nonperformance. PacifiCorp acknowledges that the potential for prices to change is greater for this resource group due to the term of the underlying contract but will treat the potential replacement costs the same as asset backed resources B3-B7. PacifiCorp will hold the security for a longer period, however, due to the length of contract related to this resource group.

This discussion of the credit requirements for Power Purchase Agreements (and Tolling Services Agreements) and the Asset Purchase and Sales Agreements assumes, for these credit requirements to be comparably analyzed, that each of these types of agreement is backed by its respective physical asset. In order for this to be the case, the agreements by their terms must put that physical resource behind the agreement, which would include, but not be limited to, the following: allowing PacifiCorp meaningful and actual exercise of step-in rights and a second lien (behind only the project lenders) on the assets and the special purpose entity equity, limiting the amount of leverage on the project by way of a cap on the debt to equity ratio, and other financial covenants for the life of the Power Purchase Agreement (resources B1, B2 and B8).

Non-Asset Backed Agreements

For eligible resources that are not backed by an asset (resources B1, B2, B8, and B9a), PacifiCorp estimates potential credit exposure on not just four summers' worth of replacement volume but on the entire remaining volume at any point a Bidder might default during the term of a contract. PacifiCorp also takes into account the full-time horizon of the contract from contract execution. To estimate potential credit exposure at any possible point of default, PacifiCorp performs a Monte Carlo simulation¹⁵ using a program purchased from a third-party vendor¹⁶ that factors in forward prices, forward price volatility, temporal correlations, and asset correlations. The simulation steps

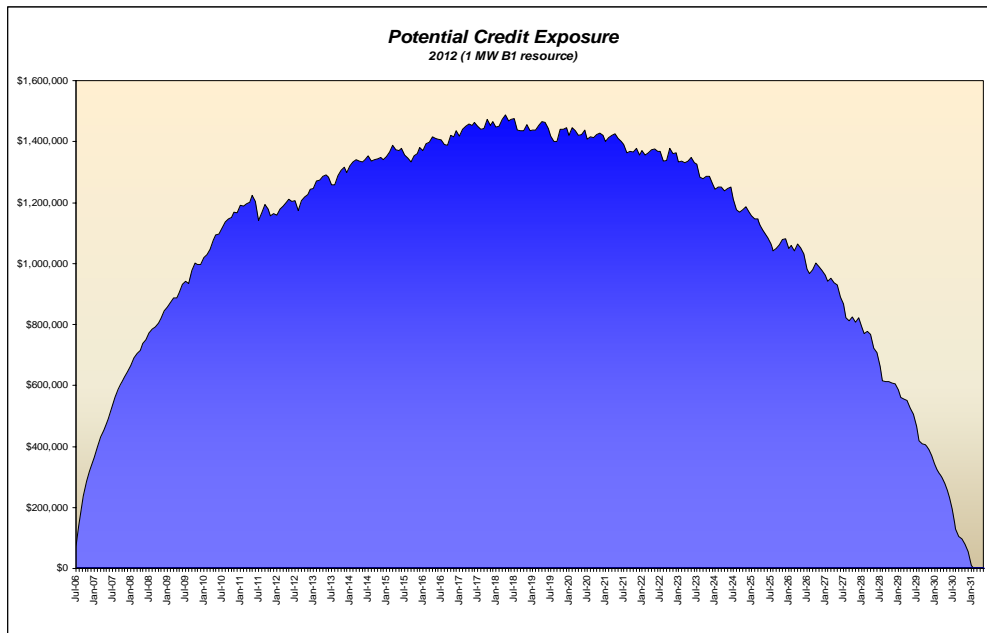
¹⁴ Assumes 1,952 on-peak hours during June-September 2012.

¹⁵ A Monte Carlo simulation incorporates randomness into the revaluation process while mindful of the boundaries imposed by volatility and correlation assumptions.

¹⁶ Risk Capital Management Partners, LLC, acquired by Towers Perrin on June 19, 2006.

through time, removing delivered volumes from the valuation while revaluing remaining, undelivered volumes. The result is a distribution of potential credit exposures from which PacifiCorp uses those at the 84th percentile.

The following chart shows the potential credit risk profile of a 1 MW, B1 resource for 2012:



For the 2012, 2013, and 2014 resources that are not backed by an asset, the potential credit exposure was estimated to be \$1,488,754, \$1,603,434, and \$1,605,863, respectively, for a 1 MW resource.

Credit Matrix

Once the potential credit exposures were estimated for all resources, the exposures then were inserted into a series of credit matrices (each a “Credit Matrix”). Each Credit Matrix lists various sizes of resources in 50 MW increments (columns) for each possible credit rating of Bidder or Bidder’s credit support provider (rows). A Credit Matrix for each resource category is shown for each resource year.

Next, PacifiCorp applies its internal credit risk tolerance specific to this RFP to each potential credit exposure in every cell of every Credit Matrix. The results are the amounts of excess credit risk that PacifiCorp requests be secured through third-party guaranties, cash, letters of credit, or other collateral, or combinations thereof.

To interpret a Credit Matrix, a Bidder needs to select the type of resource, the size of the resource, and the year the resource is expected to be operational. Depending on the credit

rating of the Bidder or the Bidder’s credit support provider, the value in the specific Credit Matrix represents the maximum value of credit security the Bidder or Bidder’s credit support provider must provide.

Using the Credit Matrix excerpt below for illustration, credit security required for a 550 MW asset purchase and sale agreement for 2012 with a ‘BBB+’ rated Bidder would be \$0 (row 8). If the Bidder was not rated or was rated less than investment grade, the Bidder would be required to provide \$95,801,750 (row 11) in credit security to cover the potential credit exposure. Security could include a third-party guaranty from an investment grade entity but in that event additional security may be required depending on the security amounts listed in the Credit Matrix corresponding to the rating of the guarantor. For instance, if the third-party guarantor was only rated ‘BBB’, PacifiCorp would require a guaranty in the amount of \$75m (\$95,801,750 (row 11) minus \$20,081,750 (row 9)) from the guarantor and additional security (i.e. a letter of credit) in the amount of \$20,801,750 (row 9) from the Bidder.

Size of Nameplate bid in MW ==>	501-550	
Credit Rating		
AAA/Aaa and above	\$0	row 1
AA+/Aa1	\$0	row 2
AA/Aa2	\$0	row 3
AA-/Aa3	\$0	row 4
A+/A1	\$0	row 5
A/A2	\$0	row 6
A-/A3	\$0	row 7
BBB+/Baa1	\$0	row 8
BBB/Baa2	\$20,801,750	row 9
BBB-/Baa3	\$45,801,750	row 10
Below BBB-/Baa3	\$95,801,750	row 11

In the event the Bidder’s credit rating or Bidder’s credit support provider’s credit rating adversely changes during the contract term, the amount of credit security must be adjusted commensurate with the amounts listed in the Credit Matrix.

Posting of Credit Security

For all eligible resources that are backed by an asset that can be attached by PacifiCorp, credit security must be posted in accordance with the following schedule:

Cumulative Value of Credit Security*	2012 Resource	2013 Resource	2014 Resource
10%	Effective Date (ED)	Effective Date (ED)	Effective Date (ED)
20%	ED+6 months	ED+18 months	ED+30 months
30%	ED+12 months	ED+24 months	ED+36 months
40%	ED+18 months	ED+30 months	ED+42 months

100%	ED+24 months	ED+36 months	ED+48 months
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* When the Bidder receives project development financing, 100% of the required credit security is then immediately due, regardless of the deadlines contained in the schedule.

The Effective Date is the date the contract is approved by the Utah Commission or the date the contract is executed by the parties, which ever is later.

A Bidder may select to either post the initial security, which must be in the form of cash or letter of credit only, or alternatively, a Bidder may post the full amount of credit security using *any* form of security acceptable to PacifiCorp (e.g. a third-party guaranty.)

For all other resources, full credit security is due within ten (10) business days after the Effective Date.

Eligible Resource Key:	
B1	Power Purchase Agreements
B2	Tolling Service Agreements
B3	Asset Purchase and Sale Agreements on PPW sites
B4	Asset Purchase and Sale Agreements
B5	EPC Contract for Currant Creek
B6	Purchase of an Existing Facility
B7	Purchase of a portion of a facility jointly owned by or operated by PPW
B8	Restructuring of existing Power Purchase Agreement or Exchange Agreement
B9a	Load Curtailment

RFP 2012
ATTACHMENT 22
Credit Commitment Letter

ATTACHMENT _22_

GUARANTY COMMITMENT LETTER

(Bidder parent or credit support provider letterhead)

PacifiCorp
(insert our address)

Dear Sirs:

The undersigned bears the following relationship to the Bidder _____ (NOTE: Please insert Bidder name) ("Counterparty") in your RFP 2012 process: (NOTE: insert nature of relationship, e.g., Parent company, tax investor, etc.).

This will indicate our promise to you that, should you enter into a transaction with Counterparty arising out of any bid submitted by Counterparty in the RFP 2012, that we will at that time issue an unconditional guaranty in form and substance reasonably satisfactory to you, and that we will guarantee all obligations of payment and performance of Counterparty to you as our independent obligation, (up to a maximum amount of \$_____, plus enforcement expenses).

We understand that you will not enter into a transaction with Counterparty without said guaranty. We understand that you are under no obligation to enter into any transaction with Counterparty, under the RFP 2012 or otherwise.

Yours truly,

(name of committing guarantor)
(name of authorized officer)

**RFP 2012
FORM 1
PRICING INPUT SHEET**

**RFP 2012
FORM 2
PERMITTING AND
CONSTRUCTION MILESTONES**

**RFP 2012
FORM 2
PERMITTING AND CONSTRUCTION MILESTONES**

Milestone	Date	Bidder to insert Break up Fee
Notice to Proceed		
Secure Property		
Secure Water Rights		
Secure ERCs		
Secure Permits		
Natural Gas Interconnection Agreement		
Complete LGIA with PacifiCorp		
Break Ground		
P/O for CTs, Xfrmr's, Cooling Tower/Condenser/ACC HRSGs and ST		
Begin Pouring of Foundations		
Delivery of HRSG1		
Delivery of HRSG2		
Set ST		
Set CT1		
Set CT2		
Complete Natural Gas Interconnect		
Set Main Transformers		
Backfeed (at Transmission Level)		
First Fire of CT1		
First Fire of CT2		
Synchronization to Grid		
Complete installation of Cooling Towers/ACC		
Completion of Steam Blows		
Roll ST		
Begin Performance Testing		
Substantial Completion		
Final Acceptance		

RFP 2012
PERMITTING AND CONSTRUCTION MILESTONES

Milestone	Date	Bidder to insert Break up Fee
Notice to Proceed		
Secure Property		
Secure Water Rights		
Secure ERCs		
Secure Permits		
Natural Gas Interconnection Agreement		
Complete LGIA with PacifiCorp		
Break Ground		
P/O for CTs, Xfrmr's, Cooling Tower/Condenser/ACC HRSGs and ST		
Begin Pouring of Foundations		
Delivery of HRSG1		
Delivery of HRSG2		
Set ST		
Set CT1		
Set CT2		
Complete Natural Gas Interconnect		
Set Main Transformers		
Backfeed (at Transmission Level)		
First Fire of CT1		
First Fire of CT2		
Synchronization to Grid		
Complete installation of Cooling Towers/ACC		
Completion of Steam Blows		
Roll ST		
Begin Performance Testing		
Substantial Completion		
Final Acceptance		

**RFP 2012
FORM ---
PERMITTING AND CONSTRUCTION MILESTONES
INTEGRATED GASIFICATION COMBINED CYCLE**

General	Bidder to insert Break up Fee
Feasibility Study Complete	
FEED Study complete	
Geotech Report complete	
Major Permit Applications Filed	
Secure Property	
Secure Water Rights	
Major Permits secured	
Natural Gas Interconnection Agreement	
Complete Large Generator Interconnection Agreement	
Full Notice to Proceed	
Site Access Available	
Power Grid (Backfeed) Available	
Natural Gas Available	
Major Equipment Procurement	
Combustion Turbine generators	
Steam Turbine generator	
Main Condenser	
Generator Step-Up & Main Auxiliary Transformers	
Heat Recovery Steam Generators/SCR System/Duct/Stacks	
Gasifiers	
Coal Preparation System	
Air Separation System	
Acid Gas Removal System	
Tail Gas Clean up System	
Digital Control System	
Engineering (Overall)	
Final Process /Equip. Data Sheets Issued	
Piping & Instrument Diagrams Issued for Design	
Major Foundation Design Completed	
Underground Utilities Design	

General	Break up Fee
Fabrication & Delivery of Major Equipment	
Gas Turbine generators	
Steam Turbine generator	
Main Condenser	
Generator Step-Up & Main Auxiliary Transformers	
Heat Recovery Steam Generators/SCR/Stacks	
Gasifiers	
Coal Preparation System	
Air Separation System	
Acid Gas Removal System	
Tail Gas Clean up System	
Digital Control System	
Overall Construction & Installation	
Mobilized	
Break ground	
Begin pouring of piling & foundations	
Major Buildings Complete	
Combustion Turbine 1 set	
Combustion Turbine 2 set	
Heat Recovery Steam Generator 1 erected	
Heat Recovery Steam Generator 2 erected	
Gasification Major Components set	
Steam turbine set	
Critical Piping Installed	
Install Digital Control System	
Main Transformers set	
Mechanically complete	
First Fire of Combustion Turbine 1	
First Fire of Combustion Turbine 2	
First Fire of each Gasifier and associated Air Separation Unit and downstream cleanup	
Cooling Tower Installation Complete	
Startup and Commissioning	
Steam Blows Complete	
Roll Steam Turbine	

General	Break up Fee
Performance Testing Complete - Natural Gas	
Performance Testing Complete - Syn-Gas	
Substantial Completion	
Final Acceptance	

PACIFICORP RFP-2012
POWER PURCHASE AGREEMENT

dated as of [_____], 2007,

BETWEEN

[Bidder # [?]],
as Seller,

AND

PACIFICORP,
as Buyer

[_____ **Project]**

[_____, *[State]*]

TABLE OF CONTENTS

	Page
SECTION 1 DEFINITIONS; RULES OF INTERPRETATION.....	2
1.1 <u>Defined Terms</u>	2
1.2 <u>Rules of Interpretation</u>	12 11
SECTION 2 TERM; COMMENCEMENT OF OPERATION.....	13
2.1 <u>Term</u>	13
2.2 <u>Milestones</u>	13
2.3 <u>Daily Delay Damages</u>	15 14
2.4 <u>Damages Invoicing</u>	15
2.5 <u>Buyer's Right to Monitor</u>	15
SECTION 3 REPRESENTATIONS AND WARRANTIES	16
3.1 <u>Buyer's Representations and Warranties</u>	16
3.2 <u>Seller's Representations and Warranties</u>	17
3.3 <u>Notice</u>	19
SECTION 4 SALE AND PURCHASE OBLIGATIONS	1920
4.1 <u>Sale and Purchase of Contract Capacity, Capacity Rights, Net Energy and Ancillary Services</u>	19 20
4.2 <u>Deliveries; Title and Risk of Loss</u>	20
4.3 <u>Dispatching Deliveries from the Contract Capacity versus the Remaining Capacity</u>	20 1
4.4 <u>Curtailment Due to Failure to Comply with Interconnection Agreement</u>	21
4.5 <u>Sale of Test Energy</u>	21
SECTION 5 PAYMENTS; COSTS.....	21
5.1 <u>Capacity Payments</u>	21
5.2 <u>Energy Payment</u>	23
5.3 <u>Test Energy</u>	23 4
5.4 <u>Costs and Charges</u>	23 4
5.5 <u>Station Service</u>	24
SECTION 6 OPERATION AND CONTROL	24
6.1 <u>As-Built Supplement</u>	24
6.2 <u>Measurement and Quality of Net Energy</u>	24
6.3 <u>Standard of Facility Operation</u>	24 5
6.4 <u>Operating Procedures and Compliance</u>	25 6
6.5 <u>Scheduling Procedures</u>	27
6.6 <u>Outages</u>	29 30
6.7 <u>Schedule Coordination</u>	30 1
6.8 <u>Electronic Communications</u>	30 1

6.9	<u>Reports and Records</u>	31
6.10	<u>Access Rights</u>	323
6.11	<u>EWG</u>	3332
6.12	<u>Facility Images</u>	33
6.13	<u>Financial and Accounting Information</u>	334
SECTION 7 SECURITY AND CREDIT SUPPORT		334
7.1	<u>Credit Support</u>	334
7.2	<u>Subordinated Security Interests</u>	334
7.3	<u>Quarterly Financial Statements</u>	345
7.4	<u>Security is Not a Limit on Seller’s Liability</u>	345
7.5	<u>Escrow Account</u>	3534
SECTION 8 METERING		356
8.1	<u>Net Energy</u>	356
8.2	<u>Records</u>	3736
8.3	<u>Adjustment to Loss Factors</u>	378
SECTION 9 BILLINGS, COMPUTATIONS AND PAYMENTS		378
9.1	<u>Monthly Invoices</u>	378
9.2	<u>Offsets</u>	378
9.3	<u>Interest on Late Payments</u>	378
9.4	<u>Disputed Amounts</u>	3837
9.5	<u>Audit Rights</u>	389
SECTION 10 DEFAULTS AND REMEDIES		389
10.1	<u>Defaults</u>	389
10.2	<u>Termination and Remedies</u>	4039
10.3	<u>Specific Performance</u>	401
10.4	<u>Failure to Meet Availability</u>	401
10.5	<u>License to Operate Facility</u>	421
10.6	<u>Termination of Duty to Buy</u>	412
10.7	<u>Net Replacement Power Costs</u>	412
10.8	<u>Default Security</u>	412
10.9	<u>Cumulative Remedies</u>	412
SECTION 11 INDEMNIFICATION AND LIABILITY.....		423
11.1	<u>Indemnities</u>	423
11.2	<u>No Dedication</u>	423
11.3	Consequential Damages	423
SECTION 12 INSURANCE.....		423
12.1	<u>Required Policies and Coverages</u>	423
12.2	<u>Certificates and Certified Copies of Policies</u>	434

SECTION 13 FORCE MAJEURE	434
13.1 <u>Definition of Force Majeure</u>	434
13.2 <u>Suspension of Performance</u>	434
13.3 <u>Force Majeure Does Not Affect Other Obligations</u>	445
13.4 <u>Right to Terminate</u>	445
SECTION 14 CONFIDENTIALITY	445
14.1 <u>Confidential Business Information</u>	445
14.2 <u>Duty to Maintain Confidentiality</u>	445
14.3 <u>Irreparable Injury; Remedies</u>	445
14.4 <u>News Releases and Publicity</u>	454
SECTION 15 DISAGREEMENTS	456
15.1 <u>Negotiations</u>	456
15.2 <u>Mediation</u>	456
15.3 <u>Choice of Forum</u>	467
15.4 <u>Settlement Discussions</u>	478
15.5 <u>Waiver of Jury Trial</u>	478
15.6 <u>Equitable Remedies</u>	478
SECTION 16 GUARANTEED PERFORMANCE PARAMETERS.....	487
16.1 <u>Guaranteed Heat Rate</u>	478
16.2 <u>Guaranteed Start-Up Time</u>	478
16.3 <u>Guaranteed Ramp Rate</u>	479
SECTION 17 MISCELLANEOUS	489
17.1 <u>Several Obligations</u>	498
17.2 <u>Choice of Law</u>	489
17.3 <u>Partial Invalidity</u>	489
17.4 <u>Waiver</u>	489
17.5 <u>Governmental Jurisdiction and Authorizations</u>	489
17.6 <u>Restriction on Assignments</u>	489
17.7 <u>Permitted Assignments</u>	489
17.8 <u>Entire Agreement</u>	4850
17.9 <u>Amendments</u>	4950
17.10 <u>No Third Party Beneficiaries</u>	4509
17.11 <u>Agents and Subcontractors</u>	4950
17.12 <u>Notices</u>	4950
17.13 <u>Mobile-Sierra</u>	501
17.14 <u>Counterparts</u>	501

EXHIBITS:

Exhibit A	Description of Seller's Facility
Exhibit B	Electricity Delivery Point/Electrical Interconnection Facilities
Exhibit C	Required Facility Documents
Exhibit D	Hourly Scalars
Exhibit E	Start-Up Testing
Exhibit F	Energy Payment
Exhibit G	Examples
Exhibit H	Event Types
Exhibit I	Major Equipment and Maintenance Schedule
Exhibit J	Required Insurance
Exhibit K	Operating Procedures
Exhibit L	Availability Notice
Exhibit M	Ambient Facility Capacity Correction Algorithms
Exhibit N	Buyer's Initial Designated Representatives
Exhibit O	Dispatch Procedures
Exhibit P	Net Energy Specifications and Dispatchable Quantities of Net Energy
Exhibit Q	Guaranteed Performance Parameters
Exhibit R	Dispatch Notice
Exhibit S	Credit Matrix [<i>Note to bidders: Credit Matrix attached as Appendix to RFP 2012</i>]
<u>Exhibit T</u>	<u>Form of Lender Consent</u>

THIS WORKING DRAFT DOES NOT CONSTITUTE A BINDING OFFER, SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE, AND IS CONDITIONED UPON SELECTION OF THE BIDDER, EXECUTION, AND EACH PARTY'S RECEIPT OF ALL REQUIRED MANAGEMENT AND BOARD APPROVALS IN THEIR SOLE AND ABSOLUTE DISCRETION (INCLUDING FINAL CREDIT AND LEGAL APPROVALS). ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS WORKING DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS RELATING TO THIS WORKING DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL THIS WORKING DRAFT IS NEGOTIATED, APPROVED BY ALL APPROPRIATE PARTIES AND EXECUTED BY EACH PARTY'S AUTHORIZED SIGNATORY, NO PARTY SHALL HAVE ANY LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS WORKING DRAFT OR IN THE COURSE OF NEGOTIATIONS. ANY ASSERTION TO THE CONTRARY IN ANY PROCEEDING OR ACTION REGARDING THIS WORKING DRAFT SHALL RENDER THIS WORKING DRAFT NULL AND VOID IN ITS ENTIRETY. DURING DISCUSSIONS AND NEGOTIATIONS ANY PARTY MAY CHANGE ITS POSITION ON ANY MATTER, WHETHER OR NOT SET FORTH IN OR BASED UPON THIS WORKING DRAFT, ANY OTHER DOCUMENT OR ANY COURSE OF DEALING, AT ANY TIME OR FOR ANY REASON.

POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT dated as of [_____], 2007 (this "Agreement"), is made and entered into between [_____], a [*describe entity*] ("Seller"), and PacifiCorp, an Oregon corporation, acting in its merchant function capacity ("Buyer"). Seller and Buyer are referred to collectively as the "Parties" and individually as a "Party."

RECITALS

A. Seller intends to develop, construct, own, operate and maintain [*Insert Resource*] a ~~natural gas fueled, combined cycle electric generation facility~~ [*consisting of [?] combustion turbines — insert further description*] for the generation of electric energy located in [*township/range*], [_____] County, [*State*], whose initial Facility Capacity shall be [525] MW (as more fully described in Exhibit A, the "Facility").

B. Seller responded to a Request for Proposals – PacifiCorp RFP 2012 which was issued by Buyer in _____ 2006. Buyer's objective in issuing the RFP was to fulfill, through a competitive bid process, a portion of its supply-side resource need as contemplated in Buyer's 2004 Integrated Resource Plan.

C. Buyer's selection of Seller was based upon a competitive bid and was, in part, based upon Seller's representations and warranties, Seller's schedule achieving the Guaranteed Commercial Operation Date (initially capitalized terms not defined in these Recitals are defined in Section 1 below), and the guaranteed performance of the Facility, all as set forth herein. Such matters were a material inducement for the selection of Seller, and Seller's failure to perform in accordance with the terms and conditions or Seller's failure to meet its representations and warranties and schedules for delivery of Net Energy shall cause material damage to Buyer.

D. Seller will make available and sell to Buyer, and Buyer will receive and purchase from Seller, Contract Capacity and Net Energy associated with such Contract Capacity pursuant to the terms and conditions of this Agreement. Seller acknowledges that Buyer will include such Contract Capacity in Buyer's resource planning.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, the Parties agree as follows:

SECTION 1

DEFINITIONS; RULES OF INTERPRETATION

1.1 Defined Terms. Unless otherwise required by the context in which any term appears, defined terms used in this Agreement (as indicated by initial capitalization, except as otherwise provided in this Section 1.1) shall have the following meanings:

“**AAA**” has the meaning set forth in Section 15.2.

“**Affiliate**” means, with respect to any entity, each entity that directly or indirectly, controls or is controlled by or is under common control with such designated entity. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any entity, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities or by contract or otherwise.

“**Alternate Representative**” has the meaning set forth in Section 6.4.2.

“**Ambient Facility Capacity**” means the Contract Capacity determined from the correction algorithms set forth in **Exhibit M**, based upon the Facility Capacity and the ambient conditions in effect in each hour.

“**Ancillary Services**” means those services and energy from time to time now or hereafter available that are necessary to support the Contract Capacity and transmission of energy from resources to loads while maintaining reliable operation of the System in accordance with Prudent Electrical Practices. Such services and energy include regulation reserve, spinning reserve, non-spinning reserve, voltage support, black start Capacity, and reactive power.

“**As-built Supplement**” shall be a supplement to **Exhibit A** that describes the Facility as actually built and shall include all such information as may reasonably be requested by Buyer.

“**Authorized Representative**” has the meaning set forth in Section 6.4.2

“**Availability Notice**” has the meaning set forth in Section 6.5.1.1.

“**Baseload Capacity**” means the Capacity of the Facility achieved when operating at the Reference Conditions with all items of Major Equipment operating at full load, but without duct firing.

“**Business Day**” means any day on which banks in Portland, Oregon 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 Oregon.

“**Btu’s**” means British Thermal Units.

“**Buyer**” has the meaning set forth in the Preamble.

“**CAF_h**” has the meaning set forth in Section 5.1.2.

“**CAF_m**” has the meaning set forth in Section 5.1.2.

“**Capacity**” means the output potential a machine or system can produce under specified conditions as generally expressed in kW or MW.

“**Capacity Payment**” means the Monthly Capacity Payments and the Minimum Monthly Capacity Payments payable in accordance with Section 5.1.

“**Capacity Payment Rate**” means, as of the Commercial Operation Date, \$[?]/kW/month.

“**Capacity Payment Shortfall**” has the meaning set forth in Section 5.1.4.

“**Capacity Rights**” means any current or future defined characteristic, certificate, tag, credit, ancillary service attribute, or accounting construct, including any accounting construct counted towards any current or future resource adequacy or reserve requirements, associated with the Capacity of the Facility or the Facility’s capability and ability to produce energy, but excluding any of the foregoing attributable to any expansion of the Facility occurring after the Commercial Operation Date, unless the output associated therewith is purchased by Buyer.

“**Carry-Over Letter of Credit**” has the meaning set forth in Section 5.1.4.

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

“**CC**” has the meaning set forth in Section 5.1.2.

“**Collateral**” has the meaning set forth in Section 7.5

“**Combustion Turbine**” or “**CT**” means any one of the combustion turbines comprising the Facility.

“**Commercial Operation Date**” means the date on which the Facility is fully operational, reliable and each condition set forth in Section 2.2.6 is continuously satisfied.

“**Contract Capacity**” means [525] MW of Capacity from the Facility, comprised of [?] MW of Baseload Capacity and [?] MW of Peakload Capacity [if applicable].

“**Contract Year**” means a twelve (12) month period commencing at 00:00 hours on January 1 and ending on 24:00 hours 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 last Day of the Term.

“**CPR**” has the meaning set forth in Section 5.1.2.

“**CPS**” has the meaning set forth in Section 5.1.2.

“**Credit Matrix**” means the credit matrix attached hereto as **Exhibit S**.

“**Credit Rating**” means, as of any date, the then applicable senior, unsecured, long-term debt or corporate credit rating of a Person published by either Moody’s or S&P.

“**Credit Support**” means, prior to the Commercial Operation Date, the amount, subject to Section 7.1, (if any) shown as the Project Development Security on the Credit Matrix and, on and after the Commercial Operation Date, the amount (if any) shown on the Credit Matrix as the Default Security.

“**Credit Support Security**” means a guaranty, Letter of Credit or Cash Escrow provided pursuant to Section 7.1.

“**CT Start**” means the process of rotating any of the Facility’s Combustion Turbine rotors by means of such Combustion Turbine’s starting motor and subsequently introducing and igniting Fuel in the Combustion Turbine’s combustor and increasing the rotating speed of the unit’s rotor sufficiently that the starting motor can be disengaged, also referred to herein as the Start-Up of a Combustion Turbine. [If Applicable]

“**Daily Delay Damages**” for each Day shall be the positive number (and if not a positive number, zero) equal to the sum for all hours of the Day of the product for each hour of the Day of (1) the Dow JonesTM SP15 Electricity Price Index for such Day, expressed in \$/MWh, *multiplied by* (2) the applicable hourly scalar set forth in **Exhibit D** for the applicable hour in the daily (i) firm on-peak, (ii) firm off-peak or (iii) 24-hour firm (on Sundays and NERC holidays) Dow JonesTM SP15 Electricity Price Index (each such hour, the “**Applicable Hour**”) during such Day, *multiplied by* (3) the loss factor of 1.112, *plus* (4) the basis of \$13/MWh for each Applicable Hour or portion thereof during such Day, *minus* (5) one-twenty-fourth of the Capacity Payments and Energy Payments that would have been made with respect to such Day, if no Capacity Payments or Energy Payments have been paid with respect to such Day. If the

Dow JonesTM SP15 Electricity Price Index ceases to be published during the Term, Buyer shall select as a replacement electricity price index or component, an index acceptable to Buyer in its discretion that, after any necessary adjustments, provides the most reasonable substitute quotation of the daily price of firm on-peak, firm off-peak or 24-hour firm energy at South of Path 15 for the applicable periods.

“**Day**” means the 24-hour period beginning at midnight Pacific Prevailing Time on a day and ending at midnight Pacific Prevailing Time on the next succeeding day.

“**Dispatch**,” “**Dispatched**,” and “**Dispatching**” means the scheduling and control by the Buyer of Net Energy, through submittal of schedules pursuant to the Dispatch Procedures and other provisions of this Agreement.

“**Dispatch Procedures**” means the procedures under which Buyer is entitled to Dispatch the Facility, as set forth in **Exhibit O**.

“**Dollar**” or “**\$**” means the lawful currency of the United States of America.

“**Effective Date**” has the meaning set forth in Section 2.1.

“**Electrical Interconnection Facilities**” means all the facilities installed by Seller for the purpose of interconnecting the Facility to the Electricity Delivery Point, including electrical transmission lines, upgrades, transformers and associated equipment, substations, relay and switching equipment, and safety equipment, as set forth in **Exhibit B**.

“**Electricity Delivery Point**” means the physical point(s) for Seller’s delivery, and Buyer’s receipt, of Net Energy at which the Facility is connected with the Transmission Provider’s transmission system, as specified in the Interconnection Agreement and in **Exhibit B**. *[Note to Bidders: If energy is to be delivered to a transmission provider other than the Transmission Provider and wheeled to the Electricity Delivery Point, the Electricity Delivery Point will be at a point of interconnection with the Transmission Provider’s transmission system where the resource can be integrated as a Network Resource.]*

“**Electric Metering Equipment**” has the meaning set forth in Section 8.1.

“**Energy Payment**” means the payment to be made by Buyer to Seller pursuant to Section 5.3 and as specified in **Exhibit F**.

“**Environmental Law**” means any federal, state or local law including statutes, regulations, rulings, orders, administrative interpretations and other governmental restrictions and requirements having the force and effect of law relating to (i) the discharge or disposal of any substance into the air, soil or water, including pollutants, water pollutants or process waste water, (ii) storage, emissions transportation or disposal of any Regulated Material, (iii) the environment or hazardous substances, all as amended from time to time, (iv) land use requirements pertaining to Regulated Materials, including laws requiring environmental impact studies or other similar evaluations, and (v) environmental issues pertaining to the development, construction, operation or maintenance of the Facility.

“**Event of Default**” has the meaning set forth in Section 10.1.

“**EWG**” means an “exempt wholesale generator,” as defined under the Public Utility Holding Company Act of 1935, as amended from time to time.

“**Example**” means an example set forth in **Exhibit G**. Each Example is for purposes of illustration only and is not intended to constitute a representation, warranty or covenant concerning the matters assumed for purposes of each Example. If there is a conflict between an Example and the text of this Agreement, the text shall control.

“**Excused Outage**” has the meaning set forth in Section 5.1.2.

“**Facility**” shall have the meaning given to that term in **Recital A**.

“**Facility Capacity**” means the maximum Capacity of the Facility, expressed in MW, when operated consistent with the manufacturer’s recommended power factor and operating parameters, as set forth in **Exhibit A**.

“**FERC**” means the Federal Energy Regulatory Commission.

“**FIN 46**” has the meaning set forth in Section 6.13.

“**Force Majeure**” has the meaning set forth in Section 13.1.

“**Forced Outage**” means NERC Event Types U1, U2 and U3, as set forth in **Exhibit H**.

“**Fuel**” means natural gas.

“**Governmental Authority**” means any supranational, federal, state or other political subdivision thereof, having jurisdiction over Seller, Buyer or this Agreement, including any municipality, township and county, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing.

“**Guaranteed Commercial Operation Date**” means *[Bidder to insert]*.

“**Guaranteed Heat Rate**” has the meaning assigned to such term in **Exhibit Q**.

“**Guaranteed Ramp Rate**” has the meaning set forth in **Exhibit Q**.

“**Guaranteed Start-Up Time**” has the meaning set forth in **Exhibit Q**.

“**Heat Rate**” means the number of Btu’s used to produce one MW of energy measured at the Electricity Delivery Point.

“**Interconnection Agreement**” means the agreement to be entered into separately between Seller and Transmission Provider providing for the construction and operation of the Electrical Interconnection Facilities.

“Lender” means any individual or entity or successor in interest thereof lending money or extending credit (including any financing lease or credit derivative arrangement) to Seller (i) for the construction, term or permanent financing or refinancing of the Facility; (ii) for working capital or other ordinary business requirements for the Facility (including for the maintenance, repair, replacement or improvement of the Facility); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Facility; or (iv) for the purchase of the Facility and related rights from Seller. As used herein, “Lender” includes a Tax Investor (as defined in the Lender Consent).

“Lender Consent” means a Consent to Collateral Assignment in favor of one or more Lenders and in substantially the form of **Exhibit T**.

“Letter of Credit” means an irrevocable standby letter of credit in form and substance acceptable to Buyer in its discretion, naming Buyer as the party entitled to demand payment and present draw requests thereunder, which letter of credit:

- (1) is issued by a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a net worth of at least \$1,000,000,000 and a Credit Rating of:
 - (a) “A2” or higher from Moody’s; or
 - (b) “A” or higher from S&P;
- (2) on the terms provided in the letter of credit, permits Buyer to draw up to the face amount thereof for the purpose of paying any and all amounts owing by Seller hereunder;
- (3) if a letter of credit is issued by a foreign bank with a U.S. branch, permits Buyer to draw upon a U.S. branch;
- (4) permits Buyer 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;
- (5) permits Buyer to draw the entire amount available thereunder if such letter of credit is not increased, replaced or replenished as and when provided in Section 7;
- (6) is transferable by Buyer to any party to which Buyer may assign this Agreement under Section 17.7; and
- (7) shall remain in effect for at least ninety (90) days after the end of the Term.

“Licensed Professional Engineer” means a person acceptable to Buyer in its reasonable judgment who (i) is licensed to practice engineering in the state in which the Facility is located, (ii) has training and experience in the engineering discipline(s) relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion,

(iii) has no economic relationship, association, or nexus with Seller, (iv) 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, (v) is engaged by Seller on terms reasonably acceptable to Buyer, (vi) has its fees paid for by Seller, and (vii) is licensed in an appropriate engineering discipline for the required certification being made. The engagement and payment of a Licensed Professional Engineer solely to provide the certifications, evaluations and opinions required by this Agreement shall not constitute a prohibited economic relationship, association or nexus with Seller, so long as such engineer has no other economic relationship, association or nexus with Seller.

“**MAAF**” has the meaning set forth in Section 5.1.2.

“**Maintenance Outage**” means NERC Event Type MO, as set forth in **Exhibit H**.

“**Major Equipment**” has the meaning set forth in **Exhibit I**.

“**Major Maintenance Cycle**” means, with respect to each item of Major Equipment, the period of time specified therefor in **Exhibit I**.

“**Mediation Notice**” has the meaning set forth in Section 15.2.1.

“**Minimum Monthly Capacity Payment**” has the meaning set forth in Section 5.1.3.

“**Monthly Capacity Payment**” has the meaning set forth in Section 5.1.2.

“**Moody’s**” shall mean Moody’s Investor Services, Inc.

“**MW**” means megawatt.

“**MWh**” means megawatt hour.

“**NERC**” means the North American Electric Reliability Council.

“**Net Energy**” means, for any period, the energy output of the Facility delivered to Buyer at the Electricity Delivery Point pursuant to Buyer’s Dispatch of the Facility of a quantity in MWh not to exceed that associated with Contract Capacity, as measured pursuant to Section 8, less station use and less transformation and transmission losses to the Electricity Delivery Point.

“**Network Resource**” means a generation resource which has been fully integrated into the System.

“**Notifying Party**” has the meaning set forth in Section 8.2.

“**Operating Procedures**” are set out in **Exhibit K**.

“**Pacific Prevailing Time**” means Pacific Standard Time or Pacific Daylight Time, as applicable on the Day in question.

“**Party**” has the meaning set forth in the Preamble.

“**Peakload Capacity**” means incremental Capacity, in excess of the Baseload Capacity, which is generated by the Facility utilizing duct firing. [if applicable]

“**Permits**” means all permits, licenses, approvals, certificates, entitlements and other authorizations issued by Governmental Authorities required for the development, construction, ownership, operation and maintenance of the Facility, and all amendments, modifications, supplements, general conditions and addenda thereto.

“**Person**” means any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or governmental authority.

“**Planned Outage**” means NERC Event Type PO, as set forth on **Exhibit H**.

“**Pledge Interest**” has the meaning set forth in Section 7.2.2.

“**Potential Event of Default**” means an event which, but for the passing of time or the giving of notice or both, would constitute an Event of Default.

“**Premises**” means the real property on which the Facility is or will be located, as more fully described on **Exhibit A**.

“**Prime Rate**” means 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. 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 based on the prime rate is being paid.

“**Protective Apparatus**” means such equipment and apparatus, including protective relays, circuit breakers and the like, necessary or appropriate to isolate the Facility from the System consistent with Prudent Electrical Practices.

“**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 for gas fired, combined cycle electric generation facilities, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, would have been expected to accomplish the desired result in a cost efficient manner consistent with good business practices, reliability criteria, safety considerations and expediency. 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.

“**Reference Conditions**” means the following conditions: standard ambient air pressure at the Premises of [?]; ambient temperature, dry bulb, of [?] degrees Fahrenheit; and relative humidity of [?] percent ([?]%).

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

“**Remaining Capacity**” means all the Capacity of the Facility in excess of the Contract Capacity.

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

“**Reporting Month**” has the meaning set forth in Section 6.9.1.

“**Requested Net Energy**” means, for any period, the Net Energy of the Facility that has been scheduled by Buyer for delivery in accordance with the Dispatch Procedures and other terms of this Agreement.

“**Required Facility Documents**” means all Permits and agreements now or hereafter necessary for the development, construction, ownership, operation and maintenance of the Facility including the documents (i) to which Seller and Buyer are a party evidencing the Security Interests and (ii) those set forth in **Exhibit C**.

“**Requirements of Law**” means collectively, as to Seller and [*if Seller is not the ultimate parent, any ultimate parent entity*], Seller’s organizational or governing documents and any federal, state, county or municipal, law, treaty, ordinance, franchise, rule, regulation, order, writ, judgment, injunction, decree, award or determination of any arbitrator, or a court or other Governmental Authority, in each case, now or hereafter applicable to or binding upon this Agreement, the Facility, Seller or [*if Seller is not the ultimate parent, any parent entity*] to which any of their respective properties are subject (including those pertaining to electrical, building, zoning, environmental and occupational health and safety).

“**RTO**” means any person, other than Transmission Provider, that becomes responsible as system operator for, or directs the operation of, the System.

“**S&P**” shall mean Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.).

“**Schedule**” or “**Scheduled**” means the acts of Buyer and Seller pursuant to Section 6.5 setting forth a schedule requesting and accepting the delivery of energy by Seller to Buyer on and after the Commercial Operation Date.

“**Scheduling Constraints**” means the limitations of the Facility’s Capacity arising as a result of the need to observe the physical ramp rates of the Major Equipment and maintain minimum run times, minimum down times, minimum dispatch levels of Net Energy and Capacity per CT, and maximum levels of Net Energy and Capacity, to be generated by any item of Major Equipment, in compliance with the warranty requirements relating to each item of Major Equipment, the operating and maintenance standards recommended by the Facility’s equipment suppliers, and Prudent Electrical Practice, as set forth on **Exhibit P**.

“**Scheduling Fees**” means fees assessed by any person to schedule the delivery of the energy.

“**Security Interests**” has the meaning set forth in Section 7.2.1.

“**Seller**” has the meaning set forth in the Preamble.

“**Senior Lenders**” means the Lenders providing construction financing for the Facility, or any term or permanent take-out financing of such construction financing.

“**Simple Cycle**” means operation of a Combustion Turbine without capturing the waste heat from the Combustion Turbine in the associated heat recovery steam generator and, therefore, without producing additional Net Energy from the steam turbine utilizing steam produced by such heat recovery steam generator. When one or more CTs are operated in Simple Cycle mode, the Facility will produce less Capacity and less Net Energy, while consuming Fuel at a higher heat rate, than when the Facility is operated in combined cycle mode to produce Baseload Capacity. The ramp rates applicable to each CT, as set forth in **Exhibit Q**, are faster in Simple Cycle mode than in combined cycle mode.

“**Solvency**” or “**Solvent**” has the meaning set forth in Section 3.2.12.

“**Standard Heat Rate**” means the actual Heat Rate of the Facility at varying levels of the Net Energy and varying ambient conditions.

“**Start-Up**” means a firing of one or more of the items constituting Major Equipment when such item or items of Major Equipment is not being operated, including any firing required to perform a CT Start. The period of a Start-Up of any item of Major Equipment begins at the commencement of such firing and ends when such item of Major Equipment obtains and produces on a continuous basis the desired quantity of Net Energy.

“**Start-Up Testing**” means the tests set in **Exhibit E**.

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

“**Tariff**” means Buyer’s FERC Electric Tariff Fourth Revised Volume No. 11 Pro Forma Open Access Transmission Tariff, as revised from time to time.

“**Term**” has the meaning set forth in Section 2.1.

“**Transmission Provider**” means [*PacifiCorp, an Oregon corporation, acting in its transmission function capacity.*] [*Note to Bidders: If the Facility is interconnected to another system, identify the appropriate Transmission Provider.*] Seller acknowledges that Buyer, as Buyer under this Agreement, has no responsibility for or control over such Transmission Provider.

“**Unexcused Outage**” has the meaning set forth in Section 5.1.2.

“**Unplanned Outage**” means NERC Event Type U, as set forth on **Exhibit H**.

1.2 Rules of Interpretation.

1.2.1 General. Unless otherwise required by the context in which any term appears, (a) the singular shall include the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” (if any) shall be to articles, sections, schedules, annexes, appendices or exhibits of this Agreement; (c) all references to a particular entity or an electricity market price index shall include a reference to such entity’s or index’s successors and (if applicable) permitted assigns; (d) the words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection hereof; (e) all accounting terms not specifically defined in this Agreement shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied; (f) references to this Agreement shall be deemed to include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; (g) the masculine shall include the feminine and neuter and vice versa; (h) the word “including” shall be construed in its broadest sense to mean “without limitation” or “but not limited to” and (i) the word “or” is not necessarily exclusive.

1.2.2 Terms Not to Be Construed for or Against Either Party. Each term of this Agreement 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 of this Agreement 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 of this Agreement are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement.

1.2.4 Interpretation with Interconnection Agreement. Each Party conducts its operations in a manner intended to comply with FERC Order No. 2004, Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions. Moreover, the Parties acknowledge that Transmission 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 separate Interconnection Agreement.

1.2.4.1 The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free standing contract and that the terms of this Agreement are not binding upon Transmission Provider.

1.2.4.2 Notwithstanding any other provision in this Agreement, nothing in the Interconnection Agreement shall alter or modify the Parties' rights, duties, and obligations under this Agreement. This Agreement shall not be construed to create any rights between Seller and Transmission Provider.

1.2.4.3 Seller expressly recognizes that, for purposes of this Agreement, Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Transmission Provider or an Affiliate thereof.

SECTION 2

TERM; COMMENCEMENT OF OPERATION

2.1 Term. This Agreement shall become effective when it is signed and delivered by both Parties (the "**Effective Date**") and, unless earlier terminated as provided in this Agreement, shall remain in effect until the [?] anniversary of the Commercial Operation Date (the "**Term**").

2.2 Milestones. Time is of the essence of this Agreement, and Seller's ability to meet certain milestones before the Commercial Operation Date and to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date is critically important. Therefore, Seller shall achieve the following milestones unless waived or extended by Buyer in its sole and absolute discretion: [*Note to bidders: portions of this Section 2.2 may not be applicable to a non-facility dependent contract*]

2.2.1 By [date], Seller shall demonstrate to Buyer's reasonable satisfaction that Seller has made all arrangements and obtained all means for transporting Fuel in quantities sufficient to operate the Facility at the Facility Capacity for the Term;

2.2.2 By [date], Seller shall obtain and provide to Buyer copies of all Required Facility Documents necessary for construction of the Facility;

2.2.3 By [date], Seller shall provide to Buyer evidence acceptable to Buyer that Seller has obtained construction financing for the Facility (or alternatively permanent financing subject only to construction of the Facility and Seller's execution of the lender's loan documents);

2.2.4 By [date], Seller shall provide Buyer with an As-built Supplement acceptable to Buyer;

2.2.5 By [date], Seller shall begin deliveries of Net Energy for purposes of initiating Start-Up Testing; and

2.2.6 By the Guaranteed Commercial Operation Date, the Commercial Operation Date shall have occurred. This shall require that all of the following conditions shall have been satisfied or waived by Buyer in its sole and absolute discretion:

(1) Buyer shall have received a certificate addressed to Buyer from a Licensed Professional Engineer certifying that the Facility is able to generate energy reliably in amounts required by this Agreement and in accordance with all other terms and conditions of this Agreement;

(2) Start-Up Testing of the Facility shall have been completed;

(3) After Buyer has received notice of the completion of Start-Up Testing, Buyer shall have endorsed a certificate addressed to Buyer from a Licensed Professional Engineer certifying that the Facility has operated for testing purposes under this Agreement uninterrupted for a period of ten (10) consecutive days at a rate of at least the Facility Capacity based upon any sixty (60) minute period for the entire testing period. Seller must provide five (5) Business Days' written notice to Buyer before the start of the Start-Up Testing period. If the operation of the Facility is interrupted during this initial testing period or any subsequent testing period, the Facility shall start a new consecutive ten (10) day testing period and Seller shall provide Buyer forty-eight (48) hour written notice before the start of such testing period;

(4) Buyer shall have received a certificate addressed to Buyer from a Licensed Professional Engineer certifying that, in accordance with the Interconnection Agreement, all required Electrical Interconnection Facilities have been constructed, all required interconnection tests have been completed, the Facility is physically interconnected with the System and the Facility Capacity is a Network Resource;

(5) Buyer shall have received a certificate addressed to Buyer from a Licensed Professional Engineer certifying that Seller has obtained all Required Facility Documents for the construction and operation of the Facility and, if requested by Buyer in writing, Seller shall have provided copies of any or all such requested Required Facility Documents, together with (i) the certificates of insurance coverage or insurance policies required by Section 12.1, and (ii) copies of all Required Facility Documents which Seller is responsible to obtain or are required for the construction and operation of the Facility;

(6) Buyer shall have issued a written certificate to Seller certifying that Buyer has received all Facility drawings, plans, specifications, policies, and other documents required by this Agreement;

(7) Buyer shall have received a certificate addressed to Buyer from Seller's primary construction contractor certifying that the Facility has been turned over to Seller for permanent operation and maintenance and that the primary construction contractor

owes no further construction-related obligations to Seller (other than punch list items); and

(8) Buyer shall have received a certificate addressed to Buyer from an office of Seller and acceptable to Buyer certifying that no Event of Default by Seller or Potential Event of Default by Seller exists under this Agreement.

2.3 Daily Delay Damages. Seller shall cause the Commercial Operation Date to occur on or before the Guaranteed Commercial Operation Date but no earlier than [**? months**] prior to the Guaranteed Commercial Operation Date. If the Commercial Operation Date does not occur on or before the Guaranteed Commercial Operation Date, to compensate Buyer for the failure to provide energy and Capacity from the Facility, Seller shall pay Buyer delay damages equal to the Daily Delay Damages times Contract Capacity for each Day or portion of a Day until that Day that the Commercial Operation Date occurs from and after the Guaranteed Commercial Operation Date. Each Party agrees and acknowledges that (a) the damages that Buyer would incur for the failure to provide energy from the Facility due to delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date would be difficult or impossible to predict with certainty, and (b) the Daily Delay Damages mechanism is an appropriate approximation of such damages. This Section 2.3 shall not limit the amount of damages payable to Buyer if this Agreement is terminated as a result of Seller's failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date and any such damages shall be determined in accordance with Section 10.7. In addition, this Section 2.3 shall not limit the damages payable to Buyer for matters resulting from delay in achieving the Commercial Operation Date other than the failure to provide energy from the Facility.

2.4 Damages Invoicing. By the tenth (10th) day following the end of the calendar month of the Guaranteed Commercial Operation Date, and continuing on the tenth (10th) day following the end of any calendar month during which Daily Delay Damages are incurred, Buyer shall deliver to Seller a proper invoice showing Buyer's computation of such damages and any amount due Buyer in respect thereof for the preceding calendar month. No later than ten (10) days after receiving such an invoice, Seller shall pay to Buyer, by wire transfer of immediately available funds to an account specified in writing by Buyer or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice.

2.5 Buyer's Right to Monitor. During the design, procurement, construction, installation, start up and testing of the Facility, Seller shall permit Buyer and its advisors and consultants to:

(a) Review and discuss with Seller and its advisors and consultants monthly status reports on the progress of the development, design, construction and installation of the Facility. Between the date on which this Agreement is executed and thirty (30) days following the Commercial Operation Date, Seller shall, on or before the tenth (10th) day of each calendar month, provide Buyer with a brief monthly status report for the preceding month.

(b) Monitor the development, design, engineering, procurement, construction and installation of the Facility and the performance of the contractor(s) constructing the Facility.

(c) Review and monitor the contractors' performance and achievement of (i) all initial performance tests and other tests required under the Facility construction contracts that must be performed in order to achieve the Commercial Operation Date and (ii) all tests contemplated by the warranty agreement(s) between the Seller and manufacturer of the Facility's CTs and any other Major Equipment. Buyer reserves the right to require additional performance tests of the Facility's CTs in the event that Seller elects not to have such CTs or other Major Equipment covered by warranty agreements acceptable to Buyer. Seller shall provide Buyer with at least five (5) Business Days' prior notice of each such test.

(d) Witness initial performance tests and other tests and review the results thereof.

(e) Perform such examinations, inspections, and quality surveillance as, in Buyer's reasonable judgment, are appropriate and advisable to determine that all Major Equipment comprising the Facility has been properly commissioned and that the Facility has achieved the Commercial Operation Date.

The Parties acknowledge and agree that Buyer is under no obligation to perform any of the monitoring rights under this Section 2.5. Any information or knowledge obtained by Buyer in the exercise of its rights under this Section 2.5 shall not prevent Buyer from subsequently asserting that Seller failed to perform its obligations under this Agreement or failed to satisfy any of its conditions in Section 2, nor shall the exercise by Buyer of such rights be used as evidence that Seller performed its obligations under this Agreement or satisfied its conditions in Section 2 or that Buyer gave any consent to Seller's action in meeting its obligations under Section 2. Buyer's right to indemnification, payments for damages or other remedy in this Agreement will not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Commercial Operation Date, including with respect to the accuracy or inaccuracy of any representation or warranty, or compliance with any covenant or obligation hereunder. Buyer shall maintain one or more designated representatives for purposes of the monitoring activities contemplated in this Section 2.5, which representatives shall have authority to act for Buyer in all technical matters under this Section 2.5. However, Buyer's representatives, in their capacity as representatives, shall not have the authority to amend or modify any provision of this Agreement. Buyer's initial representatives for purposes of this Section 2.5 and their contact information are listed in **Exhibit N**. Buyer may, by written notice to Seller, change its representatives or the contact information for such representatives.

SECTION 3

REPRESENTATIONS AND WARRANTIES

3.1 Buyer's Representations and Warranties. Buyer represents, covenants, and warrants to Seller that:

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

3.1.2 Authority. Buyer 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 Corporate Actions. Buyer 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 No Contravention. 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 Buyer or any valid order of any court, or any regulatory agency or other body having authority to which Buyer is subject.

3.1.5 Valid and Enforceable Agreement. This Agreement is a valid and legally binding obligation of Buyer, enforceable against Buyer 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's Representations and Warranties. Seller represents, covenants, and warrants to Buyer that:

3.2.1 Organization. Seller is a [*insert legal entity*] duly [*organized*] and validly existing under the laws of [_____].

3.2.2 Authority. Seller (i) has the requisite power and authority to enter into this Agreement and to perform, including all required regulatory authority to make wholesale sales from the Facility; (ii) has the power and authority to own and operate its businesses and properties, to own or lease the property it occupies and to conduct the business in which it currently engaged; and is duly qualified as [_____] in Utah; and (iii) is 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.

3.2.3 Actions. Seller has taken all [*insert appropriate legal entity*] actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.2.4 No Contravention. The execution, delivery, performance and observance by Seller of its obligations under this Agreement do not and will not:

3.2.4.1 contravene, conflict with or violate any provision of any material Requirements of Law presently in effect having applicability to either Seller or [*if Seller is not the ultimate parent, Seller's ultimate parent*];

3.2.4.2 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 C** or (ii) required in connection with the construction and/or operation of the Facility and expected to be obtained in due course;

3.2.4.3 result in a breach of or constitute a default under any provision of any security issued by [*ultimate parent of Seller*] or any of its Affiliates or any material agreement, instrument or undertaking to which either [*ultimate parent of Seller*] or any of its Affiliates is a party or by which [*ultimate parent of Seller*]'s or any of its Affiliates' property is bound; or

3.2.4.4 require Seller to be licensed under the Utah Construction Trades Licensing Act.

3.2.5 Valid and Enforceable Agreement. 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 Litigation. No litigation, arbitration, investigation or other proceeding is pending or, to the best of Seller's knowledge, threatened against either Seller, its parent(s), or any Affiliate with respect to this Agreement and the transactions contemplated hereby and thereby.

3.2.7 Accuracy of Information. To the knowledge of Seller, no exhibit, contract, report or document furnished by Seller to Buyer in connection with this Agreement, or the negotiation or execution of this Agreement contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statements contained therein not misleading.

3.2.8 Required Facility Documents. All Required Facility Documents are set forth in **Exhibit C** attached hereto. To Seller's knowledge, no unusual or burdensome conditions are expected by Seller to be placed upon, or created by, any of the Required Facility Documents. The anticipated use of the Facility complies with all applicable restrictive covenants affecting the Premises and all Requirements of Law. The representation made in this Section 3.2.8 shall be deemed to be given throughout the entire Term.

3.2.9 Taxes. Seller has filed or caused to be filed all tax returns which were required to be filed and has paid all taxes shown to be due and payable on said returns or on any assessments made against it or any of its property including the Premises, and all other taxes, fees or other charges imposed on it or any of its property by any Governmental Authority, and no tax liens have been filed and no claims are being asserted with respect to any such taxes, fees or other charges, except where such taxes, fees or other charges are being contested in good faith by Seller through appropriate proceedings with adequate reserves set aside in the event of an adverse determination.

3.2.10 Seller's Intent. Seller intends:

3.2.10.1 To construct and operate the Facility in accordance with Prudent Electrical Practices, and in accordance with, and subject to the terms of this Agreement;

3.2.10.2 To supply the Contract Capacity and Net Energy of the Facility throughout the Term of this Agreement in accordance with the provisions of this Agreement; and

3.2.10.3 [if Seller will be a single purpose vehicle, that its sole business shall be the ownership and operation of the Facility.]

3.2.11 No Collusion. Neither Seller nor any of its representatives has entered into any form of collusive arrangement with any person or entity which directly or indirectly has to any extent lessened competition between Seller and any other person or entity for the supply of Capacity and energy sought by Buyer.

3.2.12 Solvency. Seller, its parent(s) and their Affiliates are Solvent. As used herein, “**Solvent**” and “**Solvency**” means with respect to any person or entity on any date of determination, that on such date (a) the book value of the property of such person or entity is greater than the total amount of book liabilities, including contingent liabilities that are probable and estimable, of such person or entity, (b) such person or entity is able to pay its debts as they become absolute and matured, taking into account the possibility of refinancing such obligations and selling assets, (c) such person or entity does not intend to, and does not believe that it will, incur debts or liabilities beyond such person’s or entity’s ability to pay such debts and liabilities as they mature taking into account the possibility of refinancing such obligations and selling assets and (d) such person or entity is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such person’s or entity’s property would constitute an unreasonably small capital. The amount of contingent liabilities at any time shall be computed as the amount that are probable and estimable in the light of all the facts and circumstances existing at such time, and that can reasonably be expected to become an actual or matured liability.

3.3 Notice. If at any time during the Term, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties made by it in this Section 3 to have been materially untrue or misleading when made, such Party shall provide the other Party with notice in accordance with Section 17.12 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

SALE AND PURCHASE OBLIGATIONS

4.1 Sale and Purchase of Contract Capacity, Capacity Rights, Net Energy and Ancillary Services.

4.1.1 Subject to the terms and conditions of this Agreement, on and after the Commercial Operation Date and for the balance of the Term, Seller shall make available to Buyer from the Facility the Contract Capacity and the Capacity Rights, and all Net Energy and Ancillary Services associated with such Contract Capacity that is Scheduled by Buyer for delivery in accordance with the Dispatch Procedures and Section 6.5.2.

4.1.2 Subject to Section 5.1, Buyer shall purchase the Contract Capacity of the Facility and pay a monthly Capacity Payment to Seller.

4.1.3 Seller shall provide Ancillary Services and Capacity Rights to Buyer without additional charge or expense.

4.1.4 Buyer shall be under no obligation to purchase any Capacity under this Agreement other than Contract Capacity.

4.1.5 Buyer shall pay the amounts specified in Section 5, and Seller shall then provide to Buyer without additional charge or expense all Net Energy and Ancillary Services that have been Scheduled by Buyer.

4.1.6 Seller shall provide to Buyer from the Facility the Contract Capacity, and associated quantities of Net Energy or Ancillary Services as Scheduled by Buyer in accordance with this Agreement. Subject to Section 4.3, the Contract Capacity, and the Net Energy and Ancillary Services associated with such Contract Capacity, shall be made available exclusively to Buyer and Seller shall be free to sell the Remaining Capacity of the Facility, and the Net Energy and Ancillary Services associated with such Remaining Capacity, to any third party. Seller shall have absolute discretion over the operation of the Facility to generate the quantities of Capacity, Net Energy and Ancillary Services to be delivered to Buyer in compliance with the provisions of this Agreement. In addition, Seller shall have absolute discretion over the use of the Remaining Capacity in sales to any third party(s).

4.2 Deliveries; Title and Risk of Loss. All Net Energy and Ancillary Services that have been, at Buyer's option, Scheduled by Buyer shall be delivered by Seller to Buyer at the Electricity Delivery Point. Seller shall be deemed to be in exclusive control of, and responsible for any damage or personal injury caused by, Net Energy or Ancillary Services delivered hereunder up to the Electricity Delivery Point; and Buyer shall be deemed to be in exclusive control of, and responsible for any damages or injury caused by, such Net Energy or Ancillary Services from the Electricity Delivery Point. Seller warrants and agrees that it will transfer and deliver Contract Capacity, Capacity Rights, Ancillary Services and Net Energy to Buyer free and clear of all liens or other encumbrances and rights of third parties. Title to and risk of loss of all

Net Energy or Ancillary Services shall transfer from Seller to Buyer upon delivery to Buyer at the Electricity Delivery Point.

4.3 Dispatching Deliveries from the Contract Capacity versus the Remaining Capacity.

4.3.1 Seller shall exclusively make available to Buyer the Contract Capacity of the Facility, and Seller shall deliver to Buyer, and Buyer shall receive, the quantities of Net Energy and Ancillary Services that were Scheduled by Buyer from such Contract Capacity in accordance with this Agreement. Subject to Section 4.3.1, Seller retains absolute discretion as to which items of the Major Equipment of the Facility are operated to generate and deliver (i) the quantities of Net Energy and Ancillary Services to be delivered to Buyer from the Contract Capacity and (ii) the quantities of Net Energy and Ancillary Services to be delivered to any third party purchaser from the Remaining Capacity.

4.3.2 During any Excused Outage or Unexcused Outage of the Facility, as defined in Section 5.1.2, which causes a partial outage of the Facility, but not a complete shutdown of the Facility, Buyer's right to the Contract Capacity shall not be affected by any reduction in the Facility Capacity, and to the extent there is a reduction of Facility Capacity, Seller shall make available to Buyer all of such reduced Facility Capacity up to the Contract Capacity. Subject to the foregoing, Seller shall, at all times, have the right to make available for sale to any third party purchasing any of the Remaining Capacity no more than the actual available Capacity of the Facility less the Contract Capacity.

4.3.3 At any time that the Contract Capacity is available, Buyer may elect to Schedule any of the quantities of Net Energy, and equivalent quantities of Ancillary Services, specified in the range of dispatchable quantities of Net Energy on **Exhibit P**.

4.4 Curtailed Due to Failure to Comply with Interconnection Agreement. Buyer shall not be obligated to purchase Contract Capacity or receive or pay for Net Energy to the extent generation or transmission curtailment is required as a result of Seller's non-compliance with the Interconnection Agreement. Nothing in this Section 4.4 shall relieve Seller of its duty to comply with the Interconnection Agreement and Net Energy curtailed as provided under this Section 4.4 shall not be deemed to be an Excused Outage, or credited toward the achievement of Net Energy, as the case may be.

4.5 Sale of Test Energy. During the period between the Effective Date and the Commercial Operation Date, Seller shall sell and make available to Buyer, and Buyer shall purchase and accept, all energy produced by the Facility during such period (the "Test Energy") as if it were Net Energy.

SECTION 5

PAYMENTS; COSTS

5.1 Capacity Payments. Commencing on the last day of the month in which the Commercial Operation Date occurs, Buyer shall, subject to Section 5.1.4, pay to Seller in arrears

a Capacity Payment equal to the greater of (i) the Monthly Capacity Payment as determined in Section 5.1.2, or (ii) the Minimum Monthly Capacity Payment as determined in Section 5.1.3.

5.1.1 All Capacity Payments shall be billed on a calendar month basis. In the event that Commercial Operation Date does not occur at the start of a calendar month, the first month's Capacity Payment shall be prorated to reflect the actual number of days of Commercial Operation in such month.

5.1.2 Monthly Capacity Payment. The "Monthly Capacity Payment" shall be computed based upon the following formula:

Monthly Capacity Payment = $(CC \times 1000 \times CPR \times MAAF) - CPS$, where:

CC = the Contract Capacity;

CPR = Capacity Payment Rate;

CPS = Capacity Payment Shortfall, if any from any prior month; and

MAAF = Availability Adjustment Factor for that month, computed as follows:

a. If $CAF_m = [\text{Bidder to insert } 96\%]$, $MAAF = 1$

b. If $CAF_m < [\text{Bidder to insert } 96\%]$, $MAAF = 1 - 2 \times ([\text{Bidder to insert } 96] - CAF_m)$

Provided, however, MAAF cannot be less than zero (0).

CAF_m = Average Capacity Availability Factor for a month shall equal the sum of the hourly Capacity Availability Factors (" CAF_h ") determined for each hour of such month, divided by the total number of hours in such month; and

CAF_h = $(AD + DD) / AFCE$

Provided, however, CAF_h cannot be more than one (1).

where:

"AD" (Actual Deliveries) means, for any hour, the actual quantity of energy generated by the Facility and delivered by Seller to Buyer at the Electricity Delivery Point;

"DD" (Deemed Deliveries) means, for any hour, (i) a quantity of energy equal to the amount of energy that could have been generated by that portion of the Ambient Facility Capacity that was set forth in the Availability Notice (a) that was not dispatched by Buyer in such hour, ~~unless such failure to dispatch was caused during times and to the extent that Transmission Provider curtails Network Integration Transmission Service (as defined in the Tariff) to Buyer pursuant to the terms of the~~

Tariff, (b) that was not generated and delivered due to a Potential Event of Default or an Event of Default by Buyer, or (c) that was not operated to generate and deliver Net Energy or Ancillary Services to Buyer due to any failure by Buyer; (ii) any amount of energy that was not available from the Facility for dispatch and receipt by Buyer, during the relevant hour, due to any outage or derating that meets the requirements for Scheduled Maintenance established in **Exhibit I**; and (iii) any amount of energy that was not available from the Facility for Dispatch and receipt by Buyer, during the relevant hour, due to any Force Majeure event. The unavailability of Capacity for any of the reasons set forth in clauses (i)(c), (ii) or (iii) shall be considered an “**Excused Outage**.” To the extent that the Capacity of the Facility, up to the Contract Capacity, is unavailable to Buyer for any reason other than an Excused Outage shall be considered an “**Unexcused Outage**.”

“**AFCE**” (Ambient Facility Capacity Energy) means the quantity of energy that could be produced from the Ambient Facility Capacity during such hour.

5.1.3 Minimum Monthly Capacity Payment. During any month, the “**Minimum Monthly Capacity Payment**” shall equal the amount determined by the following formula:

Minimum Monthly Capacity Payment = $CC \times 1000 \times CPR \times [?]\%$, where:

CC = the Contract Capacity;

CPR = Capacity Payment Rate; and

% = [?].

5.1.4 Carry-Over Provisions. With respect to any month in which the calculated Monthly Capacity Payment is less than the Minimum Monthly Capacity Payment, the difference between the two payment amounts shall be set forth in a separate account (the amount in such account is referred to herein as the “**Capacity Payment Shortfall**”). The Capacity Payment Shortfall shall be increased by interest at the Prime Rate divided by 365 on the maximum amount of the Capacity Payment Shortfall on that day and shall be recovered by Buyer as a credit against the otherwise applicable Monthly Capacity Payment owed to Seller in any following month and by drawing on the Carry-Over-Letter of Credit as provided below. That portion of any Capacity Payment Shortfall which is not recovered in any month shall be carried over to each subsequent month thereafter until recovered by Buyer in full from Seller. If the Capacity Payment Shortfall exceeds $\$[?]$, then Seller shall provide a Letter of Credit for the benefit of Buyer, in form reasonably acceptable to Buyer, with a face amount equal to the full amount of the Capacity Payment Shortfall amounts (“**Carry-Over Letter of Credit**”). The amount of such Carry-Over Letter of Credit shall be adjusted thereafter, at the end of each month, to equal the then-outstanding Capacity Payment Shortfall. At the end of each Contract Year, Buyer shall be entitled to draw down against the Carry-Over Letter of Credit for the amount the Capacity Payment Shortfall that has not been recovered as of that date.

5.2 Energy Payment. Commencing on the last day of the month in which the Commercial Operation Date occurs, Buyer shall pay to Seller in arrears an Energy Payment as set forth in **Exhibit F** for Net Energy.

5.3 Test Energy. For the period between the Effective Date and the Commercial Operation Date, Seller shall sell and deliver Net Energy to Buyer at the Electricity Delivery Point as Test Energy. Buyer shall pay Seller for Test Energy delivered at the Electricity Delivery Point, an amount per MWh equal to eighty-five percent (Bidder to insert 85%) of the settled price for the applicable hour in the daily (i) firm on-peak, (ii) firm-off peak or (iii) 24-hour firm (on Sundays and NERC holidays) Dow JonesTM SP15 Electricity Price Index; *provided, however*, that the amount to be paid by Buyer for such Test Energy shall in no event exceed seventy-five percent (75%) of the price per MWh specified on **Exhibit M** for the first Contract Year. If the Dow JonesTM SP15 Electricity Price Index ceases to be published during the Term, Buyer shall select as a replacement electricity price index or component, an index acceptable to Buyer in its discretion that, after any necessary adjustments, provides the most reasonable substitute quotation of the daily price of firm on-peak, firm off-peak or 24-hour firm energy at South of Path 15 for the applicable periods.

5.4 Costs and Charges. Seller shall be responsible for all costs or charges imposed in connection with the delivery of Net Energy at the Electricity Delivery Point, including transmission costs and charges. Without limiting the generality of the foregoing, except to the extent otherwise provided in the Interconnection Agreement, Seller shall bear all costs associated with the modifications to Transmission Provider's interconnection facilities or electric system (including system upgrades) caused by or related to (a) the interconnection of the Facility with Transmission Provider's system, (b) any increase in Capacity of the Facility, and (c) any increase of delivery of energy from the Facility.

5.5 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.

SECTION 6

OPERATION AND CONTROL

6.1 As-Built Supplement. Upon completion of construction of the Facility, Seller shall provide Buyer the As-built Supplement. The As-built Supplement shall be deemed effective and shall be added to **Exhibit A** of this Agreement when it has been reviewed and approved by Buyer. Buyer shall not unreasonably withhold, condition or delay its approval of the As-built Supplement.

6.2 Measurement and Quality of Net Energy. All Net Energy shall be measured at the Electricity Delivery Point and shall meet all requirements in the Interconnection Agreement and the specifications set forth in **Exhibit P**. Seller shall instruct the Transmission Provider in writing that Buyer is entitled to receive, directly from Transmission Provider, any and all data associated with the Facility and/or the production of Net Energy that the Transmission Provider has in its possession.

6.3 Standard of Facility Operation.

6.3.1 General.

6.3.1.1 At Seller's sole cost and expense, Seller shall operate, maintain and repair the Facility and the Electrical Interconnection Facilities in accordance with (i) the standards, criteria and formal guidelines of FERC, NERC, any RTO, and any successors to the functions thereof; (ii) the Required Facility Documents; (iii) the Interconnection Agreement; (iv) all Requirements of Law; (v) the requirements of this Agreement; and (vi) Prudent Electrical Practice. During the Term, Seller shall be the sole owner of the Electrical Interconnection Facilities. Seller shall defend, indemnify and hold Buyer harmless from and against any requirements to comply with FERC Open Access requirements respecting the Electrical Interconnection Facilities caused by Seller's act or omission. Seller acknowledges that it shall have no claims under this Agreement against Buyer, acting in its merchant function capacity, with respect to any requirements imposed by or damages caused by Buyer, acting in its transmission function capacity, in connection with the Interconnection Agreement or otherwise.

6.3.1.2 Without limiting the generality of Section 6.3.1.1, Seller shall:

6.3.1.2.1 At all times, employ qualified and trained personnel for managing, operating and maintaining the Facility and for coordinating such managing, operating and maintenance with Buyer. Seller shall ensure that prior to or on the first Day Seller delivers energy to the Electricity Delivery Point such qualified and trained personnel are available to Buyer at all times, twenty-four (24) hours per Day during the Term.

6.3.1.2.2 Operate and maintain the Facility with due regard for the safety, security and reliability of the System and Buyer's customers and in compliance with the general specifications contained in **Exhibit I**.

6.3.1.2.3 Comply with operating and maintenance standards recommended by the Facility's equipment suppliers.

6.3.1.2.4 Coordinate the Facility's relaying and protection to conform with Prudent Electrical Practice.

6.3.1.2.5 Furnish and install, at Seller's sole expense, a manually operable disconnecting device that can be locked by Buyer in the open position and visually checked to be in the open position, so as to be able to electrically isolate the Facility from the System. This device(s) shall be installed at a location at or near the Electricity Delivery Point.

6.3.1.2.6 Have the Facility's protective relays calibrated and operationally checked, at least annually by a person qualified to perform such service and provide Buyer with a written confirmation of the calibration.

6.3.1.2.7 Operate the Facility in such a manner so as not to have an adverse effect on Buyer's voltage level or voltage waveform.

6.3.1.2.8 Operate the Facility in a manner and consistent with the Operating Procedures so as to permit Buyer to dispatch individuals items of Major Equipment required to generate energy Scheduled by Buyer.

6.3.2 Interconnection. Pursuant to the Interconnection Agreement, Seller shall be responsible for the costs and expenses associated with interconnection of the Facility at its Facility Capacity at the Electricity Delivery Point, including the costs of any System upgrades beyond the Electricity Delivery Point necessary to interconnect the Facility with System and to allow the delivery of energy to the Electricity Delivery Point.

6.3.3 Coordination with System. Pursuant to the Interconnection Agreement, Seller shall be responsible for the coordination and synchronization of the Facility's equipment with the System, and shall be solely responsible for (and shall defend and hold Buyer harmless against) any damage that may occur as a direct result of Seller's improper coordination or synchronization of such equipment with the System.

6.4 Operating Procedures and Compliance.

6.4.1 Without limiting the generality of Section 6.2, during the Term, the Parties shall observe the Operating Procedures.

6.4.2 In the Operating Procedures, each Party has designated an authorized representative (an "**Authorized Representative**") and an alternate representative (an "**Alternate Representative**") to act in the Authorized Representative's absence. A Party's appointment of an Authorized Representative and Alternate Representative shall remain in full force and effect until the Party delivers written notice of substitution to the other Party. The Authorized Representatives and Alternate Representatives shall be managers well-experienced with regard to matters relating to the implementation of the Parties' rights and obligations under this Agreement.

6.4.3 Operational Compliance.

6.4.3.1 Required Facility Documents. Seller shall maintain in full force and effect and available for inspection by Buyer during the Term all Required Facility Documents now or hereafter required.

6.4.3.2 Hazardous Substances. Seller shall operate the Facility in compliance with all Environmental Laws and permits, licenses, rules or orders promulgated, issued or otherwise required by a Governmental Authority having jurisdiction or enforcement power over any Environmental Law and Seller. Seller shall immediately notify Buyer if Seller or any Affiliate of Seller receives or obtains any actual knowledge of or actual notice of any past, present or future actions or plans which may interfere with or prevent compliance or continued compliance with Environmental Laws, affect the construction or operation of the Facility, or may give rise to any material liability under any Environmental Laws or to any common law or legal

liability or otherwise form the basis of any claim, action, demand, suit, proceeding, hearing, study or investigation under Environmental Laws.

6.4.4 Taxes. Seller shall pay when due or reimburse Buyer for all existing and any new sales, use, excise, ad valorem, and any other similar taxes, imposed or levied by any Governmental Authority on the sale of Net Energy to Buyer under this Agreement regardless of whether such taxes are payable by Buyer or Seller under Requirements of Law.

6.4.5 Fines and Penalties.

6.4.5.1 Seller shall pay when due, and in no event later than thirty (30) days of assessment, all fines, penalties, or legal costs incurred by Seller or for which Seller is legally responsible for noncompliance by Seller, its agents, employees, contractors or subcontractors, with any provision of this Agreement, any agreement, commitment, obligation or liability incurred in connection with this Agreement or the Facility or any Requirements of Law, except where such fines, penalties or legal costs are being contested in good faith by Seller, its agents or contractors through appropriate proceedings with (i) adequate reserves set aside, or (ii) if requested by Buyer, the posting of adequate security, in the event of an adverse determination.

6.4.5.2 Subject to Section 6.4.4, if fines, penalties, or legal costs are assessed against Buyer by any Governmental Authority due to noncompliance by Seller with any Requirements of Law, or if the performance of Seller is delayed or stopped by order of any Governmental Authority due to Seller's noncompliance with any Requirements of Law, Seller shall indemnify and hold harmless Buyer against any and all losses, liabilities, damages, and claims suffered or incurred by Buyer.

6.4.5.3 Seller shall reimburse Buyer for all fees, damages, or penalties imposed by any Governmental Authority, other person or to other utilities for violations to the extent caused by a Potential Event of Default or an Event of Default by Seller or a failure of performance by Seller under this Agreement.

6.5 Scheduling Procedures. [*Note to bidders: portions of this Section 6.5 may not be applicable to a non-facility dependent contract*]

6.5.1 Availability Notices and Updates.

6.5.1.1 By 5:00 A.M. Pacific Prevailing Time on the Business Day immediately preceding the next three (3) Days on which energy is to be delivered by Seller to Buyer, Seller shall provide Buyer with an hourly forecast of the Capacity of the Facility expected to be available to Buyer, up to the Contract Capacity, and for each hour of the next three (3) Days (as set forth in the form of **Exhibit L**, an "**Availability Notice**"); *provided, however*, that an Availability Notice provided on a Day before any non-Business Day shall include forecasts for each Day to and including the next Business Day. Delivery of an Availability Notice by Seller to Buyer with respect to any item of Major Equipment declared Available shall be deemed a declaration that all Ancillary Services capable of being provided from such Major Equipment are available for the Days for which such Availability Notice shall be effective. Seller shall

promptly update Availability Notices any time information becomes available indicating a change in the forecast of generation of energy from the then current forecast; and in any event within 15 minutes of each time it becomes aware of a change (favorable or unfavorable) in the availability, or projected availability, of the Facility or electric transmission capacity, *provided* that such changes to the daily Availability Notices may be delivered by telephone within the fifteen (15) minute initial period and then later confirmed in writing within the hour. To the extent commercially reasonable, the parties shall cooperate to implement and use automatic forecast updates.

6.5.1.2 Availability Notices shall specify any known limitations on the availability of electric transmission capacity made known to Seller that may affect the ability of the Facility to generate and deliver Scheduled Energy to the Electricity Delivery Point. Seller will also provide Buyer with a monthly Availability Notice six Business Days before the commencement of each such month, and a weekly Availability Notice on each Friday for the next week. Availability Notices identifying reductions in availability will include a short description of the nature of the problem, steps taken or being taken to resolve it and Seller's estimate of the time by which a reduction in availability will be resolved. Availability Notices identifying projected restorations of Capacity availability will specify the time and extent that such restoration is projected to occur, and Seller will issue a further notice after restoration of availability is complete. Without limiting the foregoing, Seller will inform Buyer of any major limitations, restrictions, deratings or outages known to Seller affecting the ability to generate Facility Capacity for the following Day and will promptly update Seller's notice to the extent of any material changes in this information.

6.5.1.3 Availability Notices will be used by and relied upon by Buyer to establish and adjust electric transmission schedules. If Seller has provided notice to Buyer of a reduction in availability affecting transmission schedules, then prior to increasing Facility generation for delivery to Buyer as a result of restored availability, Seller will provide Buyer timely notice so as to enable Buyer sufficient time to reestablish its transmission schedules. The failure by Seller to provide revised Availability Notices is not a breach of this Agreement, but rather places Seller at risk for electric imbalance penalties or charges incurred by Buyer due to its lack of notice; *provided, however*, the failure to provide such notices more than [?] times a Contract Year shall constitute the failure to perform a material obligation hereunder that is not capable of being cured.

6.5.2 Dispatch Notice.

6.5.2.1 No later than 5:00 P.M. Pacific Prevailing Time on each Business Day, Buyer shall deliver to Seller a statement (which may be communicated by fax, e-mail or other electronic medium or a recorded telephone line) setting forth the estimated quantity of Net Energy to be Scheduled during each hour of the immediately following Day(s) at the Electricity Delivery Point. These estimates shall not be binding upon Buyer and Buyer may subsequently revise its estimates. The foregoing estimates by Buyer shall not be construed to permit Seller to limit the availability of the Facility such that Buyer is restricted from Dispatching Contract Capacity unless the Facility Capacity is physically unavailable due to

Force Majeure, Planned Outage or Unplanned Outage, as the case may be. Buyer's written statement may request the delivery of energy to be Scheduled during any or all hours of any Day.

6.5.2.2 Each Dispatch Notice submitted by Buyer shall specify (i) the quantities of Net Energy or Ancillary Services being Scheduled from the Baseload Capacity component of the Contract Capacity, (ii) the quantities, if any, of Net Energy or Ancillary Services being Scheduled from the Peakload Capacity component of the Contract Capacity, and (iii) the quantities, if any, of Net Energy or Ancillary Services being Scheduled from the Facility in Simple Cycle mode. In order to be included on any Dispatch Notice, each quantity of Net Energy, and each equivalent quantity of Ancillary Services, being Scheduled by Buyer from the Baseload Capacity component of the Contract Capacity, or from the Peakload Capacity component of the Contract Capacity, or in Simple Cycle mode, must be shown as a dispatchable quantity on **Exhibit O**. Any amount not shown on **Exhibit O**, but which falls between listed numbers on **Exhibit O** and is explicitly within the range of allowed dispatch, shall be interpolated from the numbers immediately above and below that amount which are listed on **Exhibit O**, including applicable heat rates. An example of a hypothetical Dispatch Notice is attached hereto as **Exhibit R**.

6.5.2.3 Seller shall be obligated to accept a request for Net Energy that has been provided to Seller in accordance with the requirements of Sections 6.5.2.1 and 6.5.2.2 except to the extent (i) such request exceeds the Contract Capacity or the Scheduling Constraints or (ii) Seller declares that the Facility is not available as a result of a previously declared Planned Outage, a Forced Outage, or an event of Force Majeure. Seller shall promptly notify Buyer if Seller determines that it will not accept a Schedule submitted by Buyer for any of the foregoing reasons.

6.5.2.4 Buyer shall pay or reimburse Seller for all Scheduling Fees charged by any third parties, if any, associated with the Scheduling of Net Energy or Ancillary Services generated by the Facility for delivery to Buyer hereunder or, if applicable, any fees charged by an independent third party for providing Ancillary Services required to deliver Net Energy or Ancillary Services generated by the Facility to Buyer.

6.5.2.5 From time to time during the Term, Buyer may designate a third party to Schedule quantities of Net Energy on behalf of Buyer in accordance with any Requirements of Law. Buyer may also wish to change the designated entity acting in such capacity from time to time. Accordingly, upon request of Buyer, Seller shall make such arrangements in accordance with the Requirements of Law at Buyer's cost as may be reasonably necessary to facilitate the re-designation of the Person who may Schedule quantities of Net Energy on Buyer's behalf.

6.5.2.6 As shown in the Scheduling Constraints set forth for the Facility in **Exhibit P**, the ramp rates applicable to the various items of Major Equipment comprising the Facility are faster for the Facility operating in Simple Cycle mode than in combined cycle mode. To the extent that Buyer elects to Schedule the delivery of Net Energy, and any equivalent quantity of Ancillary Services, from the Facility in Simple Cycle mode the Scheduling Constraints applicable to Simple Cycle mode shall be applicable to such Scheduling

by Buyer. For any Scheduling by Buyer of Net Energy or Ancillary Services from the Baseload Capacity component or the Peakload Capacity component of the Contract Capacity, the Scheduling Constraints applicable to combined cycle mode shall be applicable to such Scheduling by Buyer.

6.5.2.7 Buyer may Dispatch energy and Ancillary Services on a real time basis, subject to the Operating Procedures. Seller shall be obligated to accept a request for a change to the applicable schedule for energy and Ancillary Services.

6.6 Outages.

6.6.1 Planned Outages. No Planned Outage may be scheduled to occur during any portion of the time period commencing on May 15 and concluding on September 15.

6.6.2 Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall notify Buyer of the proposed Maintenance Outage at least five (5) days before the outage begins (or such shorter period to which Buyer may reasonably consent in light of then existing conditions). Upon such notice, the Parties shall plan the Maintenance Outage to mutually accommodate the reasonable requirements of Seller and the service obligations of Buyer; *provided, however*, that, unless Buyer otherwise consents, such consent not to be unreasonably withheld, no Maintenance Outage may be scheduled between the hour ending 0700 through the hour ending 2200, Monday through Saturday, during the time period commencing on May 15 and concluding on September 15. Notice of a proposed Maintenance Outage shall include the expected start date and time of the outage, the amount of Capacity of the Facility that will not be available, and the expected completion date and time of the outage. Seller shall give Buyer notice of the Maintenance Outage as soon as Seller determines that the Maintenance Outage is necessary. Buyer 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. Seller shall notify Buyer of any subsequent changes in Capacity available to Buyer 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 and exercise its best efforts in accordance with Prudent Electrical Practices to minimize the frequency and duration of Maintenance Outages.

6.6.3 Forced Outages. Seller shall promptly provide to Buyer an oral report of any Forced Outage of the Facility. This report shall include the amount of the Capacity of the Facility that will not be available because of the Forced Outage and the expected return date of such Capacity. Seller shall promptly update the report as necessary to advise Buyer of changed circumstances. As soon as practicable, if the Forced Outage resulted in more than five percent (5%) of the Facility Capacity being unavailable, the oral report shall be confirmed in writing. Seller shall take all reasonable measures and exercise its best efforts in accordance with Prudent Electrical Practices to avoid Forced Outages and to minimize their duration.

6.6.4 Notice of Deratings and Outages. Without limiting the foregoing, Seller will inform Buyer of any major limitations, restrictions, deratings or outages known to Seller

affecting the Facility for the following day 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 Facility Capacity.

6.7 Schedule Coordination. If, as a result of this Agreement, Buyer is deemed by an RTO to be financially responsible for Seller's performance under the Interconnection Agreement, due to Seller's lack of a "scheduling coordinator" or other RTO recognized standing or otherwise, then (a) Seller shall use commercially reasonable and diligent efforts to acquire such RTO recognized standing such that Buyer is no longer responsible for Seller's performance under the Interconnection Agreement, and (b) Seller shall defend, indemnify and hold Buyer harmless against any liability arising due to Seller's performance or failure to perform under the Interconnection Agreement.

6.8 Electronic Communications.

6.8.1 Telemetry. Seller shall provide telemetry equipment and facilities capable of transmitting the following information concerning the Facility pursuant to the Interconnection Agreement and to Buyer on a real-time basis and will operate such equipment when requested by Buyer to indicate:

- 6.8.1.1 instantaneous MW output at the Electricity Delivery Point;
- 6.8.1.2 Net Energy; and
- 6.8.1.3 Facility Capacity.

Seller shall also transmit to Buyer any other data from the Facility that Seller receives on a real time basis. Seller shall provide such real time data to Buyer on the same basis as the basis on which Seller receives the data (e.g., if Seller receives the data in four second intervals, Buyer shall also receive the data in four second intervals).

6.8.2 Dedicated Communication Circuit. Seller shall install a dedicated direct communication circuit (which may be by common carrier telephone) between Buyer and the control center in the Facility's control room or such other communication equipment as the Parties may agree.

6.9 Reports and Records.

6.9.1 Monthly Reports. Within thirty (30) days after the end of each calendar month during the Term (each, a "**Reporting Month**"), Seller shall provide to Buyer a report in electronic format, which report shall include (a) summaries of the Facility's output data for the Reporting Month in intervals not to exceed one hour (or such shorter period as is reasonably possible with commercially available technology), including information from the Facility's Computer Monitoring System; (b) summaries of any other significant events related to the construction or operation of the Facility for the Reporting Month; and (c) any supporting information that Buyer may from time to time reasonably request (including historical data for the Facility).

6.9.2 Electronic Fault Log. Seller shall maintain an electronic fault log of operations of the Facility during each hour of the Term beginning as of the Commercial Operation Date. Seller shall provide Buyer 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.

6.9.3 Other Information to Be Provided to Buyer. Seller shall provide to Buyer the following information concerning the Facility:

6.9.3.1 Upon the request of Buyer, the manufacturers' guidelines and recommendations for maintenance of the Facility equipment;

6.9.3.2 A detailed report summarizing the results of maintenance performed during each Planned Outage and any Forced Outage, and upon request of Buyer any of the technical data obtained in connection with such maintenance; and

6.9.3.3 A detailed report describing the facts, circumstances and events that caused and arose out of, or related to, any Forced Outage, failed Start-Up or other item of Major Equipment being taken off-line or tripping for any reason other than in connection with a Planned Outage.

6.9.4 Information to Any Governmental Authority. Seller shall, promptly upon written request from Buyer, provide Buyer with all data which is collected by Seller related to the Facility reasonably required for reports to and information requests from any Governmental Authority. Along with said information, Seller shall provide to Buyer copies of all submittals to any Governmental Authority directed by Buyer 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 Buyer soon enough so that Buyer has time to review such information and meet any submission deadlines imposed by the requesting organization or entity. After the sending or filing any statement, application, and report or any document with any Governmental Authority relating to operation and maintenance of the Facility, Seller shall promptly provide to Buyer with a copy of the same.

6.9.5 Information to Any Intervenor. Seller shall, promptly upon written request from Buyer, provide Buyer with data reasonably required for information requests from any state or federal agency intervenor or any other party achieving intervenor status in any Buyer rate proceeding or other proceeding before any Governmental Authority. Seller shall use best efforts to provide this information to Buyer soon enough so that Buyer has time to review such information and meet any submission deadlines imposed by the requesting organization or entity.

6.9.6 Environmental Information. Seller shall, promptly upon written request from Buyer, provide Buyer with all data reasonably requested by Buyer relating to environmental information under the Required Facility Documents.

6.9.7 Information Relating to Facility Performance. Seller shall provide Buyer monthly operational reports in a form and substance acceptable to Buyer and Seller shall, promptly upon written request from Buyer, provide Buyer with all operational data requested by Buyer with respect to the performance of the Facility and delivery of energy therefrom.

6.9.8 Audited Financial Statements. Seller shall provide Buyer within ninety (90) days after the end of each calendar year, its audited financial statements together with the audited financial statements of any guarantor providing Credit Support, in each case prepared in accordance with generally accepted accounting principles by an accounting firm of nationally recognized standing in the electric power industry reasonably acceptable to Buyer.

6.9.9 Notice of Default. Seller shall promptly notify Buyer of receipt of written notice or actual knowledge 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 in this Agreement.

6.9.10 Notice of Litigation. Following its receipt of written notice or actual knowledge of the commencement of any action, suit, and proceeding before any court or Governmental Authority which would, if adversely determined, adversely affect Seller, the Premises or the Facility, Seller shall promptly give notice to Buyer of the same.

6.9.11 Additional Information. Seller shall provide to Buyer such other information respecting the condition or operations of Seller and the Facility as Buyer may, from time to time, reasonably request.

6.10 Access Rights. Upon reasonable prior notice and subject to the safety rules and regulations of Seller, Seller shall provide Buyer and its authorized agents, employees and inspectors with reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment, (b) as necessary to witness any required Capacity tests necessary to determine the amount of Capacity associated with the Facility, (c) in connection with the operation and maintenance of the Electrical Interconnection Facilities for the Facility, (d) to provide tours of the Facility to customers and other guests of Buyer (not more than twelve (12) times per year), (e) for purposes of implementing Section 9.5, and (f) for other reasonable purposes at the reasonable request of Buyer.

6.11 EWG. Seller shall provide Buyer with copies of Seller's applications to FERC for EWG status and for authority to sell energy under this Agreement within ten (10) days of filing such application(s). During the Term, Seller shall either (i) maintain its EWG status and its authority to sell power under this Agreement or (ii) otherwise cause Seller to be exempt from federal and state regulations as an electric utility.

6.12 Facility Images. Buyer shall be free to use any and all images from or of the Facility for promotional purposes. Upon Buyer's request and at Buyer's expense, Seller shall install equipment as Buyer may request, including without limitation video and or web-based imaging equipment. Buyer shall use its discretion with respect to how images from or of the Facility are presented by Buyer, including without limitation associating images of the Facility with Buyer's corporate logo but not the corporate logo of Seller.

6.13 Financial and Accounting Information. If Buyer or one of its Affiliates determines that, under the Financial Accounting Standards Board's revised Interpretation No. 46, Consolidation of Variable Interest Entities ("FIN 46"), it may hold a variable interest in Seller,

but it lacks the information necessary to make a definitive conclusion, Seller hereby agrees to provide sufficient financial and ownership information so that Buyer or its Affiliate may confirm whether a variable interest does exist under FIN 46. If Buyer or one of its affiliates determines that, under FIN 46, it holds a variable interest in Seller, Seller hereby agrees to provide sufficient financial and other information to Buyer or its Affiliate so that Buyer may properly consolidate the entity in which it holds the variable interest and/or present the disclosures required by FIN 46.

SECTION 7

SECURITY AND CREDIT SUPPORT

7.1 Credit Support. If at any time during the Term, Seller maintains a Credit Rating of (1) “Aa2” or higher by Moody’s and (2) “AA” or higher by S&P, then Seller will not be required to post any Credit Support Security. If Seller does not meet the Credit Rating requirements of (1) and (2) in the preceding sentence, it may have to post Credit Support Security in the amounts outlined on the Credit Matrix based upon its’ Credit Rating or that of the entity providing a guaranty as Credit Support Security on behalf of the Seller, and the size of the project. If Seller has a published Credit Rating from each of S&P and Moody’s, the lower rating will be used to determine the level of Credit Support in the Credit Matrix. If Seller, or the entity providing a guaranty as Credit Support Security on behalf of the Seller, has no published Credit Rating, an equivalent Credit Rating will be determined by Buyer through the application of Buyer’s proprietary credit scoring model developed in conjunction with S&P, and the amount of Credit Support for Seller (as shown on the Credit Matrix) will be based upon this equivalent Credit Rating. If the required Credit Support is greater than zero dollars (\$0.00), upon the request of Buyer, Seller shall within five (5) Business Days provide one of the following in the amount of the Credit Support: (x) a guaranty, in form and substance acceptable to Buyer in its sole discretion from a Person acceptable to Buyer in its sole discretion, (y) a Letter of Credit, or (z) a Cash Escrow. *[IE has requested language to the effect of: Buyer shall be required to post Credit Support Security in the amount of ___ % of the Credit Support if the same is required at any time before the milestone set forth in Section 2.2.3 has been met; and after such milestone has been met, Buyer shall be required to post Credit Support Security in the amount of 100% of the required Credit Support.]*

7.2 Subordinated Security Interests.

7.2.1 Security Interests. Concurrently with the execution of this Agreement and simultaneously with the acquisition by Seller after the Effective Date of any real property in connection with the Facility (including land and water or rights thereto), Seller shall execute, file and record such agreements, documents, instruments, deeds of trust and other writings as Buyer may request, all in form and substance satisfactory to Buyer, to give Buyer a perfected security interest in and lien on the Facility, the Premises and all other assets necessary or in Buyer’s opinion desirable for the development, construction, ownership, operation or maintenance of the Facility as security for Seller’s performance and any amounts owed by Seller to Buyer pursuant to this Agreement (collectively the “**Security Interests**”). The Security Interests shall be subordinate in right of payment, priority and remedies only to the interests of the financiers for the Facility contemplated by Section 2.2.3 and approved by Buyer.

7.2.2 Pledge of Ownership Interests. [*Note to bidders: This section is applicable only if Seller is a special purpose entity.*] Concurrently with the execution of this Agreement, Seller's equity holders shall execute and file such agreements, documents, instruments, and other writings as Buyer may request, all in form and substance satisfactory to Buyer, to give Buyer a perfected security interest in and lien on all ownership interests in Seller as security for Seller's performance and any amounts owed by Seller to Buyer pursuant to this Agreement (the "**Pledge Interest**"). The Pledge Interest shall be subordinate in right of payment, priority and remedies only to the interests of the financiers for the Facility contemplated by Section 2.2.3 and approved by Buyer.

7.2.23 Maintenance of Security Interests. Seller shall execute and file and record (or cause to be executed and filed and recorded) such Uniform Commercial Code financing statements and deeds of trust and shall take such further action and execute such further instruments and other writings as shall be required by Buyer to confirm and continue the validity, priority, and perfection of the Security Interests [and the Pledge Interest]. The granting of the Security Interests [and the Pledge Interest] shall not be to the exclusion of, nor be construed to limit the amount of any further claims, causes of action or other rights accruing to Buyer by reason of any breach or default by Seller under this Agreement or the termination of this Agreement prior to the expiration of the Term.

7.2.34 Transfer of Required Facility Documents. The Security Interests shall provide that if Buyer acts to obtain title to the Facility pursuant to the interests provided by Seller pursuant to Section 7.2.1, Seller shall take all steps necessary to transfer all Required Facility Documents necessary to operate the Facility to Buyer, and shall diligently prosecute and cooperate in such transfers.

7.3 Quarterly Financial Statements. If requested by Buyer, Seller shall within thirty (30) days provide Buyer with copies of its most recent quarterly financial statements, together with the audited financial statements of any guarantor providing Credit Support, in each case prepared in accordance with generally accepted accounting principles.

7.4 Security is Not a Limit on Seller's Liability. The Credit Support and Security Interests contemplated by this Section 7: (a) constitutes security for, but is not a limitation of, Seller's obligations under this Agreement, and (b) shall not be Buyer's exclusive remedy for Seller's failure to perform in accordance with this Agreement. To the extent that Buyer draws on the Credit Support, Seller shall within five (5) Business Days reinstate the security to the full amount required by this Section 7.

7.5 Escrow Account. With respect to any Cash Escrow established pursuant to this Section 7 as Credit Support, Seller hereby grants Buyer a security interest in the escrow account and all moneys and other amounts in the account to secure payment and performance of Seller's obligations under this Agreement. Buyer shall have, and Seller agrees to take all further action required or reasonably requested by Buyer to ensure that Buyer has, all rights of a secured party under Article 9 of the Uniform Commercial Code and applicable law with respect to the escrow account and all moneys and other amounts in the escrow account. The escrow agreement shall be in form and substance acceptable to Buyer in its discretion and shall contain the following

language: “Escrow Agent acknowledges that Seller has granted Buyer a security interest in the amounts held by Escrow Agent in the [*describe escrow accounts and all moneys and other amounts in the account*] (collectively, the “**Collateral**”). Escrow Agent acknowledges that it (a) has received and holds possession of the Collateral for the benefit of Buyer and not as the agent of or on behalf of Seller and (b) shall continue to hold possession of the Collateral for Buyer’s benefit until Escrow Agent receives notice in an authenticated record from Buyer that Buyer’s security interest in the Collateral has been terminated. Escrow Agent acknowledges that it has no rights in and to the Collateral other than its right to receive payment of its fees and expenses pursuant to the Escrow Agreement.”

SECTION 8

METERING

8.1 Net Energy. Meter equipment shall be installed, owned, operated, maintained and tested in accordance with the terms of the Interconnection Agreement and shall automatically account for line losses between such meter equipment and the Electricity Delivery Point (collectively, the “**Electric Metering Equipment**”). The Electric Metering Equipment shall be capable of metering Net Energy delivered at the Electricity Delivery Point on a continuous real time basis.

| 8.1.1 Seller Electric Metering. Seller shall be responsible for the maintenance, testing and calibration of the Electric Metering Equipment and the maintenance and testing of the electrical facilities and Protective Apparatus, including any transmission equipment and related facilities, necessary to interconnect the Facility at the Electricity Delivery Point. Such installation shall be completed, and the delivery of such data shall be commenced, as promptly as possible but in no event later than one month prior to the commencement of Net Energy deliveries. Seller shall bear all costs and expenses of installing, maintaining and testing all Electric Metering Equipment.

| 8.1.2 Check Meters. Buyer may at its option and expense install and operate one or more check meters to check Seller’s meters. Such check meters shall be for check purposes and shall not be used in the measurement of Net Energy or Ancillary Services for the purposes of this Agreement. The check meters shall be subject at all reasonable times to inspection and examination by the Seller or its designee. The installation and operation thereof shall, however, be done entirely by Buyer at no cost or expense to Seller. The Seller shall grant to Buyer, at no cost or expense, the right to install such check meters at the Electricity Delivery Point and the right to access such check meters at reasonable times as requested by Buyer if such check meters are located on the Premises.

| 8.1.3 Change in Measurement Method. If, at any time during the Term a new method or technique is developed with respect to electricity measurement, or the determination of the factors used in electricity measurement, such new method or technique may be substituted for the method set forth in this Section 8.1 when in the opinion of the Parties, employing such new method or technique is advisable, and they so agree in writing.

_____ 8.1.4 Industry Standards. All Electric Metering Equipment, whether owned by the Seller or by a third party, shall be operated, maintained and tested by and/or on behalf of the Seller in accordance with Prudent Electrical Practices.

_____ 8.1.5 Access. Each Party shall have the right to receive reasonable advance notice with respect to, and to be present at the time of, any installing, cleaning, changing, repairing, inspecting, testing, calibrating or adjusting of Electric Metering Equipment. The records from such Electric Metering Equipment shall be the property of the Seller, but upon reasonable advance notice, the Seller shall make available to Buyer all data, records and charts relating to the Electric Metering Equipment, together with calculations therefrom, for inspection and verification.

_____ 8.1.6 Installations. Any installations of Electric Metering Equipment required pursuant to this Agreement shall be scheduled by the Seller; provided, however, that no installation which shall or could affect deliveries of Net Energy shall be made without the prior written consent of Buyer, which shall not be unreasonably withheld. Any installations of check meters by Buyer shall be scheduled by Buyer; provided, however that the installation shall not unreasonably interfere with the operation and maintenance of the Facility by the Seller.

_____ 8.1.7 Estimates. During the period after the Effective Date and prior to the installation and commencement of operation of the meters contemplated by this Section 8.1.8, the Net Energy generated and delivered shall be estimated in good faith by the Seller and the Parties shall prepare and submit invoices on the basis of such estimates. Any such invoice shall be adjusted retroactively based on the performance of the Facility during the three month period immediately following the installation of such meters.

_____ 8.1.8 Inspection. Seller, at its sole cost and expense, shall inspect and calibrate, or cause to be inspected and calibrated, all Electric Metering Equipment periodically, but not less frequently than annually. When any test, in the case of Electric Metering Equipment, shall show a measurement error of more than one-quarter percent (1/4%), correction shall be made for the period during which the measurement instruments were in error, first, by using the registration of Buyer's check meter, if installed and registering accurately; if no check meter is installed and registering accurately, or if the period cannot be ascertained, correction shall be made for one-half (1/2) of the period elapsed since the last date of test; and the measuring instrument shall be adjusted immediately to measure accurately.

8.2 Records. The Parties shall, for five (5) years or such longer period as may be required by the applicable Governmental Authority, each keep and maintain accurate and detailed records relating to the Facility's hourly deliveries of Net Energy. Such records shall be made available for inspection by either Party or any Governmental Authority having jurisdiction with respect thereto during normal business hours upon reasonable notice. If either Party (the "**Notifying Party**") shall propose to discard any records theretofore required to be retained by this Section 8.2, it shall give notice to the other Party thereof and the other Party may within thirty (30) days elect to take possession of such records by notice to the Notifying Party, and in such case the Notifying Party shall promptly, and in any event, no later than five (5) days following receipt of such notice, deliver such records to the other Party at its expense. If the

Party receiving a Notice pursuant to this Section 8.2 shall not respond within such thirty (30) days, the Notifying Party may discard such records without any further obligation hereunder. Upon written request by Buyer, Seller promptly shall request that the Transmission Provider provide in writing any and all meter or other data associated with the Facility and Net Energy directly to Buyer. Notwithstanding any other provision of this Agreement, Buyer shall have the right to provide such meter data to any RTO or generation tracking service.

8.3 Adjustment to Loss Factors. If Buyer or Seller has a reasonable basis for concluding that the Electric Metering Equipment is not accurately measuring losses between the Electric Metering Equipment and the Electricity Delivery Point, it may propose an adjustment to the Electric Metering Equipment by notice to the other Party. Such an adjustment shall be prospective only. The notice will include information explaining in reasonable detail why the loss factor appears to be incorrect. The other Party shall have thirty (30) days in which to approve or disapprove of the proposed adjustment, which approval may not be unreasonably withheld, conditioned or delayed. A proposed loss factor adjustment that is not disapproved by notice to Seller given within the thirty (30) day period shall be deemed approved. The Parties shall cooperate in causing PacifiCorp Transmission to make an appropriate adjustment to the Electric Metering Equipment pursuant to the Interconnection Agreement.

SECTION 9

BILLINGS, COMPUTATIONS AND PAYMENTS

9.1 Monthly Invoices. On or before the tenth (10th) day following the end of each month, Seller shall deliver to Buyer a proper invoice showing Seller's computation of the Energy Payment, MAAF and the Capacity Payment for such month. If such invoice is delivered by Seller to Buyer, Buyer shall send to Seller payment for Seller's deliveries in respect thereof on or before the thirtieth (30th) day following the end of each month.

9.2 Offsets. Buyer may offset any payment due under this Agreement against amounts owing from Seller to Buyer pursuant to this Agreement, any other agreement between the Parties or otherwise.

9.3 Interest on Late Payments. Any amounts that are not paid when due under this Agreement shall bear interest at the Prime Rate plus two hundred (200) basis points from the date due until paid; provided, however, that this interest rate shall at no time exceed the maximum rate allowed by applicable law.

9.4 Disputed Amounts. If either Party, in good faith, disputes any amount due pursuant to an invoice rendered or written demand made under this Agreement, 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) days of such determination or resolution, along with interest accrued at the rate determined under Section 9.3 from the date due until the date paid.

9.5 Audit Rights. Buyer, through its authorized representatives, shall have the right, at its sole expense and during normal business hours, to examine and copy the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made hereunder or to verify the Seller's performance of its obligations hereunder. Upon request, Seller shall provide to Buyer statements evidencing the quantities of energy delivered at the Electricity Delivery Point. 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 calculated at the rate determined under Section 9.3 from the date of the overpayment or underpayment to the date of receipt of the reconciling payment. Notwithstanding the above, no adjustment shall be made with respect to any statement or payment hereunder unless Buyer questions the accuracy of such payment or statement within two (2) years after the date of such statement or payment.

SECTION 10

DEFAULTS AND REMEDIES

10.1 Defaults. The following events are defaults (each, an “**Event of Default**”) under this Agreement:

10.1.1 Events of Default by Either Party.

10.1.1.1 A Party's failure to make a payment when due under this Agreement if the failure is not cured within ten (10) days after the non-defaulting Party gives the defaulting Party a notice of the default, except as provided in Section 9.4.

10.1.1.2 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.

10.1.1.3 A Party's breach of a representation or warranty made by that Party in this Agreement if the breach is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party a notice of the default.

10.1.1.4 A Party otherwise fails to perform any material obligation imposed upon that Party by this Agreement 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 thirty (30) day period shall be extended by an additional sixty (60) 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 sixty (60) 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.

10.1.2 Events of Default by Seller.

10.1.2.1 Seller's failure to post or increase the Carry-Over Letter of Credit within ten (10) Business Days after the end of each month as may be required under Section 5.1.4.

10.1.2.2 Seller's failure to cause the Facility to achieve (a) an average of the applicable CAF_{ms} of at least [?%] in any three (3) consecutive quarters in a Contract Year or (b) achieve an average of the applicable CAF_{ms} of at least [?%] in three (3) out of any five (5) consecutive Contract Years. [bidder to edit and provide parameters]

10.1.2.3 Seller's failure to post and maintain Credit Support as required by Section 7 if the failure is not cured within five (5) days after Buyer gives Seller a notice of the default.

10.1.2.4 Seller's failure to achieve a milestone by the date set forth for the achievement of that milestone in Section 2.2 (other than the failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date) if the failure is not cured within thirty (30) days after Buyer gives Seller a notice of the default.

10.1.2.5 Seller's failure to cause the Facility to achieve the Commercial Operation Date on or before [] days following the Guaranteed Commercial Operation Date. *[note to bidders: insert number of days; this will be a material component of the evaluation of your bid; the nature of the resource will be considered. The lowest feasible numeral is encouraged.]*

10.1.2.6 Seller's failure to cure any default under any Required Facility Documents (including the Interconnection Agreement) within the time allowed for a cure under such agreement or instrument.

10.1.2.7 Seller's sale of energy from the Facility to a Party other than Buyer in breach of this Agreement if Seller does not permanently cease such sale and compensate Buyer for the damages arising from the breach within ten (10) days after Buyer gives Seller a notice of default.

10.1.2.8 The Facility is unavailable to provide energy for ninety (90) consecutive days or one hundred twenty (120) non-consecutive days in any three hundred sixty-five (365) day period commencing on the Commercial Operation Date and prior to end of the Term.

10.2 Termination and Remedies.

10.2.1 Upon the occurrence of, and during the continuation 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 ten (10) days before such termination date. Further, during the continuation of an Event of Default by Seller, and until it

has recovered all damages incurred on account of such Event of Default by Seller, without exercising its termination right, Buyer may offset its damages against any payment due Seller.

10.2.2 In the event of a termination of this Agreement:

10.2.2.1 The Parties' respective obligations under this Agreement shall terminate (other than those obligations which expressly are to be performed after termination).

10.2.2.2 Each Party shall pay to the other all amounts due the other under this Agreement for all periods prior to termination subject to offset by the non-defaulting Party against damages incurred by such Party.

10.2.2.3 The amounts due pursuant to Section 10.2.2.2 shall be paid within thirty (30) days of the billing date for such charges plus interest thereon at the Prime Rate from the date of termination until the date paid.

10.2.2.4 The provisions of Sections 6.4.4, 6.9.4, 6.9.5, 8.2, 9.3, 9.4, 9.5, 10.7, 10.9, 11 and 14 shall survive the termination of this Agreement.

10.3 Specific Performance. Buyer shall be entitled to seek and obtain a decree compelling specific performance or granting injunctive relief with respect to, and shall be entitled, without the necessity of filing any bond, to enjoin any actual or threatened breach of any material obligation of Seller under this Agreement. Seller agrees that in view of the nature of the bid procedure that caused Seller to be selected, and the importance of the Facility and the Buyer's requirement for Capacity and energy, specific performance (including temporary and preliminary relief) and injunctive and other equitable relief, including access to all records of Seller, are proper in the event of any actual or threatened breach of any material obligation by Seller under this Agreement, and that any liability limits contained in this Agreement shall not operate to limit the exercise of Buyer's remedies in equity to cause Seller to perform its obligations under this Agreement. In any action for specific performance or injunctive relief or other equitable relief, all expenses incurred by the prevailing party in such proceeding, including reasonable counsel fees, shall be awarded to the prevailing party in such proceeding. Seller agrees that it will not assert as a defense to Buyer's action for specific performance of, or injunctive relief or other equitable relief relating to, Seller's obligations hereunder that the amounts payable or paid by Seller in respect of liquidated damages or actual damage constitute an adequate remedy for the breach of such obligation, and Seller hereby conclusively waives such defense.

10.4 Failure to Meet Availability. If an Event of Default by Seller described in Section 10.1.2.2 shall occur, Buyer shall have the right to enter the Facility and do all such things as Buyer may consider necessary or desirable to remedy such situation or to improve the availability of the Contract Capacity, including making any repairs to the Major Equipment or the Facility. Seller shall reimburse Buyer for and shall indemnify and hold harmless Buyer from and against all losses, costs, charges and expenses incurred by Buyer in connection with exercise of its rights under this Section 10.4 other than due to the gross negligence or willful misconduct of Buyer. In connection with the exercise of the rights under this Section 10.4, Buyer shall have

the right to recoup and set off all such losses, costs, charges and expenses against amounts otherwise owed by Buyer under this Agreement.

10.5 License to Operate Facility. During the occurrence and continuance of an Event of Default by Seller, Seller hereby irrevocably grants to Buyer the right, license, and authority to enter the Premises, operate the Facility, and to perform Seller's obligations under this Agreement for the Term of this Agreement. Notwithstanding the license granted to Buyer in this Section 10.5, so long as no Event of Default by Seller which would entitle Buyer to terminate this Agreement has occurred and is continuing, Buyer agrees that Seller may operate the Facility and provide the energy and Capacity in accordance with its obligations under this Agreement. Upon the occurrence of an Event of Default and the expiration of all applicable opportunities to cure, Buyer may, but shall not be obligated to, exercise its rights as licensee under this Section 10.5 in lieu of termination. Buyer's right to operate the Facility pursuant to the license granted in this Section 10.5 shall be effective for a period not to exceed 365 days from the date Buyer first exercises its license rights. During any period in which Buyer is operating the Facility pursuant to the license granted in this Section 10.5, Seller shall, upon request from Buyer, reimburse Buyer for all reasonable costs and expenses incurred by Buyer to operate and maintain the Facility. In connection with the exercise of the rights under this Section 10.5, Buyer shall have the right to recoup and set off all such losses, costs, charges and expenses against amounts otherwise owed by Buyer under this Agreement.

10.6 Termination of Duty to Buy. If this Agreement is terminated because of Seller's default, Seller may not require Buyer to purchase energy from the Facility before the date on which the Term would have ended had this Agreement remained in effect. Seller hereby waives its rights to require Buyer to do so.

10.7 Net Replacement Power Costs. If this Agreement is terminated because of Seller's default, Seller shall pay Buyer the positive difference, if any, obtained by subtracting (a) the result of (1) the energy, stated in MWh, that Seller was obligated to provide to Buyer during the remainder of the Term, multiplied by (2) the price per MWh (i) specified in **Exhibit F** for the remaining Contract Years subtracted from (ii) the market price of such energy as determined in good faith by Buyer, from (b) the Replacement Price for any energy that Seller was obligated to provide during the remainder of the Term. Amounts owed by Seller pursuant to this Section 10.7 shall be due within five (5) Business Days after Buyer gives Seller notice of the amount due.

10.8 Default Security. Buyer may apply the Credit Support Security at any time to reduce amounts due from Seller to Buyer under this Agreement which are not paid when due.

10.9 Cumulative Remedies. The rights and remedies provided to Buyer under this Agreement are cumulative and not exclusive of any rights or remedies which Buyer would otherwise have.

SECTION 11

INDEMNIFICATION AND LIABILITY

11.1 Indemnities.

11.1.1 Indemnity by Seller. Seller hereby releases, indemnifies and holds harmless Buyer, its directors, officers, agents, and representatives against and from any and all losses, claims, actions or suits, including costs and attorney's fees, 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 Electricity Delivery Point, (b) any facilities on Seller's side of the Electricity Delivery Point, (c) Seller's operation and/or maintenance of the Facility, or (d) arising from Seller's performance under this Agreement, including 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 Buyer, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Buyer, its directors, officers, employees, agents or representatives.

11.1.2 Indemnity by Buyer. Buyer hereby releases, indemnifies and holds harmless Seller, its directors, officers, agents, and representatives against and from any and all losses, claims, actions or suits, including costs and attorney's fees, resulting from, or arising out of or in any way connected with the energy delivered by Seller under this Agreement after the Electricity Delivery Point, including 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 or representatives.

11.2 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 Buyer as an independent public utility corporation or Seller as an independent individual or entity.

11.3 Consequential Damages. Neither Party shall be liable to 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 12

INSURANCE

12.1 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" by the A.M. Best Company the insurance coverage specified on **Exhibit J** during the periods specified on **Exhibit J**.

12.2 Certificates and Certified Copies of Policies. Seller shall provide Buyer with a certified “true and correct” copy of the insurance policies, provisions and endorsements contemplated by **Exhibit J** within ten (10) days after the date by which such policies are required to be obtained (as set forth in **Exhibit J**). If any coverage is written on a “claims-made” basis, the certification accompanying the policy shall conspicuously state that the policy is “claims made.”

SECTION 13

FORCE MAJEURE

13.1 Definition of Force Majeure. As used in this Agreement, “**Force Majeure**” or “**an event of Force Majeure**” means an event (a) is not reasonably anticipated as of the date of this Agreement, (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; fire; explosion; civil disturbance; sabotage; 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 Buyer’s ability to purchase energy at a more advantageous price than is provided under this Agreement; (ii) the cost or availability of Fuel; (iii) economic hardship including lack of money; (iv) the imposition upon Seller of costs or taxes allocated to Seller under Sections 5 or 6; (v) delay or failure by Seller to obtain any Required Facility Document, other than Permits which Seller is diligently and timely taking all reasonable steps to obtain; (vi) strikes or labor disturbances occurring at the Facility, the Premises or any of Buyer’s or Seller’s facilities; (vii) changes in, or costs of compliance with, Environmental Laws enacted after the date of this Agreement; and (viii) the failure of the Transmission Provider, whether or not Transmission Provider is PacifiCorp acting in its regulated transmission function capacity, for any reason to transmit Contract Capacity or energy.

13.2 Suspension of Performance. If either Party is rendered wholly or in part unable to perform its obligations under this Agreement because of an event of Force Majeure, both Parties shall be excused from the performance affected by the event of Force Majeure, provided that:

13.2.1 the Party affected by the Force Majeure, shall, within two (2) weeks after the occurrence of the event of Force Majeure, give the other Party written notice describing the particulars of the event; and

13.2.2 the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure; and

13.2.3 the affected Party shall use diligent efforts to remedy its inability to perform.

13.3 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.

13.4 Right to Terminate. If a Force Majeure event prevents a Party from substantially performing its obligations under this Agreement for a period exceeding one hundred eighty (180) days, then Buyer may terminate this Agreement by giving ten (10) days' prior notice to Seller. 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 under this Agreement before the effective date of such termination.

SECTION 14

CONFIDENTIALITY

14.1 Confidential Business Information. The Parties' proposals and negotiations prior to the date hereof concerning this Agreement, the terms of this Agreement, and the actual charges billed to Buyer under this Agreement, constitute the "Confidential Business Information" of both Parties. Seller and Buyer each agree to hold such Confidential Business Information wholly confidential.

14.2 Duty to Maintain Confidentiality. Confidential Business Information may only be used by the Parties for purposes related to the approval, administration or enforcement of this Agreement and for no other purpose. Each Party agrees not to disclose Confidential Business Information to any other person (other than its affiliates, counsel, consultants, lenders, prospective lenders, buyers, prospective buyers, contractors constructing or providing services to the Facility, employees, officers and directors who agree to be bound by the provisions of this Section), without the prior written consent of the other Party, provided that either Party may disclose Confidential Business Information, if such disclosure is required by law, required in order for Buyer to receive regulatory recovery of expenses related to the Agreement or pursuant to an order of a court or regulatory agency or in order to enforce this Agreement or to seek approval of this Agreement. In the event a Party is required by law or by a court or regulatory agency to disclose Confidential Business Information, such Party shall to the extent possible notify the other Party at least three (3) Business Days in advance of such disclosure.

14.3 Irreparable Injury; Remedies. Each Party agrees that violation of the terms of this Section 14 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.

14.4 News Releases and Publicity. Before issuing any news release or promotional material regarding the Facility, Seller shall contact Buyer for language that credits Buyer as purchasing the Net Energy and shall use such language in such news releases and promotional material.

SECTION 15

DISAGREEMENTS

15.1 Negotiations. The Parties shall attempt in good faith to resolve all disputes arising out of or 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 from the referral of the dispute to senior executives, or if no meeting of such senior executives has taken place within fifteen (15) days after such referral, either Party may initiate litigation as provided hereinafter if neither Party has requested that the dispute be mediated in accordance with Section 15.2 below. All negotiations pursuant to this clause are confidential.

15.2 Mediation. If the dispute is not resolved within thirty (30) days from the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within fifteen (15) days after such referral, 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 Construction Industry Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Construction Disputes) of the American Arbitration Association (the “AAA”), as amended and effective on July 1, 2003 (the “**Mediation Procedures**”), notwithstanding any Dollar amounts or Dollar limitations contained therein.

15.2.1 The Party requesting the mediation, may commence the mediation process with AAA by notifying AAA and the other Party in writing (“**Mediation Notice**”) of such Party’s desire that the dispute be resolved through mediation, including therewith a copy of the Dispute Notice and the response thereto, if any, and a copy of the other Party’s written agreement to such mediation.

15.2.2 The mediation shall be conducted through, by and at the office of AAA located in Salt Lake City, Utah.

15.2.3 The mediation shall be conducted by a single mediator. The Parties may select any mutually acceptable member from the panel of retired judges at AAA as a mediator. If the parties cannot agree on a mediator within five (5) days after the date of the Mediation Notice, then the AAA’s Arbitration Administrator shall send a list and resumes of three (3) available mediators to the parties, each of whom shall strike one name, and the remaining person shall be appointed as the mediator. If more than one name remains, either because one or both parties have failed to respond to the AAA’s Arbitration Administrator within five (5) days of receiving the list or because one or both parties have failed to strike a name from the list or because both parties strike the same name, the AAA’s Arbitration Administrator will choose the mediator from the remaining names. If the designated mediator shall die, become incapable or, unwilling to, or unable to serve or proceed with the mediation, a substitute mediator shall be appointed in accordance with the selection procedure described above in this Section 15.2.3, and

such substitute mediator shall have all such powers as if he or she has been originally appointed herein.

15.2.4 The mediation shall consist of one or more informal, nonbinding meetings between the Parties and the mediator, jointly and in separate caucuses, out of which the mediator will seek to guide the Parties to a resolution of the dispute. The mediation process shall continue until the resolution of the dispute, or the termination of the mediation process pursuant to Section 15.2.7.

15.2.5 The mediator's fees and expenses, shall be borne equally by the Parties. Each Party shall bear its own expenses incurred in connection with such mediation; provided, however, that if any dispute hereunder is not fully resolved as a result of such mediation, the prevailing party shall be awarded its reasonable attorney fees in any subsequent dispute resolution proceedings.

15.2.6 All verbal and written communications between the parties and issued or prepared in connection with this Section 15.2 shall be deemed prepared and communicated in furtherance, and in the context, of dispute settlement, and shall be exempt from discovery and production, and shall not be admissible in evidence (whether as admission or otherwise) in any arbitration or other proceedings for the resolution of the dispute.

15.2.7 The initial mediation meeting between the Parties and the mediator shall be held within twenty (20) days after the Mediation Notice. Either Party may terminate the mediation process upon the earlier to occur of (A) the failure of the initial mediation meeting to occur within twenty (20) days after the date of the Mediation Notice, (B) the passage of thirty (30) days from the date of the Mediation Notice without the dispute having been resolved, or (C) such time as the mediator makes a finding that there is no possibility of resolution through mediation. The mediation shall follow and be governed by the laws of the State of Oregon.

15.2.8 All deadlines specified in this Section 15.2 may be extended by mutual agreement.

15.3 Choice of Forum. 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 Oregon, Portland Division. By execution and delivery of this Agreement, 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, (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), (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 in this Agreement, and

(e) agrees that nothing in this Agreement shall affect the right to effect service of process in any other manner permitted by law.

15.4 Settlement Discussions. The Parties agree that 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 or arbitration between the Parties, nor will any such statements or offers of settlement be used in any manner against either Party in any such litigation or arbitration. 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 or arbitration. 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.

15.5 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 TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY MATTER ARISING HEREUNDER OR THEREUNDER IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

15.6 Equitable Remedies. In any action for specific performance or injunctive relief or other equitable relief, all expenses incurred by the prevailing party in such proceeding, including reasonable counsel fees, shall be awarded to the prevailing party in such proceeding. Seller agrees that it will not assert as a defense to Buyer's action for specific performance of, or injunctive or other equitable 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 all Required Facility Documents (as the case may be) relating to the Facility to the extent necessary to prevent a material adverse effect on Buyer's right to specific performance or injunctive relief.

SECTION 16

GUARANTEED PERFORMANCE PARAMETERS

16.1 Guaranteed Heat Rate. Seller shall operate and maintain the Facility so as to achieve the Guaranteed Heat Rate in accordance with the provisions of **Exhibit Q**.

16.2 Guaranteed Start-Up Time. Seller shall operate and maintain the Facility so as to achieve the Guaranteed Start-Up Time in accordance with the provisions of **Exhibit Q**.

16.3 Guaranteed Ramp Rate. Seller shall operate and maintain the Facility so as to achieve the Guaranteed Ramp Rate in accordance with the provisions of **Exhibit Q**.

SECTION 17

MISCELLANEOUS

17.1 Several Obligations. Nothing contained in this Agreement 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. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

17.2 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 that may direct the application of the laws of another jurisdiction.

17.3 Partial Invalidity. The Parties do not intend to violate any Requirements of Law governing the subject matter of this Agreement. If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void as being contrary to any Requirements of Law or public policy, all other terms of the Agreement 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 Requirements of Law, (b) give effect to the intent of the Parties in entering into this Agreement, and (c) preserve the balance of the equities contemplated by this Agreement in all material respects.

17.4 Waiver. No waiver of any provision of this Agreement shall be effective unless the waiver is set forth in a writing that (a) expressly identifies the provision being waived, and (b) is signed 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 of this Agreement shall not be construed as a waiver of any other failure or failures, whether of a like kind or different nature.

17.5 Governmental Jurisdiction and Authorizations. This Agreement is subject to the jurisdiction of those Governmental Authorities having control over either Party or this Agreement. Buyer's duty to comply with this Agreement is conditioned on Seller's submission to Buyer before the Commercial Operation Date and maintaining thereafter copies of all Required Facility Documents.

17.6 Restriction on Assignments. Except as expressly provided in Section 17.7, neither Party shall assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party.

17.7 Permitted Assignments. The Buyer may assign its rights, delegate its duties or otherwise transfer its interests hereunder, in whole or in part to another entity having a long-term credit rating assigned thereto by a "nationally recognized statistical rating organization" (as that term is used in Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934) that equals or exceeds the Buyer's long term credit rating as of the date of such assignment.

17.8 Entire Agreement. This Agreement (including all attached Exhibits, which are incorporated by this reference) supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding the subject matter of this Agreement. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

17.9 Amendments. This Agreement shall not be altered or amended except by an instrument in writing specifically identifying the provisions to be amended and executed by authorized representatives of both parties.

17.10 No Third Party Beneficiaries. Notwithstanding anything to the contrary herein, this Agreement does not confer any rights upon any person other than the parties and their respective successors and permitted assigns. There are no third party beneficiaries of this Agreement.

17.11 Agents and Subcontractors. This Agreement may be performed by Buyer through the use of agents and subcontractors (but such use shall not relieve Buyer of any obligation hereunder).

17.12 Notices. All notices, requests, statements or payments shall be (a) made to the addresses set forth below, (b) in writing, and (c) delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day during which the notice is received or hand delivered. Notice by overnight mail or courier shall be deemed to have been received upon delivery as evidenced by the delivery receipt.

To Seller: _____

with a copy to: _____

To Buyer: PacifiCorp
825 NE Multnomah, Suite 2000
Portland, Oregon 97232-2315
Attn: Sr. Vice President, Commercial & Trading

with copies to: PacifiCorp
825 NE Multnomah, Suite 600
Portland, Oregon 97232-2315
Attn: Director of Contract Administration, C&ommercial & Trading

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

17.13 Mobile-Sierra. The rates for service specified in this Agreement 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 to this Agreement proposed by a Party, a non-party or the FERC acting *sua sponte* shall be the “public interest” 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). To the extent that the FERC adopts specific language that parties must incorporate into agreements in order to bind FERC, third parties and themselves to a public interest standard of review, the Parties hereby incorporate such language herein by reference.

17.14 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which is an original and all of which taken together constitute one and the same instrument.

[SIGNATURES ON NEXT PAGE]

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

[SELLER],
as Seller

By: _____

Name: _____

Title: _____

PACIFICORP,
as Buyer

By: _____

Name: _____

Title:

EXHIBIT T

FORM OF LENDER CONSENT

This CONSENT AND AGREEMENT (this “Consent”), dated as of _____, 200__, is entered into by and among PacifiCorp, an Oregon corporation, acting in its merchant function capacity (together with its permitted successors and assigns, “PacifiCorp”), _____, in its capacity as [Administrative Agent] for the Lenders referred to below (together with its successors, designees and assigns in such capacity, “Administrative Agent”), and _____, a _____ formed and existing under the laws of the State of _____ (together with its permitted successors and assigns, “Borrower”). Unless otherwise defined, all capitalized terms have the meaning given in the Contract (as hereinafter defined).

RECITALS

A. Borrower intends to develop, construct, install, test, own, operate and use an approximately ___ MW electric generating facility located _____, known as the _____ Generation Project (the “Project”).

B. In order to partially finance the development, construction, installation, testing, operation and use of the Project, Borrower has entered into that certain [Financing Agreement,] dated as of _____ (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Financing Agreement”), among Borrower, the financial institutions from time to time parties thereto (collectively, the “Lenders”), and Administrative Agent for the Lenders, pursuant to which, among other things, Lenders have extended commitments to make loans and other financial accommodations to, and for the benefit of, Borrower.

C. Borrower anticipates that, prior to the completion of construction of the ~~Project, Project~~, it will seek an additional investor (the “Tax Investor”) to make an investment in Borrower to provide additional funds to finance the operation and use of the Project. [if applicable]

D. PacifiCorp and Borrower have entered into that certain Power Purchase Agreement, dated as of _____ (collectively with all documents entered into in connection therewith that are listed on [Schedule A] attached hereto and incorporated herein by reference, as all are amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “Contract”).

E. Pursuant to a security agreement executed by Borrower and Administrative Agent for the Lenders (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”), Borrower has agreed, among other things, to assign, as collateral security for its obligations under the Financing Agreement and related documents (collectively, the “Financing Documents”), all of its right, title and interest in, to and under the Contract to Administrative Agent for the benefit of itself, the Lenders and each other entity or person providing collateral security under the Financing Documents.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

SECTION 1. CONSENT TO ASSIGNMENT. PacifiCorp acknowledges the assignment referred to in Recital E above, consents to an assignment of the Contract pursuant thereto, and agrees with Administrative Agent as follows:

(A) Administrative Agent shall be entitled (but not obligated) to exercise all rights and to cure any defaults of Borrower under the Contract, subject to applicable notice and cure periods provided in the Contract. Upon receipt of notice from Administrative Agent, PacifiCorp agrees to accept such exercise and cure by Administrative Agent if timely made by Administrative Agent under the Contract and this Consent. Upon receipt of Administrative Agent's written instructions, PacifiCorp agrees to make directly to Administrative Agent all payments to be made by PacifiCorp to Borrower under the Contract from and after PacifiCorp's receipt of such instructions, and Borrower consents to any such action.

(B) PacifiCorp will not, without the prior written consent of Administrative Agent (such consent not to be unreasonably withheld), (i) cancel or terminate the Contract, or consent to or accept any cancellation, termination or suspension thereof by Borrower, except as provided in the Contract and in accordance with subparagraph 1(C) hereof, (ii) sell, assign or otherwise dispose (by operation of law or otherwise) of any part of its interest in the Contract, except as provided in the Contract, or (iii) amend or modify the Contract in any manner materially adverse to the interest of the Lenders in the Contract as collateral security under the Security Agreement.

(C) PacifiCorp agrees to deliver duplicates or copies of all notices of default delivered by PacifiCorp under or pursuant to the Contract to Administrative Agent in accordance with the notice provisions of this Consent. PacifiCorp may deliver any such notices concurrently with delivery of the notice to Borrower under the Contract. Administrative Agent shall have: (a) the same period of time to cure the breach or default that Borrower is entitled to under the Contract if such default is the failure to pay amounts to PacifiCorp which are due and payable by Borrower under the Contract, except that if PacifiCorp does not deliver the default notice to Administrative Agent concurrently with delivery of the notice to Borrower under the Contract, then as to Administrative Agent, the applicable cure period under the Contract shall begin on the date on which the notice is given to Administrative Agent, or (b) ninety (90) days from the date notice of default or breach is delivered to Administrative Agent to cure such default if such breach or default cannot be cured by the payment of money to PacifiCorp, so long as Administrative Agent continues to perform any monetary obligations under the Contract, Section 11.1.2(c) of the Contract is not being breached, and all other obligations under the Contract are performed by Borrower or Administrative Agent or its designee(s) or assignee(s). If possession of the Project is necessary to cure such breach or default, and Administrative Agent or its designee(s) or assignee(s) declare Borrower in default and commence foreclosure proceedings, Administrative Agent or its designee(s) or assignee(s) will be allowed a reasonable

period to complete such proceedings. PacifiCorp consents to the transfer of Borrower's interest under the Contract to the Lenders or Administrative Agent or their designee(s) or assignee(s) or any of them or a purchaser or grantee at a foreclosure sale by judicial or nonjudicial foreclosure and sale or by a conveyance by Borrower in lieu of foreclosure and agrees that upon such foreclosure, sale or conveyance, PacifiCorp shall recognize the Lenders or Administrative Agent or their designee(s) or assignee(s) or any of them or other purchaser or grantee as the applicable party under the Contract (provided that such Lenders or Administrative Agent or their designee(s) or assignee(s) or purchaser or grantee assume the obligations of Borrower under the Contract, including, without limitation, satisfaction and compliance with all requirements of Sections 8.1 and 8.2 of the Contract, and provided further that PacifiCorp's subordinated lien rights with respect to the Project are preserved in the event of any transfer of Borrower's interest under the Contract).

(D) Notwithstanding subparagraph 1(C) above, in the event that the Contract is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, or if the Contract is terminated for any reason other than a default which could have been but was not cured by Administrative Agent or its designee(s) or assignee(s) as provided in subparagraph 1(C) above, and if, within forty-five (45) days after such rejection or termination, the Lenders or their successors or assigns shall so request, to the extent permitted by applicable law, PacifiCorp and the Lenders or Administrative Agent or their designee(s) or assignee(s) will enter into a new contract. Such new contract shall be on the same terms and conditions as the original Contract for the remaining term of the original Contract before giving effect to such termination, and shall require the Lenders or Administrative Agent or their designee(s) or assignee(s) to cure any payment defaults then existing under the original Contract.

(E) In the event Administrative Agent, the Lenders or their designee(s) or assignee(s) elect to perform Borrower's obligations under the Contract as provided in subparagraph 1(C) above or enter into a new contract as provided in subparagraph 1(D) above, the recourse of PacifiCorp against Administrative Agent, Lenders or their designee(s) and assignee(s) shall be limited to such parties' interests in the Project, the credit support required under Section 7 of the Contract, and recourse against the assets of any party or entity that assumes the Contract or that enters into such new contract.

(F) In the event Administrative Agent, the Lenders or their designee(s) or assignee(s) succeed to Borrower's interest under the Contract, Administrative Agent, the Lenders or their designee(s) or assignee(s) shall cure any then-existing payment and performance defaults under the Contract, except any performance defaults of Borrower itself which by their nature are not susceptible of being cured. Administrative Agent, the Lenders and their designee(s) or assignee(s) shall have the right to assign all or a pro rata interest in the Contract or the new contract entered into pursuant to subparagraph 1(d) above to a person or entity to whom Borrower's interest in the Project is transferred, provided such transferee assumes the obligations of Borrower under the Contract. Upon such assignment, Administrative Agent and the Lenders and their designee(s) or assignee(s) (including their agents and employees, but excluding Seller) shall be released from any further liability thereunder accruing from and after the date of such assignment, to the extent of the interest assigned.

SECTION 2. REPRESENTATIONS AND WARRANTIES [PacifiCorp shall have the right to qualify the factual information contained in this Section to ensure that such representation is a true statement as of the date of this Consent]

PacifiCorp, acting in its merchant function capacity (and therefore specifically excluding the knowledge of PacifiCorp, acting in its transmission function capacity (“PacifiCorp Transmission”), as to any of the matters stated below, and without imputation to PacifiCorp of any knowledge whatsoever relating to the PacifiCorp Transmission, whether as a result of information publicly posted to the open access same-time information system or otherwise), hereby represents and warrants that as of the date of this Consent:

(A) It (i) is a corporation duly formed and validly existing under the laws of the state of its organization, (ii) is duly qualified, authorized to do business and in good standing in every jurisdiction necessary to perform its obligations under this Consent, and (iii) has all requisite corporate power and authority to enter into and to perform its obligations hereunder and under the Contract, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby;

(B) the execution, delivery and performance of this Consent and the Contract have been duly authorized by all necessary corporate action on its part and do not require any approvals, material filings with, or consents of any entity or person which have not previously been obtained or made;

(C) each of this Consent and the Contract is in full force and effect;

(D) each of this Consent and the Contract has been duly executed and delivered on its behalf and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as the enforceability thereof may be limited as set forth in Section 3.1.5 of the Contract;

(E) there is no litigation, arbitration, investigation or other proceeding pending for which PacifiCorp has received service of process or, to PacifiCorp’s actual knowledge, threatened, against PacifiCorp relating solely to this Consent or the Contract and the transactions contemplated hereby and thereby;

(F) the execution, delivery and performance by it of this Consent and the Contract, and the consummation of the transactions contemplated hereby, will not result in any violation of, breach of or default under any term of (i) its formation or governance documents, or (ii) any material contract or material agreement to which it is a party or by which it or its property is bound, or of any material Requirements of Law presently in effect having applicability to it, the violation, breach or default of which could have a material adverse effect on its ability to perform its obligations under this Consent;

(G) neither PacifiCorp nor, to PacifiCorp’s actual knowledge, any other party to the Contract, is in default of any of its obligations thereunder;

(H) to the best of PacifiCorp's actual knowledge, (i) no Force Majeure Event exists under, and as defined in, the Contract and (ii) no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either PacifiCorp or Borrower to terminate or suspend its obligations under the Contract; and

(I) the Contract and the documents and instruments contemplated therein and this Consent are the only agreements between Borrower and PacifiCorp with respect to the Project, and all conditions precedent to effectiveness under the Contract have been satisfied or waived. [Reference to subordinated lien documents per Section 7.3 of the Contract to be inserted.]

Each of the representations and warranties set forth herein shall survive the execution and delivery of this Consent and the consummation of the transactions contemplated hereby.

SECTION 3. NOTICES. All notices required or permitted hereunder shall be in writing and shall be effective (a) upon receipt if hand delivered, (b) upon telephonic verification of receipt if sent by facsimile and (c) if otherwise delivered, upon the earlier of receipt or three (3) Business Days after being sent registered or certified mail, return receipt requested, with proper postage affixed thereto, or by private courier or delivery service with charges prepaid, and addressed as specified below:

If to PacifiCorp:
[_____]
[_____]
[_____]
Telephone No.: [_____]
Telecopy No.: [_____]
Attn: [_____]

<p>If to Administrative Agent:</p> <p>[_____]</p> <p>[_____]</p> <p>[_____]</p> <p>Telephone No.: [_____]</p> <p>Telecopy No.: [_____]</p> <p>Attn: [_____]</p>
<p>If to Borrower:</p> <p>[_____]</p> <p>[_____]</p> <p>[_____]</p> <p>Telephone No.: [_____]</p> <p>Telecopy No.: [_____]</p> <p>Attn: [_____]</p>

Any party shall have the right to change its address for notice hereunder to any other location within the United States by giving thirty (30) days written notice to the other parties in the manner set forth above. Further, the Tax Investor shall be entitled to receive notices from PacifiCorp by providing written notice to PacifiCorp of Tax Investor's address for notices. PacifiCorp's failure to provide any notice to the Tax Investor shall not be a breach of this Consent.

SECTION 4. ASSIGNMENT, TERMINATION, AMENDMENT AND GOVERNING LAW. This Consent shall be binding upon and benefit the successors and assigns of the parties hereto and the Tax Investor and their respective successors, transferees and assigns (including without limitation, any entity that refinances all or any portion of the obligations under the Financing Agreement). PacifiCorp agrees (a) to confirm such continuing obligation in writing upon the reasonable request of (and at the expense of) Borrower, Administrative Agent, the Lenders or any of their respective successors, transferees or assigns, and (b) to cause any successor-in-interest to PacifiCorp with respect to its interest in the Contract to assume, in writing in form and substance reasonably satisfactory to Administrative Agent, the obligations of PacifiCorp hereunder. Any purported assignment or transfer of the Contract not in conjunction with the written instrument of assumption contemplated by the foregoing clause (b) shall be null and void. No termination, amendment, variation or waiver of any provisions of this Consent shall be effective unless in writing and signed by the parties hereto. This Consent shall be governed by the laws of the State of New York (without giving effect to the principles thereof relating to conflicts of law except Section 5-1401 and 5-1402 of the New York General Obligations Law).

SECTION 5. COUNTERPARTS. This Consent may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

SECTION 6. SEVERABILITY. In case any provision of this Consent, or the obligations of any of the parties hereto, shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions, or the obligations of the other parties hereto, shall not in any way be affected or impaired thereby.

SECTION 7. ACKNOWLEDGMENTS BY BORROWER. Borrower, by its execution hereof, acknowledges and agrees that notwithstanding any term to the contrary in the Contract, PacifiCorp may perform as set forth herein and that neither the execution of this Consent, the performance by PacifiCorp of any of the obligations of PacifiCorp hereunder, the exercise of any of the rights of PacifiCorp hereunder, or the acceptance by PacifiCorp of performance of the Contract by any party other than Borrower shall (1) release Borrower from any obligation of Borrower under the Contract, (2) constitute a consent by PacifiCorp to, or impute knowledge to PacifiCorp of, any specific terms or conditions of the Financing Agreement, the Security Agreement or any of the other Financing Documents, or (3) constitute a waiver by PacifiCorp of any of its rights under the Contract. Borrower and Administrative Agent acknowledge hereby for the benefit of PacifiCorp that none of the Financing Agreement, the Security Agreement, the Financing Documents or any other documents executed in connection therewith alter, amend, modify or impair (or purport to alter, amend, modify or impair) any provisions of the Contract. Borrower shall have no rights against PacifiCorp on account of this Consent.

IN WITNESS WHEREOF, the parties hereto by their officers thereunto duly authorized, have duly executed this Consent as of the date first set forth above.

PacifiCorp,
an Oregon corporation

By:
Name:
Title:

a _____

By:
Name:
Title:

as Administrative Agent for the Lenders

By:

Name:
Title:

**PACIFICORP RFP-2012
POWER PURCHASE AGREEMENT**

dated as of [_____], 2007,

BETWEEN

**[Bidder # [?]],
as Seller,**

AND

**PACIFICORP,
as Buyer**

[_____ **Project]**

[_____, *[State]*]

TABLE OF CONTENTS

	Page
SECTION 1 DEFINITIONS; RULES OF INTERPRETATION.....	2
1.1 <u>Defined Terms</u>	2
1.2 <u>Rules of Interpretation</u>	12
SECTION 2 TERM; COMMENCEMENT OF OPERATION.....	13
2.1 <u>Term</u>	13
2.2 <u>Milestones</u>	13
2.3 <u>Daily Delay Damages</u>	15
2.4 <u>Damages Invoicing</u>	15
2.5 <u>Buyer's Right to Monitor</u>	15
SECTION 3 REPRESENTATIONS AND WARRANTIES	17
3.1 <u>Buyer's Representations and Warranties</u>	17
3.2 <u>Seller's Representations and Warranties</u>	17
3.3 <u>Notice</u>	19
SECTION 4 SALE AND PURCHASE OBLIGATIONS	20
4.1 <u>Sale and Purchase of Contract Capacity, Capacity Rights, Net Energy and Ancillary Services</u>	20
4.2 <u>Deliveries; Title and Risk of Loss</u>	20
4.3 <u>Dispatching Deliveries from the Contract Capacity versus the Remaining Capacity</u>	21
4.4 <u>Curtailment Due to Failure to Comply with Interconnection Agreement</u>	21
4.5 <u>Sale of Test Energy</u>	21
SECTION 5 PAYMENTS; COSTS.....	22
5.1 <u>Capacity Payments</u>	22
5.2 <u>Energy Payment</u>	24
5.3 <u>Test Energy</u>	24
5.4 <u>Costs and Charges</u>	24
5.5 <u>Station Service</u>	24
SECTION 6 OPERATION AND CONTROL	24
6.1 <u>As-Built Supplement</u>	24
6.2 <u>Measurement and Quality of Net Energy</u>	24
6.3 <u>Standard of Facility Operation</u>	25
6.4 <u>Operating Procedures and Compliance</u>	26
6.5 <u>Scheduling Procedures</u>	27
6.6 <u>Outages</u>	30
6.7 <u>Schedule Coordination</u>	31
6.8 <u>Electronic Communications</u>	31
6.9 <u>Reports and Records</u>	31

6.10	<u>Access Rights</u>	33
6.11	<u>EWG</u>	33
6.12	<u>Facility Images</u>	34
6.13	<u>Financial and Accounting Information</u>	34
SECTION 7 SECURITY AND CREDIT SUPPORT		34
7.1	<u>Credit Support</u>	34
7.2	<u>Subordinated Security Interests</u>	34
7.3	<u>Quarterly Financial Statements</u>	35
7.4	<u>Security is Not a Limit on Seller’s Liability</u>	35
7.5	<u>Escrow Account</u>	36
SECTION 8 METERING		36
8.1	<u>Net Energy</u>	36
8.2	<u>Records</u>	38
8.3	<u>Adjustment to Loss Factors</u>	38
SECTION 9 BILLINGS, COMPUTATIONS AND PAYMENTS		38
9.1	<u>Monthly Invoices</u>	38
9.2	<u>Offsets</u>	38
9.3	<u>Interest on Late Payments</u>	39
9.4	<u>Disputed Amounts</u>	39
9.5	<u>Audit Rights</u>	39
SECTION 10 DEFAULTS AND REMEDIES		39
10.1	<u>Defaults</u>	39
10.2	<u>Termination and Remedies</u>	41
10.3	<u>Specific Performance</u>	41
10.4	<u>Failure to Meet Availability</u>	41
10.5	<u>License to Operate Facility</u>	42
10.6	<u>Termination of Duty to Buy</u>	42
10.7	<u>Net Replacement Power Costs</u>	42
10.8	<u>Default Security</u>	43
10.9	<u>Cumulative Remedies</u>	43
SECTION 11 INDEMNIFICATION AND LIABILITY.....		43
11.1	<u>Indemnities</u>	43
11.2	<u>No Dedication</u>	43
11.3	Consequential Damages	44
SECTION 12 INSURANCE.....		44
12.1	<u>Required Policies and Coverages</u>	44
12.2	<u>Certificates and Certified Copies of Policies</u>	44
SECTION 13 FORCE MAJEURE.....		44
13.1	<u>Definition of Force Majeure</u>	44
13.2	<u>Suspension of Performance</u>	45

13.3	<u>Force Majeure Does Not Affect Other Obligations</u>	45
13.4	<u>Right to Terminate</u>	45
SECTION 14 CONFIDENTIALITY		45
14.1	<u>Confidential Business Information</u>	45
14.2	<u>Duty to Maintain Confidentiality</u>	45
14.3	<u>Irreparable Injury; Remedies</u>	46
14.4	<u>News Releases and Publicity</u>	46
SECTION 15 DISAGREEMENTS		46
15.1	<u>Negotiations</u>	46
15.2	<u>Mediation</u>	46
15.3	<u>Choice of Forum</u>	48
15.4	<u>Settlement Discussions</u>	48
15.5	<u>Waiver of Jury Trial</u>	48
15.6	<u>Equitable Remedies</u>	48
SECTION 16 GUARANTEED PERFORMANCE PARAMETERS.....		49
16.1	<u>Guaranteed Heat Rate</u>	49
16.2	<u>Guaranteed Start-Up Time</u>	49
16.3	<u>Guaranteed Ramp Rate</u>	49
SECTION 17 MISCELLANEOUS		49
17.1	<u>Several Obligations</u>	49
17.2	<u>Choice of Law</u>	49
17.3	<u>Partial Invalidity</u>	49
17.4	<u>Waiver</u>	49
17.5	<u>Governmental Jurisdiction and Authorizations</u>	50
17.6	<u>Restriction on Assignments</u>	50
17.7	<u>Permitted Assignments</u>	50
17.8	<u>Entire Agreement</u>	50
17.9	<u>Amendments</u>	50
17.10	<u>No Third Party Beneficiaries</u>	50
17.11	<u>Agents and Subcontractors</u>	50
17.12	<u>Notices</u>	50
17.13	<u>Mobile-Sierra</u>	51
17.14	<u>Counterparts</u>	51

EXHIBITS:

Exhibit A	Description of Seller's Facility
Exhibit B	Electricity Delivery Point/Electrical Interconnection Facilities
Exhibit C	Required Facility Documents
Exhibit D	Hourly Scalars
Exhibit E	Start-Up Testing
Exhibit F	Energy Payment
Exhibit G	Examples
Exhibit H	Event Types
Exhibit I	Major Equipment and Maintenance Schedule
Exhibit J	Required Insurance
Exhibit K	Operating Procedures
Exhibit L	Availability Notice
Exhibit M	Ambient Facility Capacity Correction Algorithms
Exhibit N	Buyer's Initial Designated Representatives
Exhibit O	Dispatch Procedures
Exhibit P	Net Energy Specifications and Dispatchable Quantities of Net Energy
Exhibit Q	Guaranteed Performance Parameters
Exhibit R	Dispatch Notice
Exhibit S	Credit Matrix [<i>Note to bidders: Credit Matrix attached as Appendix to RFP 2012</i>]
<u>Exhibit T</u>	<u>Form of Lender Consent</u>

THIS WORKING DRAFT DOES NOT CONSTITUTE A BINDING OFFER, SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE, AND IS CONDITIONED UPON SELECTION OF THE BIDDER, EXECUTION, AND EACH PARTY'S RECEIPT OF ALL REQUIRED MANAGEMENT AND BOARD APPROVALS IN THEIR SOLE AND ABSOLUTE DISCRETION (INCLUDING FINAL CREDIT AND LEGAL APPROVALS). ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS WORKING DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS RELATING TO THIS WORKING DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL THIS WORKING DRAFT IS NEGOTIATED, APPROVED BY ALL APPROPRIATE PARTIES AND EXECUTED BY EACH PARTY'S AUTHORIZED SIGNATORY, NO PARTY SHALL HAVE ANY LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS WORKING DRAFT OR IN THE COURSE OF NEGOTIATIONS. ANY ASSERTION TO THE CONTRARY IN ANY PROCEEDING OR ACTION REGARDING THIS WORKING DRAFT SHALL RENDER THIS WORKING DRAFT NULL AND VOID IN ITS ENTIRETY. DURING DISCUSSIONS AND NEGOTIATIONS ANY PARTY MAY CHANGE ITS POSITION ON ANY MATTER, WHETHER OR NOT SET FORTH IN OR BASED UPON THIS WORKING DRAFT, ANY OTHER DOCUMENT OR ANY COURSE OF DEALING, AT ANY TIME OR FOR ANY REASON.

POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT dated as of [_____], 2007 (this "Agreement"), is made and entered into between [_____], a [*describe entity*] ("Seller"), and PacifiCorp, an Oregon corporation, acting in its merchant function capacity ("Buyer"). Seller and Buyer are referred to collectively as the "Parties" and individually as a "Party."

RECITALS

A. Seller intends to develop, construct, own, operate and maintain [Insert Resource] [*consisting of [?] insert further description*] for the generation of electric energy located in [*township/range*], [_____] County, [*State*], whose initial Facility Capacity shall be [525] MW (as more fully described in **Exhibit A**, the "Facility").

B. Seller responded to a Request for Proposals – PacifiCorp RFP 2012 which was issued by Buyer in _____ 2006. Buyer's objective in issuing the RFP was to fulfill, through a competitive bid process, a portion of its supply-side resource need as contemplated in Buyer's 2004 Integrated Resource Plan.

C. Buyer's selection of Seller was based upon a competitive bid and was, in part, based upon Seller's representations and warranties, Seller's schedule achieving the Guaranteed Commercial Operation Date (initially capitalized terms not defined in these Recitals are defined in Section 1 below), and the guaranteed performance of the Facility, all as set forth herein. Such matters were a material inducement for the selection of Seller, and Seller's failure to perform in accordance with the terms and conditions or Seller's failure to meet its representations and warranties and schedules for delivery of Net Energy shall cause material damage to Buyer.

D. Seller will make available and sell to Buyer, and Buyer will receive and purchase from Seller, Contract Capacity and Net Energy associated with such Contract Capacity pursuant to the terms and conditions of this Agreement. Seller acknowledges that Buyer will include such Contract Capacity in Buyer's resource planning.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, the Parties agree as follows:

SECTION 1

DEFINITIONS; RULES OF INTERPRETATION

1.1 Defined Terms. Unless otherwise required by the context in which any term appears, defined terms used in this Agreement (as indicated by initial capitalization, except as otherwise provided in this Section 1.1) shall have the following meanings:

“**AAA**” has the meaning set forth in Section 15.2.

“**Affiliate**” means, with respect to any entity, each entity that directly or indirectly, controls or is controlled by or is under common control with such designated entity. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any entity, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities or by contract or otherwise.

“**Alternate Representative**” has the meaning set forth in Section 6.4.2.

“**Ambient Facility Capacity**” means the Contract Capacity determined from the correction algorithms set forth in **Exhibit M**, based upon the Facility Capacity and the ambient conditions in effect in each hour.

“**Ancillary Services**” means those services and energy from time to time now or hereafter available that are necessary to support the Contract Capacity and transmission of energy from resources to loads while maintaining reliable operation of the System in accordance with Prudent Electrical Practices. Such services and energy include regulation reserve, spinning reserve, non-spinning reserve, voltage support, black start Capacity, and reactive power.

“**As-built Supplement**” shall be a supplement to **Exhibit A** that describes the Facility as actually built and shall include all such information as may reasonably be requested by Buyer.

“**Authorized Representative**” has the meaning set forth in Section 6.4.2

“**Availability Notice**” has the meaning set forth in Section 6.5.1.1.

“**Baseload Capacity**” means the Capacity of the Facility achieved when operating at the Reference Conditions with all items of Major Equipment operating at full load, but without duct firing.

“**Business Day**” means any day on which banks in Portland, Oregon 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 Oregon.

“**Btu’s**” means British Thermal Units.

“**Buyer**” has the meaning set forth in the Preamble.

“**CAF_h**” has the meaning set forth in Section 5.1.2.

“**CAF_m**” has the meaning set forth in Section 5.1.2.

“**Capacity**” means the output potential a machine or system can produce under specified conditions as generally expressed in kW or MW.

“**Capacity Payment**” means the Monthly Capacity Payments and the Minimum Monthly Capacity Payments payable in accordance with Section 5.1.

“**Capacity Payment Rate**” means, as of the Commercial Operation Date, \$[?]/kW/month.

“**Capacity Payment Shortfall**” has the meaning set forth in Section 5.1.4.

“**Capacity Rights**” means any current or future defined characteristic, certificate, tag, credit, ancillary service attribute, or accounting construct, including any accounting construct counted towards any current or future resource adequacy or reserve requirements, associated with the Capacity of the Facility or the Facility’s capability and ability to produce energy, but excluding any of the foregoing attributable to any expansion of the Facility occurring after the Commercial Operation Date, unless the output associated therewith is purchased by Buyer.

“**Carry-Over Letter of Credit**” has the meaning set forth in Section 5.1.4.

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

“**CC**” has the meaning set forth in Section 5.1.2.

“**Collateral**” has the meaning set forth in Section 7.5

“**Combustion Turbine**” or “**CT**” means any one of the combustion turbines comprising the Facility.

“**Commercial Operation Date**” means the date on which the Facility is fully operational, reliable and each condition set forth in Section 2.2.6 is continuously satisfied.

“**Contract Capacity**” means [525] MW of Capacity from the Facility, comprised of [?] MW of Baseload Capacity and [?] MW of Peakload Capacity[if applicable].

“**Contract Year**” means a twelve (12) month period commencing at 00:00 hours on January 1 and ending on 24:00 hours 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 last Day of the Term.

“**CPR**” has the meaning set forth in Section 5.1.2.

“**CPS**” has the meaning set forth in Section 5.1.2.

“**Credit Matrix**” means the credit matrix attached hereto as **Exhibit S**.

“**Credit Rating**” means, as of any date, the then applicable senior, unsecured, long-term debt or corporate credit rating of a Person published by either Moody’s or S&P.

“**Credit Support**” means, prior to the Commercial Operation Date, the amount, subject to Section 7.1, shown as the Project Development Security on the Credit Matrix and, on and after the Commercial Operation Date, the amount (if any) shown on the Credit Matrix as the Default Security.

“**Credit Support Security**” means a guaranty, Letter of Credit or Cash Escrow provided pursuant to Section 7.1.

“**CT Start**” means the process of rotating any of the Facility’s Combustion Turbine rotors by means of such Combustion Turbine’s starting motor and subsequently introducing and igniting Fuel in the Combustion Turbine’s combustor and increasing the rotating speed of the unit’s rotor sufficiently that the starting motor can be disengaged, also referred to herein as the Start-Up of a Combustion Turbine. [If Applicable]

“**Daily Delay Damages**” for each Day shall be the positive number (and if not a positive number, zero) equal to the sum for all hours of the Day of the product for each hour of the Day of (1) the Dow JonesTM SP15 Electricity Price Index for such Day, expressed in \$/MWh, *multiplied by* (2) the applicable hourly scalar set forth in **Exhibit D** for the applicable hour in the daily (i) firm on-peak, (ii) firm off-peak or (iii) 24-hour firm (on Sundays and NERC holidays) Dow JonesTM SP15 Electricity Price Index (each such hour, the “**Applicable Hour**”) during such Day, *multiplied by* (3) the loss factor of 1.112, *plus* (4) the basis of \$13/MWh for each Applicable Hour or portion thereof during such Day, *minus* (5) one-twenty-fourth of the Capacity Payments and Energy Payments that would have been made with respect to such Day, if no Capacity Payments or Energy Payments have been paid with respect to such Day. If the

Dow JonesTM SP15 Electricity Price Index ceases to be published during the Term, Buyer shall select as a replacement electricity price index or component, an index acceptable to Buyer in its discretion that, after any necessary adjustments, provides the most reasonable substitute quotation of the daily price of firm on-peak, firm off-peak or 24-hour firm energy at South of Path 15 for the applicable periods.

“**Day**” means the 24-hour period beginning at midnight Pacific Prevailing Time on a day and ending at midnight Pacific Prevailing Time on the next succeeding day.

“**Dispatch**,” “**Dispatched**,” and “**Dispatching**” means the scheduling and control by the Buyer of Net Energy, through submittal of schedules pursuant to the Dispatch Procedures and other provisions of this Agreement.

“**Dispatch Procedures**” means the procedures under which Buyer is entitled to Dispatch the Facility, as set forth in **Exhibit O**.

“**Dollar**” or “**\$**” means the lawful currency of the United States of America.

“**Effective Date**” has the meaning set forth in Section 2.1.

“**Electrical Interconnection Facilities**” means all the facilities installed by Seller for the purpose of interconnecting the Facility to the Electricity Delivery Point, including electrical transmission lines, upgrades, transformers and associated equipment, substations, relay and switching equipment, and safety equipment, as set forth in **Exhibit B**.

“**Electricity Delivery Point**” means the physical point(s) for Seller’s delivery, and Buyer’s receipt, of Net Energy at which the Facility is connected with the Transmission Provider’s transmission system, as specified in the Interconnection Agreement and in **Exhibit B**. *[Note to Bidders: If energy is to be delivered to a transmission provider other than the Transmission Provider and wheeled to the Electricity Delivery Point, the Electricity Delivery Point will be at a point of interconnection with the Transmission Provider’s transmission system where the resource can be integrated as a Network Resource.]*

“**Electric Metering Equipment**” has the meaning set forth in Section 8.1.

“**Energy Payment**” means the payment to be made by Buyer to Seller pursuant to Section 5.3 and as specified in **Exhibit F**.

“**Environmental Law**” means any federal, state or local law including statutes, regulations, rulings, orders, administrative interpretations and other governmental restrictions and requirements having the force and effect of law relating to (i) the discharge or disposal of any substance into the air, soil or water, including pollutants, water pollutants or process waste water, (ii) storage, emissions transportation or disposal of any Regulated Material, (iii) the environment or hazardous substances, all as amended from time to time, (iv) land use requirements pertaining to Regulated Materials, including laws requiring environmental impact studies or other similar evaluations, and (v) environmental issues pertaining to the development, construction, operation or maintenance of the Facility.

“**Event of Default**” has the meaning set forth in Section 10.1.

“**EWG**” means an “exempt wholesale generator,” as defined under the Public Utility Holding Company Act of 1935, as amended from time to time.

“**Example**” means an example set forth in **Exhibit G**. Each Example is for purposes of illustration only and is not intended to constitute a representation, warranty or covenant concerning the matters assumed for purposes of each Example. If there is a conflict between an Example and the text of this Agreement, the text shall control.

“**Excused Outage**” has the meaning set forth in Section 5.1.2.

“**Facility**” shall have the meaning given to that term in **Recital A**.

“**Facility Capacity**” means the maximum Capacity of the Facility, expressed in MW, when operated consistent with the manufacturer’s recommended power factor and operating parameters, as set forth in **Exhibit A**.

“**FERC**” means the Federal Energy Regulatory Commission.

“**FIN 46**” has the meaning set forth in Section 6.13.

“**Force Majeure**” has the meaning set forth in Section 13.1.

“**Forced Outage**” means NERC Event Types U1, U2 and U3, as set forth in **Exhibit H**.

“**Fuel**” means natural gas.

“**Governmental Authority**” means any supranational, federal, state or other political subdivision thereof, having jurisdiction over Seller, Buyer or this Agreement, including any municipality, township and county, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing.

“**Guaranteed Commercial Operation Date**” means *[Bidder to insert]*.

“**Guaranteed Heat Rate**” has the meaning assigned to such term in **Exhibit Q**.

“**Guaranteed Ramp Rate**” has the meaning set forth in **Exhibit Q**.

“**Guaranteed Start-Up Time**” has the meaning set forth in **Exhibit Q**.

“**Heat Rate**” means the number of Btu’s used to produce one MW of energy measured at the Electricity Delivery Point.

“**Interconnection Agreement**” means the agreement to be entered into separately between Seller and Transmission Provider providing for the construction and operation of the Electrical Interconnection Facilities.

“Lender” means any individual or entity or successor in interest thereof lending money or extending credit (including any financing lease or credit derivative arrangement) to Seller (i) for the construction, term or permanent financing or refinancing of the Facility; (ii) for working capital or other ordinary business requirements for the Facility (including for the maintenance, repair, replacement or improvement of the Facility); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Facility; or (iv) for the purchase of the Facility and related rights from Seller. As used herein, “Lender” includes a Tax Investor (as defined in the Lender Consent).

“Lender Consent” means a Consent to Collateral Assignment in favor of one or more Lenders and in substantially the form of **Exhibit T**.

“Letter of Credit” means an irrevocable standby letter of credit in form and substance acceptable to Buyer in its discretion, naming Buyer as the party entitled to demand payment and present draw requests thereunder, which letter of credit:

(1) is issued by a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a net worth of at least \$1,000,000,000 and a Credit Rating of:

(a) “A2” or higher from Moody’s; or

(b) “A” or higher from S&P;

(2) on the terms provided in the letter of credit, permits Buyer to draw up to the face amount thereof for the purpose of paying any and all amounts owing by Seller hereunder;

(3) if a letter of credit is issued by a foreign bank with a U.S. branch, permits Buyer to draw upon a U.S. branch;

(4) permits Buyer 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;

(5) permits Buyer to draw the entire amount available thereunder if such letter of credit is not increased, replaced or replenished as and when provided in Section 7;

(6) is transferable by Buyer to any party to which Buyer may assign this Agreement under Section 17.7; and

(7) shall remain in effect for at least ninety (90) days after the end of the Term.

“Licensed Professional Engineer” means a person acceptable to Buyer in its reasonable judgment who (i) is licensed to practice engineering in the state in which the Facility is located, (ii) has training and experience in the engineering discipline(s) relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion,

(iii) has no economic relationship, association, or nexus with Seller, (iv) 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, (v) is engaged by Seller on terms reasonably acceptable to Buyer, (vi) has its fees paid for by Seller, and (vii) is licensed in an appropriate engineering discipline for the required certification being made. The engagement and payment of a Licensed Professional Engineer solely to provide the certifications, evaluations and opinions required by this Agreement shall not constitute a prohibited economic relationship, association or nexus with Seller, so long as such engineer has no other economic relationship, association or nexus with Seller.

“**MAAF**” has the meaning set forth in Section 5.1.2.

“**Maintenance Outage**” means NERC Event Type MO, as set forth in **Exhibit H**.

“**Major Equipment**” has the meaning set forth in **Exhibit I**.

“**Major Maintenance Cycle**” means, with respect to each item of Major Equipment, the period of time specified therefor in **Exhibit I**.

“**Mediation Notice**” has the meaning set forth in Section 15.2.1.

“**Minimum Monthly Capacity Payment**” has the meaning set forth in Section 5.1.3.

“**Monthly Capacity Payment**” has the meaning set forth in Section 5.1.2.

“**Moody’s**” shall mean Moody’s Investor Services, Inc.

“**MW**” means megawatt.

“**MWh**” means megawatt hour.

“**NERC**” means the North American Electric Reliability Council.

“**Net Energy**” means, for any period, the energy output of the Facility delivered to Buyer at the Electricity Delivery Point pursuant to Buyer’s Dispatch of the Facility of a quantity in MWh not to exceed that associated with Contract Capacity, as measured pursuant to Section 8, less station use and less transformation and transmission losses to the Electricity Delivery Point.

“**Network Resource**” means a generation resource which has been fully integrated into the System.

“**Notifying Party**” has the meaning set forth in Section 8.2.

“**Operating Procedures**” are set out in **Exhibit K**.

“**Pacific Prevailing Time**” means Pacific Standard Time or Pacific Daylight Time, as applicable on the Day in question.

“**Party**” has the meaning set forth in the Preamble.

“**Peakload Capacity**” means incremental Capacity, in excess of the Baseload Capacity, which is generated by the Facility utilizing duct firing. [if applicable]

“**Permits**” means all permits, licenses, approvals, certificates, entitlements and other authorizations issued by Governmental Authorities required for the development, construction, ownership, operation and maintenance of the Facility, and all amendments, modifications, supplements, general conditions and addenda thereto.

“**Person**” means any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or governmental authority.

“**Planned Outage**” means NERC Event Type PO, as set forth on **Exhibit H**.

“**Pledge Interest**” has the meaning set forth in Section 7.2.2.

“**Potential Event of Default**” means an event which, but for the passing of time or the giving of notice or both, would constitute an Event of Default.

“**Premises**” means the real property on which the Facility is or will be located, as more fully described on **Exhibit A**.

“**Prime Rate**” means 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. 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 based on the prime rate is being paid.

“**Protective Apparatus**” means such equipment and apparatus, including protective relays, circuit breakers and the like, necessary or appropriate to isolate the Facility from the System consistent with Prudent Electrical Practices.

“**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 for gas fired, combined cycle electric generation facilities, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, would have been expected to accomplish the desired result in a cost efficient manner consistent with good business practices, reliability criteria, safety considerations and expediency. 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.

“**Reference Conditions**” means the following conditions: standard ambient air pressure at the Premises of [?]; ambient temperature, dry bulb, of [?] degrees Fahrenheit; and relative humidity of [?] percent ([?]%).

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

“**Remaining Capacity**” means all the Capacity of the Facility in excess of the Contract Capacity.

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

“**Reporting Month**” has the meaning set forth in Section 6.9.1.

“**Requested Net Energy**” means, for any period, the Net Energy of the Facility that has been scheduled by Buyer for delivery in accordance with the Dispatch Procedures and other terms of this Agreement.

“**Required Facility Documents**” means all Permits and agreements now or hereafter necessary for the development, construction, ownership, operation and maintenance of the Facility including the documents (i) to which Seller and Buyer are a party evidencing the Security Interests and (ii) those set forth in **Exhibit C**.

“**Requirements of Law**” means collectively, as to Seller and [*if Seller is not the ultimate parent, any ultimate parent entity*], Seller’s organizational or governing documents and any federal, state, county or municipal, law, treaty, ordinance, franchise, rule, regulation, order, writ, judgment, injunction, decree, award or determination of any arbitrator, or a court or other Governmental Authority, in each case, now or hereafter applicable to or binding upon this Agreement, the Facility, Seller or [*if Seller is not the ultimate parent, any parent entity*] to which any of their respective properties are subject (including those pertaining to electrical, building, zoning, environmental and occupational health and safety).

“**RTO**” means any person, other than Transmission Provider, that becomes responsible as system operator for, or directs the operation of, the System.

“**S&P**” shall mean Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.).

“**Schedule**” or “**Scheduled**” means the acts of Buyer and Seller pursuant to Section 6.5 setting forth a schedule requesting and accepting the delivery of energy by Seller to Buyer on and after the Commercial Operation Date.

“**Scheduling Constraints**” means the limitations of the Facility’s Capacity arising as a result of the need to observe the physical ramp rates of the Major Equipment and maintain minimum run times, minimum down times, minimum dispatch levels of Net Energy and Capacity per CT, and maximum levels of Net Energy and Capacity, to be generated by any item of Major Equipment, in compliance with the warranty requirements relating to each item of Major Equipment, the operating and maintenance standards recommended by the Facility’s equipment suppliers, and Prudent Electrical Practice, as set forth on **Exhibit P**.

“**Scheduling Fees**” means fees assessed by any person to schedule the delivery of the energy.

“**Security Interests**” has the meaning set forth in Section 7.2.1.

“**Seller**” has the meaning set forth in the Preamble.

“**Senior Lenders**” means the Lenders providing construction financing for the Facility, or any term or permanent take-out financing of such construction financing.

“**Simple Cycle**” means operation of a Combustion Turbine without capturing the waste heat from the Combustion Turbine in the associated heat recovery steam generator and, therefore, without producing additional Net Energy from the steam turbine utilizing steam produced by such heat recovery steam generator. When one or more CTs are operated in Simple Cycle mode, the Facility will produce less Capacity and less Net Energy, while consuming Fuel at a higher heat rate, than when the Facility is operated in combined cycle mode to produce Baseload Capacity. The ramp rates applicable to each CT, as set forth in **Exhibit Q**, are faster in Simple Cycle mode than in combined cycle mode.

“**Solvency**” or “**Solvent**” has the meaning set forth in Section 3.2.12.

“**Standard Heat Rate**” means the actual Heat Rate of the Facility at varying levels of the Net Energy and varying ambient conditions.

“**Start-Up**” means a firing of one or more of the items constituting Major Equipment when such item or items of Major Equipment is not being operated, including any firing required to perform a CT Start. The period of a Start-Up of any item of Major Equipment begins at the commencement of such firing and ends when such item of Major Equipment obtains and produces on a continuous basis the desired quantity of Net Energy.

“**Start-Up Testing**” means the tests set in **Exhibit E**.

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

“**Tariff**” means Buyer’s FERC Electric Tariff Fourth Revised Volume No. 11 Pro Forma Open Access Transmission Tariff, as revised from time to time.

“**Term**” has the meaning set forth in Section 2.1.

“**Transmission Provider**” means [*PacifiCorp, an Oregon corporation, acting in its transmission function capacity.*] [*Note to Bidders: If the Facility is interconnected to another system, identify the appropriate Transmission Provider.*] Seller acknowledges that Buyer, as Buyer under this Agreement, has no responsibility for or control over such Transmission Provider.

“**Unexcused Outage**” has the meaning set forth in Section 5.1.2.

“**Unplanned Outage**” means NERC Event Type U, as set forth on **Exhibit H**.

1.2 Rules of Interpretation.

1.2.1 General. Unless otherwise required by the context in which any term appears, (a) the singular shall include the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” (if any) shall be to articles, sections, schedules, annexes, appendices or exhibits of this Agreement; (c) all references to a particular entity or an electricity market price index shall include a reference to such entity’s or index’s successors and (if applicable) permitted assigns; (d) the words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection hereof; (e) all accounting terms not specifically defined in this Agreement shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied; (f) references to this Agreement shall be deemed to include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; (g) the masculine shall include the feminine and neuter and vice versa; (h) the word “including” shall be construed in its broadest sense to mean “without limitation” or “but not limited to” and (i) the word “or” is not necessarily exclusive.

1.2.2 Terms Not to Be Construed for or Against Either Party. Each term of this Agreement 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 of this Agreement 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 of this Agreement are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement.

1.2.4 Interpretation with Interconnection Agreement. Each Party conducts its operations in a manner intended to comply with FERC Order No. 2004, Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions. Moreover, the Parties acknowledge that Transmission 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 separate Interconnection Agreement.

1.2.4.1 The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free standing contract and that the terms of this Agreement are not binding upon Transmission Provider.

1.2.4.2 Notwithstanding any other provision in this Agreement, nothing in the Interconnection Agreement shall alter or modify the Parties' rights, duties, and obligations under this Agreement. This Agreement shall not be construed to create any rights between Seller and Transmission Provider.

1.2.4.3 Seller expressly recognizes that, for purposes of this Agreement, Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Transmission Provider or an Affiliate thereof.

SECTION 2

TERM; COMMENCEMENT OF OPERATION

2.1 Term. This Agreement shall become effective when it is signed and delivered by both Parties (the "**Effective Date**") and, unless earlier terminated as provided in this Agreement, shall remain in effect until the [?] anniversary of the Commercial Operation Date (the "**Term**").

2.2 Milestones. Time is of the essence of this Agreement, and Seller's ability to meet certain milestones before the Commercial Operation Date and to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date is critically important. Therefore, Seller shall achieve the following milestones unless waived or extended by Buyer in its sole and absolute discretion: [*Note to bidders: portions of this Section 2.2 may not be applicable to a non-facility dependent contract*]

2.2.1 By [date], Seller shall demonstrate to Buyer's reasonable satisfaction that Seller has made all arrangements and obtained all means for transporting Fuel in quantities sufficient to operate the Facility at the Facility Capacity for the Term;

2.2.2 By [date], Seller shall obtain and provide to Buyer copies of all Required Facility Documents necessary for construction of the Facility;

2.2.3 By [date], Seller shall provide to Buyer evidence acceptable to Buyer that Seller has obtained construction financing for the Facility (or alternatively permanent financing subject only to construction of the Facility and Seller's execution of the lender's loan documents);

2.2.4 By [date], Seller shall provide Buyer with an As-built Supplement acceptable to Buyer;

2.2.5 By [date], Seller shall begin deliveries of Net Energy for purposes of initiating Start-Up Testing; and

2.2.6 By the Guaranteed Commercial Operation Date, the Commercial Operation Date shall have occurred. This shall require that all of the following conditions shall have been satisfied or waived by Buyer in its sole and absolute discretion:

(1) Buyer shall have received a certificate addressed to Buyer from a Licensed Professional Engineer certifying that the Facility is able to generate energy reliably in amounts required by this Agreement and in accordance with all other terms and conditions of this Agreement;

(2) Start-Up Testing of the Facility shall have been completed;

(3) After Buyer has received notice of the completion of Start-Up Testing, Buyer shall have endorsed a certificate addressed to Buyer from a Licensed Professional Engineer certifying that the Facility has operated for testing purposes under this Agreement uninterrupted for a period of ten (10) consecutive days at a rate of at least the Facility Capacity based upon any sixty (60) minute period for the entire testing period. Seller must provide five (5) Business Days' written notice to Buyer before the start of the Start-Up Testing period. If the operation of the Facility is interrupted during this initial testing period or any subsequent testing period, the Facility shall start a new consecutive ten (10) day testing period and Seller shall provide Buyer forty-eight (48) hour written notice before the start of such testing period;

(4) Buyer shall have received a certificate addressed to Buyer from a Licensed Professional Engineer certifying that, in accordance with the Interconnection Agreement, all required Electrical Interconnection Facilities have been constructed, all required interconnection tests have been completed, the Facility is physically interconnected with the System and the Facility Capacity is a Network Resource;

(5) Buyer shall have received a certificate addressed to Buyer from a Licensed Professional Engineer certifying that Seller has obtained all Required Facility Documents for the construction and operation of the Facility and, if requested by Buyer in writing, Seller shall have provided copies of any or all such requested Required Facility Documents, together with (i) the certificates of insurance coverage or insurance policies required by Section 12.1, and (ii) copies of all Required Facility Documents which Seller is responsible to obtain or are required for the construction and operation of the Facility;

(6) Buyer shall have issued a written certificate to Seller certifying that Buyer has received all Facility drawings, plans, specifications, policies, and other documents required by this Agreement;

(7) Buyer shall have received a certificate addressed to Buyer from Seller's primary construction contractor certifying that the Facility has been turned over to Seller for permanent operation and maintenance and that the primary construction contractor

owes no further construction-related obligations to Seller (other than punch list items); and

(8) Buyer shall have received a certificate addressed to Buyer from an office of Seller and acceptable to Buyer certifying that no Event of Default by Seller or Potential Event of Default by Seller exists under this Agreement.

2.3 Daily Delay Damages. Seller shall cause the Commercial Operation Date to occur on or before the Guaranteed Commercial Operation Date but no earlier than [**? months**] prior to the Guaranteed Commercial Operation Date. If the Commercial Operation Date does not occur on or before the Guaranteed Commercial Operation Date, to compensate Buyer for the failure to provide energy and Capacity from the Facility, Seller shall pay Buyer delay damages equal to the Daily Delay Damages times Contract Capacity for each Day or portion of a Day until that Day that the Commercial Operation Date occurs from and after the Guaranteed Commercial Operation Date. Each Party agrees and acknowledges that (a) the damages that Buyer would incur for the failure to provide energy from the Facility due to delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date would be difficult or impossible to predict with certainty, and (b) the Daily Delay Damages mechanism is an appropriate approximation of such damages. This Section 2.3 shall not limit the amount of damages payable to Buyer if this Agreement is terminated as a result of Seller's failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date and any such damages shall be determined in accordance with Section 10.7. In addition, this Section 2.3 shall not limit the damages payable to Buyer for matters resulting from delay in achieving the Commercial Operation Date other than the failure to provide energy from the Facility.

2.4 Damages Invoicing. By the tenth (10th) day following the end of the calendar month of the Guaranteed Commercial Operation Date, and continuing on the tenth (10th) day following the end of any calendar month during which Daily Delay Damages are incurred, Buyer shall deliver to Seller a proper invoice showing Buyer's computation of such damages and any amount due Buyer in respect thereof for the preceding calendar month. No later than ten (10) days after receiving such an invoice, Seller shall pay to Buyer, by wire transfer of immediately available funds to an account specified in writing by Buyer or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice.

2.5 Buyer's Right to Monitor. During the design, procurement, construction, installation, start up and testing of the Facility, Seller shall permit Buyer and its advisors and consultants to:

(a) Review and discuss with Seller and its advisors and consultants monthly status reports on the progress of the development, design, construction and installation of the Facility. Between the date on which this Agreement is executed and thirty (30) days following the Commercial Operation Date, Seller shall, on or before the tenth (10th) day of each calendar month, provide Buyer with a brief monthly status report for the preceding month.

(b) Monitor the development, design, engineering, procurement, construction and installation of the Facility and the performance of the contractor(s) constructing the Facility.

(c) Review and monitor the contractors' performance and achievement of (i) all initial performance tests and other tests required under the Facility construction contracts that must be performed in order to achieve the Commercial Operation Date and (ii) all tests contemplated by the warranty agreement(s) between the Seller and manufacturer of the Facility's CTs and any other Major Equipment. Buyer reserves the right to require additional performance tests of the Facility's CTs in the event that Seller elects not to have such CTs or other Major Equipment covered by warranty agreements acceptable to Buyer. Seller shall provide Buyer with at least five (5) Business Days' prior notice of each such test.

(d) Witness initial performance tests and other tests and review the results thereof.

(e) Perform such examinations, inspections, and quality surveillance as, in Buyer's reasonable judgment, are appropriate and advisable to determine that all Major Equipment comprising the Facility has been properly commissioned and that the Facility has achieved the Commercial Operation Date.

The Parties acknowledge and agree that Buyer is under no obligation to perform any of the monitoring rights under this Section 2.5. Any information or knowledge obtained by Buyer in the exercise of its rights under this Section 2.5 shall not prevent Buyer from subsequently asserting that Seller failed to perform its obligations under this Agreement or failed to satisfy any of its conditions in Section 2, nor shall the exercise by Buyer of such rights be used as evidence that Seller performed its obligations under this Agreement or satisfied its conditions in Section 2 or that Buyer gave any consent to Seller's action in meeting its obligations under Section 2. Buyer's right to indemnification, payments for damages or other remedy in this Agreement will not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Commercial Operation Date, including with respect to the accuracy or inaccuracy of any representation or warranty, or compliance with any covenant or obligation hereunder. Buyer shall maintain one or more designated representatives for purposes of the monitoring activities contemplated in this Section 2.5, which representatives shall have authority to act for Buyer in all technical matters under this Section 2.5. However, Buyer's representatives, in their capacity as representatives, shall not have the authority to amend or modify any provision of this Agreement. Buyer's initial representatives for purposes of this Section 2.5 and their contact information are listed in **Exhibit N**. Buyer may, by written notice to Seller, change its representatives or the contact information for such representatives.

SECTION 3

REPRESENTATIONS AND WARRANTIES

3.1 Buyer's Representations and Warranties. Buyer represents, covenants, and warrants to Seller that:

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

3.1.2 Authority. Buyer 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 Corporate Actions. Buyer 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 No Contravention. 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 Buyer or any valid order of any court, or any regulatory agency or other body having authority to which Buyer is subject.

3.1.5 Valid and Enforceable Agreement. This Agreement is a valid and legally binding obligation of Buyer, enforceable against Buyer 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's Representations and Warranties. Seller represents, covenants, and warrants to Buyer that:

3.2.1 Organization. Seller is a [*insert legal entity*] duly [*organized*] and validly existing under the laws of [_____].

3.2.2 Authority. Seller (i) has the requisite power and authority to enter into this Agreement and to perform, including all required regulatory authority to make wholesale sales from the Facility; (ii) has the power and authority to own and operate its businesses and properties, to own or lease the property it occupies and to conduct the business in which it currently engaged; and is duly qualified as [_____] in Utah; and (iii) is 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.

3.2.3 Actions. Seller has taken all [*insert appropriate legal entity*] actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.2.4 No Contravention. The execution, delivery, performance and observance by Seller of its obligations under this Agreement do not and will not:

3.2.4.1 contravene, conflict with or violate any provision of any material Requirements of Law presently in effect having applicability to either Seller or [*if Seller is not the ultimate parent, Seller's ultimate parent*];

3.2.4.2 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 C** or (ii) required in connection with the construction and/or operation of the Facility and expected to be obtained in due course;

3.2.4.3 result in a breach of or constitute a default under any provision of any security issued by [*ultimate parent of Seller*] or any of its Affiliates or any material agreement, instrument or undertaking to which either [*ultimate parent of Seller*] or any of its Affiliates is a party or by which [*ultimate parent of Seller*]'s or any of its Affiliates' property is bound; or

3.2.4.4 require Seller to be licensed under the Utah Construction Trades Licensing Act.

3.2.5 Valid and Enforceable Agreement. 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 Litigation. No litigation, arbitration, investigation or other proceeding is pending or, to the best of Seller's knowledge, threatened against either Seller, its parent(s), or any Affiliate with respect to this Agreement and the transactions contemplated hereby and thereby.

3.2.7 Accuracy of Information. To the knowledge of Seller, no exhibit, contract, report or document furnished by Seller to Buyer in connection with this Agreement, or the negotiation or execution of this Agreement contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statements contained therein not misleading.

3.2.8 Required Facility Documents. All Required Facility Documents are set forth in **Exhibit C** attached hereto. To Seller's knowledge, no unusual or burdensome conditions are expected by Seller to be placed upon, or created by, any of the Required Facility Documents. The anticipated use of the Facility complies with all applicable restrictive covenants affecting the Premises and all Requirements of Law. The representation made in this Section 3.2.8 shall be deemed to be given throughout the entire Term.

3.2.9 Taxes. Seller has filed or caused to be filed all tax returns which were required to be filed and has paid all taxes shown to be due and payable on said returns or on any assessments made against it or any of its property including the Premises, and all other taxes, fees or other charges imposed on it or any of its property by any Governmental Authority, and no tax liens have been filed and no claims are being asserted with respect to any such taxes, fees or other charges, except where such taxes, fees or other charges are being contested in good faith by Seller through appropriate proceedings with adequate reserves set aside in the event of an adverse determination.

3.2.10 Seller's Intent. Seller intends:

3.2.10.1 To construct and operate the Facility in accordance with Prudent Electrical Practices, and in accordance with, and subject to the terms of this Agreement;

3.2.10.2 To supply the Contract Capacity and Net Energy of the Facility throughout the Term of this Agreement in accordance with the provisions of this Agreement; and

3.2.10.3 *[if Seller will be a single purpose vehicle, that its sole business shall be the ownership and operation of the Facility.]*

3.2.11 No Collusion. Neither Seller nor any of its representatives has entered into any form of collusive arrangement with any person or entity which directly or indirectly has to any extent lessened competition between Seller and any other person or entity for the supply of Capacity and energy sought by Buyer.

3.2.12 Solvency. Seller, its parent(s) and their Affiliates are Solvent. As used herein, “**Solvent**” and “**Solvency**” means with respect to any person or entity on any date of determination, that on such date (a) the book value of the property of such person or entity is greater than the total amount of book liabilities, including contingent liabilities that are probable and estimable, of such person or entity, (b) such person or entity is able to pay its debts as they become absolute and matured, taking into account the possibility of refinancing such obligations and selling assets, (c) such person or entity does not intend to, and does not believe that it will, incur debts or liabilities beyond such person’s or entity’s ability to pay such debts and liabilities as they mature taking into account the possibility of refinancing such obligations and selling assets and (d) such person or entity is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such person’s or entity’s property would constitute an unreasonably small capital. The amount of contingent liabilities at any time shall be computed as the amount that are probable and estimable in the light of all the facts and circumstances existing at such time, and that can reasonably be expected to become an actual or matured liability.

3.3 Notice. If at any time during the Term, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties made by it in this Section 3 to have been materially untrue or misleading when made, such Party shall provide the other Party with notice in accordance with Section 17.12 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

SALE AND PURCHASE OBLIGATIONS

4.1 Sale and Purchase of Contract Capacity, Capacity Rights, Net Energy and Ancillary Services.

4.1.1 Subject to the terms and conditions of this Agreement, on and after the Commercial Operation Date and for the balance of the Term, Seller shall make available to Buyer from the Facility the Contract Capacity and the Capacity Rights, and all Net Energy and Ancillary Services associated with such Contract Capacity that is Scheduled by Buyer for delivery in accordance with the Dispatch Procedures and Section 6.5.2.

4.1.2 Subject to Section 5.1, Buyer shall purchase the Contract Capacity of the Facility and pay a monthly Capacity Payment to Seller.

4.1.3 Seller shall provide Ancillary Services and Capacity Rights to Buyer without additional charge or expense.

4.1.4 Buyer shall be under no obligation to purchase any Capacity under this Agreement other than Contract Capacity.

4.1.5 Buyer shall pay the amounts specified in Section 5, and Seller shall then provide to Buyer without additional charge or expense all Net Energy and Ancillary Services that have been Scheduled by Buyer.

4.1.6 Seller shall provide to Buyer from the Facility the Contract Capacity, and associated quantities of Net Energy or Ancillary Services as Scheduled by Buyer in accordance with this Agreement. Subject to Section 4.3, the Contract Capacity, and the Net Energy and Ancillary Services associated with such Contract Capacity, shall be made available exclusively to Buyer and Seller shall be free to sell the Remaining Capacity of the Facility, and the Net Energy and Ancillary Services associated with such Remaining Capacity, to any third party. Seller shall have absolute discretion over the operation of the Facility to generate the quantities of Capacity, Net Energy and Ancillary Services to be delivered to Buyer in compliance with the provisions of this Agreement. In addition, Seller shall have absolute discretion over the use of the Remaining Capacity in sales to any third party(s).

4.2 Deliveries; Title and Risk of Loss. All Net Energy and Ancillary Services that have been, at Buyer's option, Scheduled by Buyer shall be delivered by Seller to Buyer at the Electricity Delivery Point. Seller shall be deemed to be in exclusive control of, and responsible for any damage or personal injury caused by, Net Energy or Ancillary Services delivered hereunder up to the Electricity Delivery Point; and Buyer shall be deemed to be in exclusive control of, and responsible for any damages or injury caused by, such Net Energy or Ancillary Services from the Electricity Delivery Point. Seller warrants and agrees that it will transfer and deliver Contract Capacity, Capacity Rights, Ancillary Services and Net Energy to Buyer free and clear of all liens or other encumbrances and rights of third parties. Title to and risk of loss of all

Net Energy or Ancillary Services shall transfer from Seller to Buyer upon delivery to Buyer at the Electricity Delivery Point.

4.3 Dispatching Deliveries from the Contract Capacity versus the Remaining Capacity.

4.3.1 Seller shall exclusively make available to Buyer the Contract Capacity of the Facility, and Seller shall deliver to Buyer, and Buyer shall receive, the quantities of Net Energy and Ancillary Services that were Scheduled by Buyer from such Contract Capacity in accordance with this Agreement. Subject to Section 4.3.1, Seller retains absolute discretion as to which items of the Major Equipment of the Facility are operated to generate and deliver (i) the quantities of Net Energy and Ancillary Services to be delivered to Buyer from the Contract Capacity and (ii) the quantities of Net Energy and Ancillary Services to be delivered to any third party purchaser from the Remaining Capacity.

4.3.2 During any Excused Outage or Unexcused Outage of the Facility, as defined in Section 5.1.2, which causes a partial outage of the Facility, but not a complete shutdown of the Facility, Buyer's right to the Contract Capacity shall not be affected by any reduction in the Facility Capacity, and to the extent there is a reduction of Facility Capacity, Seller shall make available to Buyer all of such reduced Facility Capacity up to the Contract Capacity. Subject to the foregoing, Seller shall, at all times, have the right to make available for sale to any third party purchasing any of the Remaining Capacity no more than the actual available Capacity of the Facility less the Contract Capacity.

4.3.3 At any time that the Contract Capacity is available, Buyer may elect to Schedule any of the quantities of Net Energy, and equivalent quantities of Ancillary Services, specified in the range of dispatchable quantities of Net Energy on **Exhibit P**.

4.4 Curtailed Due to Failure to Comply with Interconnection Agreement. Buyer shall not be obligated to purchase Contract Capacity or receive or pay for Net Energy to the extent generation or transmission curtailment is required as a result of Seller's non-compliance with the Interconnection Agreement. Nothing in this Section 4.4 shall relieve Seller of its duty to comply with the Interconnection Agreement and Net Energy curtailed as provided under this Section 4.4 shall not be deemed to be an Excused Outage, or credited toward the achievement of Net Energy, as the case may be.

4.5 Sale of Test Energy. During the period between the Effective Date and the Commercial Operation Date, Seller shall sell and make available to Buyer, and Buyer shall purchase and accept, all energy produced by the Facility during such period (the "**Test Energy**") as if it were Net Energy.

SECTION 5

PAYMENTS; COSTS

5.1 Capacity Payments. Commencing on the last day of the month in which the Commercial Operation Date occurs, Buyer shall, subject to Section 5.1.4, pay to Seller in arrears

a Capacity Payment equal to the greater of (i) the Monthly Capacity Payment as determined in Section 5.1.2, or (ii) the Minimum Monthly Capacity Payment as determined in Section 5.1.3.

5.1.1 All Capacity Payments shall be billed on a calendar month basis. In the event that Commercial Operation Date does not occur at the start of a calendar month, the first month's Capacity Payment shall be prorated to reflect the actual number of days of Commercial Operation in such month.

5.1.2 Monthly Capacity Payment. The "**Monthly Capacity Payment**" shall be computed based upon the following formula:

Monthly Capacity Payment = $(CC \times 1000 \times CPR \times MAAF) - CPS$, where:

CC = the Contract Capacity;

CPR = Capacity Payment Rate;

CPS = Capacity Payment Shortfall, if any from any prior month; and

MAAF = Availability Adjustment Factor for that month, computed as follows:

a. If $CAF_m = [\text{Bidder to insert \%}]$, $MAAF = 1$

b. If $CAF_m < [\text{Bidder to insert \%}]$, $MAAF = 1 - 2 \times ([\text{Bidder to insert}] - CAF_m)$

Provided, however, MAAF cannot be less than zero (0).

CAF_m = Average Capacity Availability Factor for a month shall equal the sum of the hourly Capacity Availability Factors ("**CAF_h**") determined for each hour of such month, divided by the total number of hours in such month; and

$CAF_h = (AD + DD) / AFCE$

Provided, however, CAF_h cannot be more than one (1).

where:

"**AD**" (Actual Deliveries) means, for any hour, the actual quantity of energy generated by the Facility and delivered by Seller to Buyer at the Electricity Delivery Point;

"**DD**" (Deemed Deliveries) means, for any hour, (i) a quantity of energy equal to the amount of energy that could have been generated by that portion of the Ambient Facility Capacity that was set forth in the Availability Notice (a) that was not dispatched by Buyer in such hour, (b) that was not generated and delivered due to a Potential Event of Default or an Event of Default by Buyer, or (c) that was not

operated to generate and deliver Net Energy or Ancillary Services to Buyer due to any failure by Buyer; (ii) any amount of energy that was not available from the Facility for dispatch and receipt by Buyer, during the relevant hour, due to any outage or derating that meets the requirements for Scheduled Maintenance established in **Exhibit I**; and (iii) any amount of energy that was not available from the Facility for Dispatch and receipt by Buyer, during the relevant hour, due to any Force Majeure event. The unavailability of Capacity for any of the reasons set forth in clauses (i)(c), (ii) or (iii) shall be considered an “**Excused Outage**.” To the extent that the Capacity of the Facility, up to the Contract Capacity, is unavailable to Buyer for any reason other than an Excused Outage shall be considered an “**Unexcused Outage**.”

“**AFCE**” (Ambient Facility Capacity Energy) means the quantity of energy that could be produced from the Ambient Facility Capacity during such hour.

5.1.3 Minimum Monthly Capacity Payment. During any month, the “**Minimum Monthly Capacity Payment**” shall equal the amount determined by the following formula:

Minimum Monthly Capacity Payment = $CC \times 1000 \times CPR \times [?]\%$, where:

CC = the Contract Capacity;

CPR = Capacity Payment Rate; and

% = [?].

5.1.4 Carry-Over Provisions. With respect to any month in which the calculated Monthly Capacity Payment is less than the Minimum Monthly Capacity Payment, the difference between the two payment amounts shall be set forth in a separate account (the amount in such account is referred to herein as the “**Capacity Payment Shortfall**”). The Capacity Payment Shortfall shall be increased by interest at the Prime Rate divided by 365 on the maximum amount of the Capacity Payment Shortfall on that day and shall be recovered by Buyer as a credit against the otherwise applicable Monthly Capacity Payment owed to Seller in any following month and by drawing on the Carry-Over-Letter of Credit as provided below. That portion of any Capacity Payment Shortfall which is not recovered in any month shall be carried over to each subsequent month thereafter until recovered by Buyer in full from Seller. If the Capacity Payment Shortfall exceeds \$[?], then Seller shall provide a Letter of Credit for the benefit of Buyer, in form reasonably acceptable to Buyer, with a face amount equal to the full amount of the Capacity Payment Shortfall amounts (“**Carry-Over Letter of Credit**”). The amount of such Carry-Over Letter of Credit shall be adjusted thereafter, at the end of each month, to equal the then-outstanding Capacity Payment Shortfall. At the end of each Contract Year, Buyer shall be entitled to draw down against the Carry-Over Letter of Credit for the amount the Capacity Payment Shortfall that has not been recovered as of that date.

5.2 Energy Payment. Commencing on the last day of the month in which the Commercial Operation Date occurs, Buyer shall pay to Seller in arrears an Energy Payment as set forth in **Exhibit F** for Net Energy.

5.3 Test Energy. For the period between the Effective Date and the Commercial Operation Date, Seller shall sell and deliver Net Energy to Buyer at the Electricity Delivery Point as Test Energy. Buyer shall pay Seller for Test Energy delivered at the Electricity Delivery Point, an amount per MWh equal to eighty-five percent (Bidder to insert %) of the settled price for the applicable hour in the daily (i) firm on-peak, (ii) firm-off peak or (iii) 24-hour firm (on Sundays and NERC holidays) Dow JonesTM SP15 Electricity Price Index; *provided, however*, that the amount to be paid by Buyer for such Test Energy shall in no event exceed seventy-five percent (75%) of the price per MWh specified on **Exhibit M** for the first Contract Year. If the Dow JonesTM SP15 Electricity Price Index ceases to be published during the Term, Buyer shall select as a replacement electricity price index or component, an index acceptable to Buyer in its discretion that, after any necessary adjustments, provides the most reasonable substitute quotation of the daily price of firm on-peak, firm off-peak or 24-hour firm energy at South of Path 15 for the applicable periods.

5.4 Costs and Charges. Seller shall be responsible for all costs or charges imposed in connection with the delivery of Net Energy at the Electricity Delivery Point, including transmission costs and charges. Without limiting the generality of the foregoing, except to the extent otherwise provided in the Interconnection Agreement, Seller shall bear all costs associated with the modifications to Transmission Provider's interconnection facilities or electric system (including system upgrades) caused by or related to (a) the interconnection of the Facility with Transmission Provider's system, (b) any increase in Capacity of the Facility, and (c) any increase of delivery of energy from the Facility.

5.5 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.

SECTION 6

OPERATION AND CONTROL

6.1 As-Built Supplement. Upon completion of construction of the Facility, Seller shall provide Buyer the As-built Supplement. The As-built Supplement shall be deemed effective and shall be added to **Exhibit A** of this Agreement when it has been reviewed and approved by Buyer. Buyer shall not unreasonably withhold, condition or delay its approval of the As-built Supplement.

6.2 Measurement and Quality of Net Energy. All Net Energy shall be measured at the Electricity Delivery Point and shall meet all requirements in the Interconnection Agreement and the specifications set forth in **Exhibit P**. Seller shall instruct the Transmission Provider in writing that Buyer is entitled to receive, directly from Transmission Provider, any and all data associated with the Facility and/or the production of Net Energy that the Transmission Provider has in its possession.

6.3 Standard of Facility Operation.

6.3.1 General.

6.3.1.1 At Seller's sole cost and expense, Seller shall operate, maintain and repair the Facility and the Electrical Interconnection Facilities in accordance with (i) the standards, criteria and formal guidelines of FERC, NERC, any RTO, and any successors to the functions thereof; (ii) the Required Facility Documents; (iii) the Interconnection Agreement; (iv) all Requirements of Law; (v) the requirements of this Agreement; and (vi) Prudent Electrical Practice. During the Term, Seller shall be the sole owner of the Electrical Interconnection Facilities. Seller shall defend, indemnify and hold Buyer harmless from and against any requirements to comply with FERC Open Access requirements respecting the Electrical Interconnection Facilities caused by Seller's act or omission. Seller acknowledges that it shall have no claims under this Agreement against Buyer, acting in its merchant function capacity, with respect to any requirements imposed by or damages caused by Buyer, acting in its transmission function capacity, in connection with the Interconnection Agreement or otherwise.

6.3.1.2 Without limiting the generality of Section 6.3.1.1, Seller shall:

6.3.1.2.1 At all times, employ qualified and trained personnel for managing, operating and maintaining the Facility and for coordinating such managing, operating and maintenance with Buyer. Seller shall ensure that prior to or on the first Day Seller delivers energy to the Electricity Delivery Point such qualified and trained personnel are available to Buyer at all times, twenty-four (24) hours per Day during the Term.

6.3.1.2.2 Operate and maintain the Facility with due regard for the safety, security and reliability of the System and Buyer's customers and in compliance with the general specifications contained in **Exhibit I**.

6.3.1.2.3 Comply with operating and maintenance standards recommended by the Facility's equipment suppliers.

6.3.1.2.4 Coordinate the Facility's relaying and protection to conform with Prudent Electrical Practice.

6.3.1.2.5 Furnish and install, at Seller's sole expense, a manually operable disconnecting device that can be locked by Buyer in the open position and visually checked to be in the open position, so as to be able to electrically isolate the Facility from the System. This device(s) shall be installed at a location at or near the Electricity Delivery Point.

6.3.1.2.6 Have the Facility's protective relays calibrated and operationally checked, at least annually by a person qualified to perform such service and provide Buyer with a written confirmation of the calibration.

6.3.1.2.7 Operate the Facility in such a manner so as not to have an adverse effect on Buyer's voltage level or voltage waveform.

6.3.1.2.8 Operate the Facility in a manner and consistent with the Operating Procedures so as to permit Buyer to dispatch individuals items of Major Equipment required to generate energy Scheduled by Buyer.

6.3.2 Interconnection. Pursuant to the Interconnection Agreement, Seller shall be responsible for the costs and expenses associated with interconnection of the Facility at its Facility Capacity at the Electricity Delivery Point, including the costs of any System upgrades beyond the Electricity Delivery Point necessary to interconnect the Facility with System and to allow the delivery of energy to the Electricity Delivery Point.

6.3.3 Coordination with System. Pursuant to the Interconnection Agreement, Seller shall be responsible for the coordination and synchronization of the Facility's equipment with the System, and shall be solely responsible for (and shall defend and hold Buyer harmless against) any damage that may occur as a direct result of Seller's improper coordination or synchronization of such equipment with the System.

6.4 Operating Procedures and Compliance.

6.4.1 Without limiting the generality of Section 6.2, during the Term, the Parties shall observe the Operating Procedures.

6.4.2 In the Operating Procedures, each Party has designated an authorized representative (an "**Authorized Representative**") and an alternate representative (an "**Alternate Representative**") to act in the Authorized Representative's absence. A Party's appointment of an Authorized Representative and Alternate Representative shall remain in full force and effect until the Party delivers written notice of substitution to the other Party. The Authorized Representatives and Alternate Representatives shall be managers well-experienced with regard to matters relating to the implementation of the Parties' rights and obligations under this Agreement.

6.4.3 Operational Compliance.

6.4.3.1 Required Facility Documents. Seller shall maintain in full force and effect and available for inspection by Buyer during the Term all Required Facility Documents now or hereafter required.

6.4.3.2 Hazardous Substances. Seller shall operate the Facility in compliance with all Environmental Laws and permits, licenses, rules or orders promulgated, issued or otherwise required by a Governmental Authority having jurisdiction or enforcement power over any Environmental Law and Seller. Seller shall immediately notify Buyer if Seller or any Affiliate of Seller receives or obtains any actual knowledge of or actual notice of any past, present or future actions or plans which may interfere with or prevent compliance or continued compliance with Environmental Laws, affect the construction or operation of the Facility, or may give rise to any material liability under any Environmental Laws or to any common law or legal

liability or otherwise form the basis of any claim, action, demand, suit, proceeding, hearing, study or investigation under Environmental Laws.

6.4.4 Taxes. Seller shall pay when due or reimburse Buyer for all existing and any new sales, use, excise, ad valorem, and any other similar taxes, imposed or levied by any Governmental Authority on the sale of Net Energy to Buyer under this Agreement regardless of whether such taxes are payable by Buyer or Seller under Requirements of Law.

6.4.5 Fines and Penalties.

6.4.5.1 Seller shall pay when due, and in no event later than thirty (30) days of assessment, all fines, penalties, or legal costs incurred by Seller or for which Seller is legally responsible for noncompliance by Seller, its agents, employees, contractors or subcontractors, with any provision of this Agreement, any agreement, commitment, obligation or liability incurred in connection with this Agreement or the Facility or any Requirements of Law, except where such fines, penalties or legal costs are being contested in good faith by Seller, its agents or contractors through appropriate proceedings with (i) adequate reserves set aside, or (ii) if requested by Buyer, the posting of adequate security, in the event of an adverse determination.

6.4.5.2 Subject to Section 6.4.4, if fines, penalties, or legal costs are assessed against Buyer by any Governmental Authority due to noncompliance by Seller with any Requirements of Law, or if the performance of Seller is delayed or stopped by order of any Governmental Authority due to Seller's noncompliance with any Requirements of Law, Seller shall indemnify and hold harmless Buyer against any and all losses, liabilities, damages, and claims suffered or incurred by Buyer.

6.4.5.3 Seller shall reimburse Buyer for all fees, damages, or penalties imposed by any Governmental Authority, other person or to other utilities for violations to the extent caused by a Potential Event of Default or an Event of Default by Seller or a failure of performance by Seller under this Agreement.

6.5 Scheduling Procedures. [*Note to bidders: portions of this Section 6.5 may not be applicable to a non-facility dependent contract*]

6.5.1 Availability Notices and Updates.

6.5.1.1 By 5:00 A.M. Pacific Prevailing Time on the Business Day immediately preceding the next three (3) Days on which energy is to be delivered by Seller to Buyer, Seller shall provide Buyer with an hourly forecast of the Capacity of the Facility expected to be available to Buyer, up to the Contract Capacity, and for each hour of the next three (3) Days (as set forth in the form of **Exhibit L**, an "**Availability Notice**"); *provided, however*, that an Availability Notice provided on a Day before any non-Business Day shall include forecasts for each Day to and including the next Business Day. Delivery of an Availability Notice by Seller to Buyer with respect to any item of Major Equipment declared Available shall be deemed a declaration that all Ancillary Services capable of being provided from such Major Equipment are available for the Days for which such Availability Notice shall be effective. Seller shall

promptly update Availability Notices any time information becomes available indicating a change in the forecast of generation of energy from the then current forecast; and in any event within 15 minutes of each time it becomes aware of a change (favorable or unfavorable) in the availability, or projected availability, of the Facility or electric transmission capacity, *provided* that such changes to the daily Availability Notices may be delivered by telephone within the fifteen (15) minute initial period and then later confirmed in writing within the hour. To the extent commercially reasonable, the parties shall cooperate to implement and use automatic forecast updates.

6.5.1.2 Availability Notices shall specify any known limitations on the availability of electric transmission capacity made known to Seller that may affect the ability of the Facility to generate and deliver Scheduled Energy to the Electricity Delivery Point. Seller will also provide Buyer with a monthly Availability Notice six Business Days before the commencement of each such month, and a weekly Availability Notice on each Friday for the next week. Availability Notices identifying reductions in availability will include a short description of the nature of the problem, steps taken or being taken to resolve it and Seller's estimate of the time by which a reduction in availability will be resolved. Availability Notices identifying projected restorations of Capacity availability will specify the time and extent that such restoration is projected to occur, and Seller will issue a further notice after restoration of availability is complete. Without limiting the foregoing, Seller will inform Buyer of any major limitations, restrictions, deratings or outages known to Seller affecting the ability to generate Facility Capacity for the following Day and will promptly update Seller's notice to the extent of any material changes in this information.

6.5.1.3 Availability Notices will be used by and relied upon by Buyer to establish and adjust electric transmission schedules. If Seller has provided notice to Buyer of a reduction in availability affecting transmission schedules, then prior to increasing Facility generation for delivery to Buyer as a result of restored availability, Seller will provide Buyer timely notice so as to enable Buyer sufficient time to reestablish its transmission schedules. The failure by Seller to provide revised Availability Notices is not a breach of this Agreement, but rather places Seller at risk for electric imbalance penalties or charges incurred by Buyer due to its lack of notice; *provided, however*, the failure to provide such notices more than [?] times a Contract Year shall constitute the failure to perform a material obligation hereunder that is not capable of being cured.

6.5.2 Dispatch Notice.

6.5.2.1 No later than 5:00 P.M. Pacific Prevailing Time on each Business Day, Buyer shall deliver to Seller a statement (which may be communicated by fax, e-mail or other electronic medium or a recorded telephone line) setting forth the estimated quantity of Net Energy to be Scheduled during each hour of the immediately following Day(s) at the Electricity Delivery Point. These estimates shall not be binding upon Buyer and Buyer may subsequently revise its estimates. The foregoing estimates by Buyer shall not be construed to permit Seller to limit the availability of the Facility such that Buyer is restricted from Dispatching Contract Capacity unless the Facility Capacity is physically unavailable due to

Force Majeure, Planned Outage or Unplanned Outage, as the case may be. Buyer's written statement may request the delivery of energy to be Scheduled during any or all hours of any Day.

6.5.2.2 Each Dispatch Notice submitted by Buyer shall specify (i) the quantities of Net Energy or Ancillary Services being Scheduled from the Baseload Capacity component of the Contract Capacity, (ii) the quantities, if any, of Net Energy or Ancillary Services being Scheduled from the Peakload Capacity component of the Contract Capacity, and (iii) the quantities, if any, of Net Energy or Ancillary Services being Scheduled from the Facility in Simple Cycle mode. In order to be included on any Dispatch Notice, each quantity of Net Energy, and each equivalent quantity of Ancillary Services, being Scheduled by Buyer from the Baseload Capacity component of the Contract Capacity, or from the Peakload Capacity component of the Contract Capacity, or in Simple Cycle mode, must be shown as a dispatchable quantity on **Exhibit O**. Any amount not shown on **Exhibit O**, but which falls between listed numbers on **Exhibit O** and is explicitly within the range of allowed dispatch, shall be interpolated from the numbers immediately above and below that amount which are listed on **Exhibit O**, including applicable heat rates. An example of a hypothetical Dispatch Notice is attached hereto as **Exhibit R**.

6.5.2.3 Seller shall be obligated to accept a request for Net Energy that has been provided to Seller in accordance with the requirements of Sections 6.5.2.1 and 6.5.2.2 except to the extent (i) such request exceeds the Contract Capacity or the Scheduling Constraints or (ii) Seller declares that the Facility is not available as a result of a previously declared Planned Outage, a Forced Outage, or an event of Force Majeure. Seller shall promptly notify Buyer if Seller determines that it will not accept a Schedule submitted by Buyer for any of the foregoing reasons.

6.5.2.4 Buyer shall pay or reimburse Seller for all Scheduling Fees charged by any third parties, if any, associated with the Scheduling of Net Energy or Ancillary Services generated by the Facility for delivery to Buyer hereunder or, if applicable, any fees charged by an independent third party for providing Ancillary Services required to deliver Net Energy or Ancillary Services generated by the Facility to Buyer.

6.5.2.5 From time to time during the Term, Buyer may designate a third party to Schedule quantities of Net Energy on behalf of Buyer in accordance with any Requirements of Law. Buyer may also wish to change the designated entity acting in such capacity from time to time. Accordingly, upon request of Buyer, Seller shall make such arrangements in accordance with the Requirements of Law at Buyer's cost as may be reasonably necessary to facilitate the re-designation of the Person who may Schedule quantities of Net Energy on Buyer's behalf.

6.5.2.6 As shown in the Scheduling Constraints set forth for the Facility in **Exhibit P**, the ramp rates applicable to the various items of Major Equipment comprising the Facility are faster for the Facility operating in Simple Cycle mode than in combined cycle mode. To the extent that Buyer elects to Schedule the delivery of Net Energy, and any equivalent quantity of Ancillary Services, from the Facility in Simple Cycle mode the Scheduling Constraints applicable to Simple Cycle mode shall be applicable to such Scheduling

by Buyer. For any Scheduling by Buyer of Net Energy or Ancillary Services from the Baseload Capacity component or the Peakload Capacity component of the Contract Capacity, the Scheduling Constraints applicable to combined cycle mode shall be applicable to such Scheduling by Buyer.

6.5.2.7 Buyer may Dispatch energy and Ancillary Services on a real time basis, subject to the Operating Procedures. Seller shall be obligated to accept a request for a change to the applicable schedule for energy and Ancillary Services.

6.6 Outages.

6.6.1 Planned Outages. No Planned Outage may be scheduled to occur during any portion of the time period commencing on May 15 and concluding on September 15.

6.6.2 Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall notify Buyer of the proposed Maintenance Outage at least five (5) days before the outage begins (or such shorter period to which Buyer may reasonably consent in light of then existing conditions). Upon such notice, the Parties shall plan the Maintenance Outage to mutually accommodate the reasonable requirements of Seller and the service obligations of Buyer; *provided, however*, that, unless Buyer otherwise consents, such consent not to be unreasonably withheld, no Maintenance Outage may be scheduled between the hour ending 0700 through the hour ending 2200, Monday through Saturday, during the time period commencing on May 15 and concluding on September 15. Notice of a proposed Maintenance Outage shall include the expected start date and time of the outage, the amount of Capacity of the Facility that will not be available, and the expected completion date and time of the outage. Seller shall give Buyer notice of the Maintenance Outage as soon as Seller determines that the Maintenance Outage is necessary. Buyer 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. Seller shall notify Buyer of any subsequent changes in Capacity available to Buyer 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 and exercise its best efforts in accordance with Prudent Electrical Practices to minimize the frequency and duration of Maintenance Outages.

6.6.3 Forced Outages. Seller shall promptly provide to Buyer an oral report of any Forced Outage of the Facility. This report shall include the amount of the Capacity of the Facility that will not be available because of the Forced Outage and the expected return date of such Capacity. Seller shall promptly update the report as necessary to advise Buyer of changed circumstances. As soon as practicable, if the Forced Outage resulted in more than five percent (5%) of the Facility Capacity being unavailable, the oral report shall be confirmed in writing. Seller shall take all reasonable measures and exercise its best efforts in accordance with Prudent Electrical Practices to avoid Forced Outages and to minimize their duration.

6.6.4 Notice of Deratings and Outages. Without limiting the foregoing, Seller will inform Buyer of any major limitations, restrictions, deratings or outages known to Seller affecting the Facility for the following day 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 Facility Capacity.

6.7 Schedule Coordination. If, as a result of this Agreement, Buyer is deemed by an RTO to be financially responsible for Seller’s performance under the Interconnection Agreement, due to Seller’s lack of a “scheduling coordinator” or other RTO recognized standing or otherwise, then (a) Seller shall use commercially reasonable and diligent efforts to acquire such RTO recognized standing such that Buyer is no longer responsible for Seller’s performance under the Interconnection Agreement, and (b) Seller shall defend, indemnify and hold Buyer harmless against any liability arising due to Seller’s performance or failure to perform under the Interconnection Agreement.

6.8 Electronic Communications.

6.8.1 Telemetry. Seller shall provide telemetry equipment and facilities capable of transmitting the following information concerning the Facility pursuant to the Interconnection Agreement and to Buyer on a real-time basis and will operate such equipment when requested by Buyer to indicate:

6.8.1.1 instantaneous MW output at the Electricity Delivery Point;

6.8.1.2 Net Energy; and

6.8.1.3 Facility Capacity.

Seller shall also transmit to Buyer any other data from the Facility that Seller receives on a real time basis. Seller shall provide such real time data to Buyer on the same basis as the basis on which Seller receives the data (e.g., if Seller receives the data in four second intervals, Buyer shall also receive the data in four second intervals).

6.8.2 Dedicated Communication Circuit. Seller shall install a dedicated direct communication circuit (which may be by common carrier telephone) between Buyer and the control center in the Facility’s control room or such other communication equipment as the Parties may agree.

6.9 Reports and Records.

6.9.1 Monthly Reports. Within thirty (30) days after the end of each calendar month during the Term (each, a “**Reporting Month**”), Seller shall provide to Buyer a report in electronic format, which report shall include (a) summaries of the Facility’s output data for the Reporting Month in intervals not to exceed one hour (or such shorter period as is reasonably possible with commercially available technology), including information from the Facility’s Computer Monitoring System; (b) summaries of any other significant events related to the construction or operation of the Facility for the Reporting Month; and (c) any supporting information that Buyer may from time to time reasonably request (including historical data for the Facility).

6.9.2 Electronic Fault Log. Seller shall maintain an electronic fault log of operations of the Facility during each hour of the Term beginning as of the Commercial Operation Date. Seller shall provide Buyer 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.

6.9.3 Other Information to Be Provided to Buyer. Seller shall provide to Buyer the following information concerning the Facility:

6.9.3.1 Upon the request of Buyer, the manufacturers' guidelines and recommendations for maintenance of the Facility equipment;

6.9.3.2 A detailed report summarizing the results of maintenance performed during each Planned Outage and any Forced Outage, and upon request of Buyer any of the technical data obtained in connection with such maintenance; and

6.9.3.3 A detailed report describing the facts, circumstances and events that caused and arose out of, or related to, any Forced Outage, failed Start-Up or other item of Major Equipment being taken off-line or tripping for any reason other than in connection with a Planned Outage.

6.9.4 Information to Any Governmental Authority. Seller shall, promptly upon written request from Buyer, provide Buyer with all data which is collected by Seller related to the Facility reasonably required for reports to and information requests from any Governmental Authority. Along with said information, Seller shall provide to Buyer copies of all submittals to any Governmental Authority directed by Buyer 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 Buyer soon enough so that Buyer has time to review such information and meet any submission deadlines imposed by the requesting organization or entity. After the sending or filing any statement, application, and report or any document with any Governmental Authority relating to operation and maintenance of the Facility, Seller shall promptly provide to Buyer with a copy of the same.

6.9.5 Information to Any Intervenor. Seller shall, promptly upon written request from Buyer, provide Buyer with data reasonably required for information requests from any state or federal agency intervenor or any other party achieving intervenor status in any Buyer rate proceeding or other proceeding before any Governmental Authority. Seller shall use best efforts to provide this information to Buyer soon enough so that Buyer has time to review such information and meet any submission deadlines imposed by the requesting organization or entity.

6.9.6 Environmental Information. Seller shall, promptly upon written request from Buyer, provide Buyer with all data reasonably requested by Buyer relating to environmental information under the Required Facility Documents.

6.9.7 Information Relating to Facility Performance. Seller shall provide Buyer monthly operational reports in a form and substance acceptable to Buyer and Seller shall, promptly upon written request from Buyer, provide Buyer with all operational data requested by Buyer with respect to the performance of the Facility and delivery of energy therefrom.

6.9.8 Audited Financial Statements. Seller shall provide Buyer within ninety (90) days after the end of each calendar year, its audited financial statements together with the audited financial statements of any guarantor providing Credit Support, in each case prepared in accordance with generally accepted accounting principles by an accounting firm of nationally recognized standing in the electric power industry reasonably acceptable to Buyer.

6.9.9 Notice of Default. Seller shall promptly notify Buyer of receipt of written notice or actual knowledge 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 in this Agreement.

6.9.10 Notice of Litigation. Following its receipt of written notice or actual knowledge of the commencement of any action, suit, and proceeding before any court or Governmental Authority which would, if adversely determined, adversely affect Seller, the Premises or the Facility, Seller shall promptly give notice to Buyer of the same.

6.9.11 Additional Information. Seller shall provide to Buyer such other information respecting the condition or operations of Seller and the Facility as Buyer may, from time to time, reasonably request.

6.10 Access Rights. Upon reasonable prior notice and subject to the safety rules and regulations of Seller, Seller shall provide Buyer and its authorized agents, employees and inspectors with reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment, (b) as necessary to witness any required Capacity tests necessary to determine the amount of Capacity associated with the Facility, (c) in connection with the operation and maintenance of the Electrical Interconnection Facilities for the Facility, (d) to provide tours of the Facility to customers and other guests of Buyer (not more than twelve (12) times per year), (e) for purposes of implementing Section 9.5, and (f) for other reasonable purposes at the reasonable request of Buyer.

6.11 EWG. Seller shall provide Buyer with copies of Seller's applications to FERC for EWG status and for authority to sell energy under this Agreement within ten (10) days of filing such application(s). During the Term, Seller shall either (i) maintain its EWG status and its authority to sell power under this Agreement or (ii) otherwise cause Seller to be exempt from federal and state regulations as an electric utility.

6.12 Facility Images. Buyer shall be free to use any and all images from or of the Facility for promotional purposes. Upon Buyer's request and at Buyer's expense, Seller shall install equipment as Buyer may request, including without limitation video and or web-based imaging equipment. Buyer shall use its discretion with respect to how images from or of the Facility are presented by Buyer, including without limitation associating images of the Facility with Buyer's corporate logo but not the corporate logo of Seller.

6.13 Financial and Accounting Information. If Buyer or one of its Affiliates determines that, under the Financial Accounting Standards Board's revised Interpretation No. 46, Consolidation of Variable Interest Entities ("FIN 46"), it may hold a variable interest in Seller,

but it lacks the information necessary to make a definitive conclusion, Seller hereby agrees to provide sufficient financial and ownership information so that Buyer or its Affiliate may confirm whether a variable interest does exist under FIN 46. If Buyer or one of its affiliates determines that, under FIN 46, it holds a variable interest in Seller, Seller hereby agrees to provide sufficient financial and other information to Buyer or its Affiliate so that Buyer may properly consolidate the entity in which it holds the variable interest and/or present the disclosures required by FIN 46.

SECTION 7

SECURITY AND CREDIT SUPPORT

7.1 Credit Support. If at any time during the Term, Seller maintains a Credit Rating of (1) "Aa2" or higher by Moody's and (2) "AA" or higher by S&P, then Seller will not be required to post any Credit Support Security. If Seller does not meet the Credit Rating requirements of (1) and (2) in the preceding sentence, it may have to post Credit Support Security in the amounts outlined on the Credit Matrix based upon its' Credit Rating or that of the entity providing a guaranty as Credit Support Security on behalf of the Seller, and the size of the project. If Seller has a published Credit Rating from each of S&P and Moody's, the lower rating will be used to determine the level of Credit Support in the Credit Matrix. If Seller, or the entity providing a guaranty as Credit Support Security on behalf of the Seller, has no published Credit Rating, an equivalent Credit Rating will be determined by Buyer through the application of Buyer's proprietary credit scoring model developed in conjunction with S&P, and the amount of Credit Support for Seller (as shown on the Credit Matrix) will be based upon this equivalent Credit Rating. If the required Credit Support is greater than zero dollars (\$0.00), upon the request of Buyer, Seller shall within five (5) Business Days provide one of the following in the amount of the Credit Support: (x) a guaranty, in form and substance acceptable to Buyer in its sole discretion from a Person acceptable to Buyer in its sole discretion, (y) a Letter of Credit, or (z) a Cash Escrow. *[IE has requested language to the effect of:* Buyer shall be required to post Credit Support Security in the amount of ___% of the Credit Support if the same is required at any time before the milestone set forth in Section 2.2.3 has been met; and after such milestone has been met, Buyer shall be required to post Credit Support Security in the amount of 100% of the required Credit Support.]

7.2 Subordinated Security Interests.

7.2.1 Security Interests. Concurrently with the execution of this Agreement and simultaneously with the acquisition by Seller after the Effective Date of any real property in connection with the Facility (including land and water or rights thereto), Seller shall execute, file and record such agreements, documents, instruments, deeds of trust and other writings as Buyer may request, all in form and substance satisfactory to Buyer, to give Buyer a perfected security interest in and lien on the Facility, the Premises and all other assets necessary or in Buyer's opinion desirable for the development, construction, ownership, operation or maintenance of the Facility as security for Seller's performance and any amounts owed by Seller to Buyer pursuant to this Agreement (collectively the "**Security Interests**"). The Security Interests shall be subordinate in right of payment, priority and remedies only to the interests of the financiers for the Facility contemplated by Section 2.2.3 and approved by Buyer.

7.2.2 Pledge of Ownership Interests. [*Note to bidders: This section is applicable only if Seller is a special purpose entity.*] Concurrently with the execution of this Agreement, Seller's equity holders shall execute and file such agreements, documents, instruments, and other writings as Buyer may request, all in form and substance satisfactory to Buyer, to give Buyer a perfected security interest in and lien on all ownership interests in Seller as security for Seller's performance and any amounts owed by Seller to Buyer pursuant to this Agreement (the "**Pledge Interest**"). The Pledge Interest shall be subordinate in right of payment, priority and remedies only to the interests of the financiers for the Facility contemplated by Section 2.2.3 and approved by Buyer.

7.2.3 Maintenance of Security Interests. Seller shall execute and file and record (or cause to be executed and filed and recorded) such Uniform Commercial Code financing statements and deeds of trust and shall take such further action and execute such further instruments and other writings as shall be required by Buyer to confirm and continue the validity, priority, and perfection of the Security Interests [and the Pledge Interest]. The granting of the Security Interests [and the Pledge Interest] shall not be to the exclusion of, nor be construed to limit the amount of any further claims, causes of action or other rights accruing to Buyer by reason of any breach or default by Seller under this Agreement or the termination of this Agreement prior to the expiration of the Term.

7.2.4 Transfer of Required Facility Documents. The Security Interests shall provide that if Buyer acts to obtain title to the Facility pursuant to the interests provided by Seller pursuant to Section 7.2.1, Seller shall take all steps necessary to transfer all Required Facility Documents necessary to operate the Facility to Buyer, and shall diligently prosecute and cooperate in such transfers.

7.3 Quarterly Financial Statements. If requested by Buyer, Seller shall within thirty (30) days provide Buyer with copies of its most recent quarterly financial statements, together with the audited financial statements of any guarantor providing Credit Support, in each case prepared in accordance with generally accepted accounting principles.

7.4 Security is Not a Limit on Seller's Liability. The Credit Support and Security Interests contemplated by this Section 7: (a) constitutes security for, but is not a limitation of, Seller's obligations under this Agreement, and (b) shall not be Buyer's exclusive remedy for Seller's failure to perform in accordance with this Agreement. To the extent that Buyer draws on the Credit Support, Seller shall within five (5) Business Days reinstate the security to the full amount required by this Section 7.

7.5 Escrow Account. With respect to any Cash Escrow established pursuant to this Section 7 as Credit Support, Seller hereby grants Buyer a security interest in the escrow account and all moneys and other amounts in the account to secure payment and performance of Seller's obligations under this Agreement. Buyer shall have, and Seller agrees to take all further action required or reasonably requested by Buyer to ensure that Buyer has, all rights of a secured party under Article 9 of the Uniform Commercial Code and applicable law with respect to the escrow account and all moneys and other amounts in the escrow account. The escrow agreement shall be in form and substance acceptable to Buyer in its discretion and shall contain the following language: "Escrow Agent acknowledges that Seller has granted Buyer a security interest in the

amounts held by Escrow Agent in the [*describe escrow accounts and all moneys and other amounts in the account*] (collectively, the “**Collateral**”). Escrow Agent acknowledges that it (a) has received and holds possession of the Collateral for the benefit of Buyer and not as the agent of or on behalf of Seller and (b) shall continue to hold possession of the Collateral for Buyer’s benefit until Escrow Agent receives notice in an authenticated record from Buyer that Buyer’s security interest in the Collateral has been terminated. Escrow Agent acknowledges that it has no rights in and to the Collateral other than its right to receive payment of its fees and expenses pursuant to the Escrow Agreement.”

SECTION 8

METERING

8.1 Net Energy. Meter equipment shall be installed, owned, operated, maintained and tested in accordance with the terms of the Interconnection Agreement and shall automatically account for line losses between such meter equipment and the Electricity Delivery Point (collectively, the “**Electric Metering Equipment**”). The Electric Metering Equipment shall be capable of metering Net Energy delivered at the Electricity Delivery Point on a continuous real time basis.

8.1.1 Seller Electric Metering. Seller shall be responsible for the maintenance, testing and calibration of the Electric Metering Equipment and the maintenance and testing of the electrical facilities and Protective Apparatus, including any transmission equipment and related facilities, necessary to interconnect the Facility at the Electricity Delivery Point. Such installation shall be completed, and the delivery of such data shall be commenced, as promptly as possible but in no event later than one month prior to the commencement of Net Energy deliveries. Seller shall bear all costs and expenses of installing, maintaining and testing all Electric Metering Equipment.

8.1.2 Check Meters. Buyer may at its option and expense install and operate one or more check meters to check Seller’s meters. Such check meters shall be for check purposes and shall not be used in the measurement of Net Energy or Ancillary Services for the purposes of this Agreement. The check meters shall be subject at all reasonable times to inspection and examination by the Seller or its designee. The installation and operation thereof shall, however, be done entirely by Buyer at no cost or expense to Seller. The Seller shall grant to Buyer, at no cost or expense, the right to install such check meters at the Electricity Delivery Point and the right to access such check meters at reasonable times as requested by Buyer if such check meters are located on the Premises.

8.1.3 Change in Measurement Method. If, at any time during the Term a new method or technique is developed with respect to electricity measurement, or the determination of the factors used in electricity measurement, such new method or technique may be substituted for the method set forth in this Section 8.1 when in the opinion of the Parties, employing such new method or technique is advisable, and they so agree in writing.

8.1.4 Industry Standards. All Electric Metering Equipment, whether owned by the Seller or by a third party, shall be operated, maintained and tested by and/or on behalf of the Seller in accordance with Prudent Electrical Practices.

8.1.5 Access. Each Party shall have the right to receive reasonable advance notice with respect to, and to be present at the time of, any installing, cleaning, changing, repairing, inspecting, testing, calibrating or adjusting of Electric Metering Equipment. The records from such Electric Metering Equipment shall be the property of the Seller, but upon reasonable advance notice, the Seller shall make available to Buyer all data, records and charts relating to the Electric Metering Equipment, together with calculations therefrom, for inspection and verification.

8.1.6 Installations. Any installations of Electric Metering Equipment required pursuant to this Agreement shall be scheduled by the Seller; provided, however, that no installation which shall or could affect deliveries of Net Energy shall be made without the prior written consent of Buyer, which shall not be unreasonably withheld. Any installations of check meters by Buyer shall be scheduled by Buyer; provided, however that the installation shall not unreasonably interfere with the operation and maintenance of the Facility by the Seller.

8.1.7 Estimates. During the period after the Effective Date and prior to the installation and commencement of operation of the meters contemplated by this Section 8.1.8, the Net Energy generated and delivered shall be estimated in good faith by the Seller and the Parties shall prepare and submit invoices on the basis of such estimates. Any such invoice shall be adjusted retroactively based on the performance of the Facility during the three month period immediately following the installation of such meters.

8.1.8 Inspection. Seller, at its sole cost and expense, shall inspect and calibrate, or cause to be inspected and calibrated, all Electric Metering Equipment periodically, but not less frequently than annually. When any test, in the case of Electric Metering Equipment, shall show a measurement error of more than one-quarter percent (1/4%), correction shall be made for the period during which the measurement instruments were in error, first, by using the registration of Buyer's check meter, if installed and registering accurately; if no check meter is installed and registering accurately, or if the period cannot be ascertained, correction shall be made for one-half (1/2) of the period elapsed since the last date of test; and the measuring instrument shall be adjusted immediately to measure accurately.

8.2 Records. The Parties shall, for five (5) years or such longer period as may be required by the applicable Governmental Authority, each keep and maintain accurate and detailed records relating to the Facility's hourly deliveries of Net Energy. Such records shall be made available for inspection by either Party or any Governmental Authority having jurisdiction with respect thereto during normal business hours upon reasonable notice. If either Party (the "**Notifying Party**") shall propose to discard any records theretofore required to be retained by this Section 8.2, it shall give notice to the other Party thereof and the other Party may within thirty (30) days elect to take possession of such records by notice to the Notifying Party, and in such case the Notifying Party shall promptly, and in any event, no later than five (5) days following receipt of such notice, deliver such records to the other Party at its expense. If the Party receiving a Notice pursuant to this Section 8.2 shall not respond within such thirty

(30) days, the Notifying Party may discard such records without any further obligation hereunder. Upon written request by Buyer, Seller promptly shall request that the Transmission Provider provide in writing any and all meter or other data associated with the Facility and Net Energy directly to Buyer. Notwithstanding any other provision of this Agreement, Buyer shall have the right to provide such meter data to any RTO or generation tracking service.

8.3 Adjustment to Loss Factors. If Buyer or Seller has a reasonable basis for concluding that the Electric Metering Equipment is not accurately measuring losses between the Electric Metering Equipment and the Electricity Delivery Point, it may propose an adjustment to the Electric Metering Equipment by notice to the other Party. Such an adjustment shall be prospective only. The notice will include information explaining in reasonable detail why the loss factor appears to be incorrect. The other Party shall have thirty (30) days in which to approve or disapprove of the proposed adjustment, which approval may not be unreasonably withheld, conditioned or delayed. A proposed loss factor adjustment that is not disapproved by notice to Seller given within the thirty (30) day period shall be deemed approved. The Parties shall cooperate in causing PacifiCorp Transmission to make an appropriate adjustment to the Electric Metering Equipment pursuant to the Interconnection Agreement.

SECTION 9

BILLINGS, COMPUTATIONS AND PAYMENTS

9.1 Monthly Invoices. On or before the tenth (10th) day following the end of each month, Seller shall deliver to Buyer a proper invoice showing Seller's computation of the Energy Payment, MAAF and the Capacity Payment for such month. If such invoice is delivered by Seller to Buyer, Buyer shall send to Seller payment for Seller's deliveries in respect thereof on or before the thirtieth (30th) day following the end of each month.

9.2 Offsets. Buyer may offset any payment due under this Agreement against amounts owing from Seller to Buyer pursuant to this Agreement, any other agreement between the Parties or otherwise.

9.3 Interest on Late Payments. Any amounts that are not paid when due under this Agreement shall bear interest at the Prime Rate plus two hundred (200) basis points from the date due until paid; provided, however, that this interest rate shall at no time exceed the maximum rate allowed by applicable law.

9.4 Disputed Amounts. If either Party, in good faith, disputes any amount due pursuant to an invoice rendered or written demand made under this Agreement, 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) days of such determination or resolution, along with interest accrued at the rate determined under Section 9.3 from the date due until the date paid.

9.5 Audit Rights. Buyer, through its authorized representatives, shall have the right, at its sole expense and during normal business hours, to examine and copy the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made hereunder or to verify the Seller's performance of its obligations hereunder. Upon request, Seller shall provide to Buyer statements evidencing the quantities of energy delivered at the Electricity Delivery Point. 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 calculated at the rate determined under Section 9.3 from the date of the overpayment or underpayment to the date of receipt of the reconciling payment. Notwithstanding the above, no adjustment shall be made with respect to any statement or payment hereunder unless Buyer questions the accuracy of such payment or statement within two (2) years after the date of such statement or payment.

SECTION 10

DEFAULTS AND REMEDIES

10.1 Defaults. The following events are defaults (each, an “**Event of Default**”) under this Agreement:

10.1.1 Events of Default by Either Party.

10.1.1.1 A Party's failure to make a payment when due under this Agreement if the failure is not cured within ten (10) days after the non-defaulting Party gives the defaulting Party a notice of the default, except as provided in Section 9.4.

10.1.1.2 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.

10.1.1.3 A Party's breach of a representation or warranty made by that Party in this Agreement if the breach is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party a notice of the default.

10.1.1.4 A Party otherwise fails to perform any material obligation imposed upon that Party by this Agreement 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 thirty (30) day period shall be extended by an additional sixty (60) 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 sixty (60) 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.

10.1.2 Events of Default by Seller.

10.1.2.1 Seller's failure to post or increase the Carry-Over Letter of Credit within ten (10) Business Days after the end of each month as may be required under Section 5.1.4.

10.1.2.2 Seller's failure to cause the Facility to achieve (a) an average of the applicable CAF_ms of at least [?%] in any three (3) consecutive quarters in a Contract Year or (b) achieve an average of the applicable CAF_ms of at least [?%] in three (3) out of any five (5) consecutive Contract Years. [bidder to edit and provide parameters]

10.1.2.3 Seller's failure to post and maintain Credit Support as required by Section 7 if the failure is not cured within five (5) days after Buyer gives Seller a notice of the default.

10.1.2.4 Seller's failure to achieve a milestone by the date set forth for the achievement of that milestone in Section 2.2 (other than the failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date) if the failure is not cured within thirty (30) days after Buyer gives Seller a notice of the default.

10.1.2.5 Seller's failure to cause the Facility to achieve the Commercial Operation Date on or before [] days following the Guaranteed Commercial Operation Date. ***[note to bidders: insert number of days; this will be a material component of the evaluation of your bid; the nature of the resource will be considered. The lowest feasible numeral is encouraged.]***

10.1.2.6 Seller's failure to cure any default under any Required Facility Documents (including the Interconnection Agreement) within the time allowed for a cure under such agreement or instrument.

10.1.2.7 Seller's sale of energy from the Facility to a Party other than Buyer in breach of this Agreement if Seller does not permanently cease such sale and compensate Buyer for the damages arising from the breach within ten (10) days after Buyer gives Seller a notice of default.

10.1.2.8 The Facility is unavailable to provide energy for ninety (90) consecutive days or one hundred twenty (120) non-consecutive days in any three hundred sixty-five (365) day period commencing on the Commercial Operation Date and prior to end of the Term.

10.2 Termination and Remedies.

10.2.1 Upon the occurrence of, and during the continuation 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 ten (10) days before such termination date. Further, during the continuation of an Event of Default by Seller, and until it

has recovered all damages incurred on account of such Event of Default by Seller, without exercising its termination right, Buyer may offset its damages against any payment due Seller.

10.2.2 In the event of a termination of this Agreement:

10.2.2.1 The Parties' respective obligations under this Agreement shall terminate (other than those obligations which expressly are to be performed after termination).

10.2.2.2 Each Party shall pay to the other all amounts due the other under this Agreement for all periods prior to termination subject to offset by the non-defaulting Party against damages incurred by such Party.

10.2.2.3 The amounts due pursuant to Section 10.2.2.2 shall be paid within thirty (30) days of the billing date for such charges plus interest thereon at the Prime Rate from the date of termination until the date paid.

10.2.2.4 The provisions of Sections 6.4.4, 6.9.4, 6.9.5, 8.2, 9.3, 9.4, 9.5, 10.7, 10.9, 11 and 14 shall survive the termination of this Agreement.

10.3 Specific Performance. Buyer shall be entitled to seek and obtain a decree compelling specific performance or granting injunctive relief with respect to, and shall be entitled, without the necessity of filing any bond, to enjoin any actual or threatened breach of any material obligation of Seller under this Agreement. Seller agrees that in view of the nature of the bid procedure that caused Seller to be selected, and the importance of the Facility and the Buyer's requirement for Capacity and energy, specific performance (including temporary and preliminary relief) and injunctive and other equitable relief, including access to all records of Seller, are proper in the event of any actual or threatened breach of any material obligation by Seller under this Agreement, and that any liability limits contained in this Agreement shall not operate to limit the exercise of Buyer's remedies in equity to cause Seller to perform its obligations under this Agreement. In any action for specific performance or injunctive relief or other equitable relief, all expenses incurred by the prevailing party in such proceeding, including reasonable counsel fees, shall be awarded to the prevailing party in such proceeding. Seller agrees that it will not assert as a defense to Buyer's action for specific performance of, or injunctive relief or other equitable relief relating to, Seller's obligations hereunder that the amounts payable or paid by Seller in respect of liquidated damages or actual damage constitute an adequate remedy for the breach of such obligation, and Seller hereby conclusively waives such defense.

10.4 Failure to Meet Availability. If an Event of Default by Seller described in Section 10.1.2.2 shall occur, Buyer shall have the right to enter the Facility and do all such things as Buyer may consider necessary or desirable to remedy such situation or to improve the availability of the Contract Capacity, including making any repairs to the Major Equipment or the Facility. Seller shall reimburse Buyer for and shall indemnify and hold harmless Buyer from and against all losses, costs, charges and expenses incurred by Buyer in connection with exercise of its rights under this Section 10.4 other than due to the gross negligence or willful misconduct of Buyer. In connection with the exercise of the rights under this Section 10.4, Buyer shall have

the right to recoup and set off all such losses, costs, charges and expenses against amounts otherwise owed by Buyer under this Agreement.

10.5 License to Operate Facility. During the occurrence and continuance of an Event of Default by Seller, Seller hereby irrevocably grants to Buyer the right, license, and authority to enter the Premises, operate the Facility, and to perform Seller's obligations under this Agreement for the Term of this Agreement. Notwithstanding the license granted to Buyer in this Section 10.5, so long as no Event of Default by Seller which would entitle Buyer to terminate this Agreement has occurred and is continuing, Buyer agrees that Seller may operate the Facility and provide the energy and Capacity in accordance with its obligations under this Agreement. Upon the occurrence of an Event of Default and the expiration of all applicable opportunities to cure, Buyer may, but shall not be obligated to, exercise its rights as licensee under this Section 10.5 in lieu of termination. Buyer's right to operate the Facility pursuant to the license granted in this Section 10.5 shall be effective for a period not to exceed 365 days from the date Buyer first exercises its license rights. During any period in which Buyer is operating the Facility pursuant to the license granted in this Section 10.5, Seller shall, upon request from Buyer, reimburse Buyer for all reasonable costs and expenses incurred by Buyer to operate and maintain the Facility. In connection with the exercise of the rights under this Section 10.5, Buyer shall have the right to recoup and set off all such losses, costs, charges and expenses against amounts otherwise owed by Buyer under this Agreement.

10.6 Termination of Duty to Buy. If this Agreement is terminated because of Seller's default, Seller may not require Buyer to purchase energy from the Facility before the date on which the Term would have ended had this Agreement remained in effect. Seller hereby waives its rights to require Buyer to do so.

10.7 Net Replacement Power Costs. If this Agreement is terminated because of Seller's default, Seller shall pay Buyer the positive difference, if any, obtained by subtracting (a) the result of (1) the energy, stated in MWh, that Seller was obligated to provide to Buyer during the remainder of the Term, multiplied by (2) the price per MWh (i) specified in **Exhibit F** for the remaining Contract Years subtracted from (ii) the market price of such energy as determined in good faith by Buyer, from (b) the Replacement Price for any energy that Seller was obligated to provide during the remainder of the Term. Amounts owed by Seller pursuant to this Section 10.7 shall be due within five (5) Business Days after Buyer gives Seller notice of the amount due.

10.8 Default Security. Buyer may apply the Credit Support Security at any time to reduce amounts due from Seller to Buyer under this Agreement which are not paid when due.

10.9 Cumulative Remedies. The rights and remedies provided to Buyer under this Agreement are cumulative and not exclusive of any rights or remedies which Buyer would otherwise have.

SECTION 11

INDEMNIFICATION AND LIABILITY

11.1 Indemnities.

11.1.1 Indemnity by Seller. Seller hereby releases, indemnifies and holds harmless Buyer, its directors, officers, agents, and representatives against and from any and all losses, claims, actions or suits, including costs and attorney's fees, 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 Electricity Delivery Point, (b) any facilities on Seller's side of the Electricity Delivery Point, (c) Seller's operation and/or maintenance of the Facility, or (d) arising from Seller's performance under this Agreement, including 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 Buyer, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Buyer, its directors, officers, employees, agents or representatives.

11.1.2 Indemnity by Buyer. Buyer hereby releases, indemnifies and holds harmless Seller, its directors, officers, agents, and representatives against and from any and all losses, claims, actions or suits, including costs and attorney's fees, resulting from, or arising out of or in any way connected with the energy delivered by Seller under this Agreement after the Electricity Delivery Point, including 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 or representatives.

11.2 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 Buyer as an independent public utility corporation or Seller as an independent individual or entity.

11.3 Consequential Damages. Neither Party shall be liable to 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 12

INSURANCE

12.1 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" by the A.M. Best Company the insurance coverage specified on **Exhibit J** during the periods specified on **Exhibit J**.

12.2 Certificates and Certified Copies of Policies. Seller shall provide Buyer with a certified “true and correct” copy of the insurance policies, provisions and endorsements contemplated by **Exhibit J** within ten (10) days after the date by which such policies are required to be obtained (as set forth in **Exhibit J**). If any coverage is written on a “claims-made” basis, the certification accompanying the policy shall conspicuously state that the policy is “claims made.”

SECTION 13

FORCE MAJEURE

13.1 Definition of Force Majeure. As used in this Agreement, “**Force Majeure**” or “**an event of Force Majeure**” means an event (a) is not reasonably anticipated as of the date of this Agreement, (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; fire; explosion; civil disturbance; sabotage; 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 Buyer’s ability to purchase energy at a more advantageous price than is provided under this Agreement; (ii) the cost or availability of Fuel; (iii) economic hardship including lack of money; (iv) the imposition upon Seller of costs or taxes allocated to Seller under Sections 5 or 6; (v) delay or failure by Seller to obtain any Required Facility Document, other than Permits which Seller is diligently and timely taking all reasonable steps to obtain; (vi) strikes or labor disturbances occurring at the Facility, the Premises or any of Buyer’s or Seller’s facilities; (vii) changes in, or costs of compliance with, Environmental Laws enacted after the date of this Agreement; and (viii) the failure of the Transmission Provider, whether or not Transmission Provider is PacifiCorp acting in its regulated transmission function capacity, for any reason to transmit Contract Capacity or energy.

13.2 Suspension of Performance. If either Party is rendered wholly or in part unable to perform its obligations under this Agreement because of an event of Force Majeure, both Parties shall be excused from the performance affected by the event of Force Majeure, provided that:

13.2.1 the Party affected by the Force Majeure, shall, within two (2) weeks after the occurrence of the event of Force Majeure, give the other Party written notice describing the particulars of the event; and

13.2.2 the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure; and

13.2.3 the affected Party shall use diligent efforts to remedy its inability to perform.

13.3 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.

13.4 Right to Terminate. If a Force Majeure event prevents a Party from substantially performing its obligations under this Agreement for a period exceeding one hundred eighty (180) days, then Buyer may terminate this Agreement by giving ten (10) days' prior notice to Seller. 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 under this Agreement before the effective date of such termination.

SECTION 14

CONFIDENTIALITY

14.1 Confidential Business Information. The Parties' proposals and negotiations prior to the date hereof concerning this Agreement, the terms of this Agreement, and the actual charges billed to Buyer under this Agreement, constitute the "Confidential Business Information" of both Parties. Seller and Buyer each agree to hold such Confidential Business Information wholly confidential.

14.2 Duty to Maintain Confidentiality. Confidential Business Information may only be used by the Parties for purposes related to the approval, administration or enforcement of this Agreement and for no other purpose. Each Party agrees not to disclose Confidential Business Information to any other person (other than its affiliates, counsel, consultants, lenders, prospective lenders, buyers, prospective buyers, contractors constructing or providing services to the Facility, employees, officers and directors who agree to be bound by the provisions of this Section), without the prior written consent of the other Party, provided that either Party may disclose Confidential Business Information, if such disclosure is required by law, required in order for Buyer to receive regulatory recovery of expenses related to the Agreement or pursuant to an order of a court or regulatory agency or in order to enforce this Agreement or to seek approval of this Agreement. In the event a Party is required by law or by a court or regulatory agency to disclose Confidential Business Information, such Party shall to the extent possible notify the other Party at least three (3) Business Days in advance of such disclosure.

14.3 Irreparable Injury; Remedies. Each Party agrees that violation of the terms of this Section 14 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.

14.4 News Releases and Publicity. Before issuing any news release or promotional material regarding the Facility, Seller shall contact Buyer for language that credits Buyer as purchasing the Net Energy and shall use such language in such news releases and promotional material.

SECTION 15

DISAGREEMENTS

15.1 Negotiations. The Parties shall attempt in good faith to resolve all disputes arising out of or 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 from the referral of the dispute to senior executives, or if no meeting of such senior executives has taken place within fifteen (15) days after such referral, either Party may initiate litigation as provided hereinafter if neither Party has requested that the dispute be mediated in accordance with Section 15.2 below. All negotiations pursuant to this clause are confidential.

15.2 Mediation. If the dispute is not resolved within thirty (30) days from the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within fifteen (15) days after such referral, 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 Construction Industry Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Construction Disputes) of the American Arbitration Association (the “AAA”), as amended and effective on July 1, 2003 (the “**Mediation Procedures**”), notwithstanding any Dollar amounts or Dollar limitations contained therein.

15.2.1 The Party requesting the mediation, may commence the mediation process with AAA by notifying AAA and the other Party in writing (“**Mediation Notice**”) of such Party’s desire that the dispute be resolved through mediation, including therewith a copy of the Dispute Notice and the response thereto, if any, and a copy of the other Party’s written agreement to such mediation.

15.2.2 The mediation shall be conducted through, by and at the office of AAA located in Salt Lake City, Utah.

15.2.3 The mediation shall be conducted by a single mediator. The Parties may select any mutually acceptable member from the panel of retired judges at AAA as a mediator. If the parties cannot agree on a mediator within five (5) days after the date of the Mediation Notice, then the AAA’s Arbitration Administrator shall send a list and resumes of three (3) available mediators to the parties, each of whom shall strike one name, and the remaining person shall be appointed as the mediator. If more than one name remains, either because one or both parties have failed to respond to the AAA’s Arbitration Administrator within five (5) days of receiving the list or because one or both parties have failed to strike a name from the list or because both parties strike the same name, the AAA’s Arbitration Administrator will choose the mediator from the remaining names. If the designated mediator shall die, become incapable or, unwilling to, or unable to serve or proceed with the mediation, a substitute mediator shall be appointed in accordance with the selection procedure described above in this Section 15.2.3, and

such substitute mediator shall have all such powers as if he or she has been originally appointed herein.

15.2.4 The mediation shall consist of one or more informal, nonbinding meetings between the Parties and the mediator, jointly and in separate caucuses, out of which the mediator will seek to guide the Parties to a resolution of the dispute. The mediation process shall continue until the resolution of the dispute, or the termination of the mediation process pursuant to Section 15.2.7.

15.2.5 The mediator's fees and expenses, shall be borne equally by the Parties. Each Party shall bear its own expenses incurred in connection with such mediation; provided, however, that if any dispute hereunder is not fully resolved as a result of such mediation, the prevailing party shall be awarded its reasonable attorney fees in any subsequent dispute resolution proceedings.

15.2.6 All verbal and written communications between the parties and issued or prepared in connection with this Section 15.2 shall be deemed prepared and communicated in furtherance, and in the context, of dispute settlement, and shall be exempt from discovery and production, and shall not be admissible in evidence (whether as admission or otherwise) in any arbitration or other proceedings for the resolution of the dispute.

15.2.7 The initial mediation meeting between the Parties and the mediator shall be held within twenty (20) days after the Mediation Notice. Either Party may terminate the mediation process upon the earlier to occur of (A) the failure of the initial mediation meeting to occur within twenty (20) days after the date of the Mediation Notice, (B) the passage of thirty (30) days from the date of the Mediation Notice without the dispute having been resolved, or (C) such time as the mediator makes a finding that there is no possibility of resolution through mediation. The mediation shall follow and be governed by the laws of the State of Oregon.

15.2.8 All deadlines specified in this Section 15.2 may be extended by mutual agreement.

15.3 Choice of Forum. 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 Oregon, Portland Division. By execution and delivery of this Agreement, 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, (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), (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 in this Agreement, and (e) agrees that nothing in this Agreement shall affect the right to effect service of process in any other manner permitted by law.

15.4 Settlement Discussions. The Parties agree that 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 or arbitration between the Parties, nor will any such statements or offers of settlement be used in any manner against either Party in any such litigation or arbitration. 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 or arbitration. 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.

15.5 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 TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY MATTER ARISING HEREUNDER OR THEREUNDER IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

15.6 Equitable Remedies. In any action for specific performance or injunctive relief or other equitable relief, all expenses incurred by the prevailing party in such proceeding, including reasonable counsel fees, shall be awarded to the prevailing party in such proceeding. Seller agrees that it will not assert as a defense to Buyer's action for specific performance of, or injunctive or other equitable 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 all Required Facility Documents (as the case may be) relating to the Facility to the extent necessary to prevent a material adverse effect on Buyer's right to specific performance or injunctive relief.

SECTION 16

GUARANTEED PERFORMANCE PARAMETERS

16.1 Guaranteed Heat Rate. Seller shall operate and maintain the Facility so as to achieve the Guaranteed Heat Rate in accordance with the provisions of **Exhibit Q**.

16.2 Guaranteed Start-Up Time. Seller shall operate and maintain the Facility so as to achieve the Guaranteed Start-Up Time in accordance with the provisions of **Exhibit Q**.

16.3 Guaranteed Ramp Rate. Seller shall operate and maintain the Facility so as to achieve the Guaranteed Ramp Rate in accordance with the provisions of **Exhibit Q**.

SECTION 17

MISCELLANEOUS

17.1 Several Obligations. Nothing contained in this Agreement 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. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

17.2 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 that may direct the application of the laws of another jurisdiction.

17.3 Partial Invalidity. The Parties do not intend to violate any Requirements of Law governing the subject matter of this Agreement. If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void as being contrary to any Requirements of Law or public policy, all other terms of the Agreement 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 Requirements of Law, (b) give effect to the intent of the Parties in entering into this Agreement, and (c) preserve the balance of the equities contemplated by this Agreement in all material respects.

17.4 Waiver. No waiver of any provision of this Agreement shall be effective unless the waiver is set forth in a writing that (a) expressly identifies the provision being waived, and (b) is signed 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 of this Agreement shall not be construed as a waiver of any other failure or failures, whether of a like kind or different nature.

17.5 Governmental Jurisdiction and Authorizations. This Agreement is subject to the jurisdiction of those Governmental Authorities having control over either Party or this Agreement. Buyer's duty to comply with this Agreement is conditioned on Seller's submission to Buyer before the Commercial Operation Date and maintaining thereafter copies of all Required Facility Documents.

17.6 Restriction on Assignments. Except as expressly provided in Section 17.7, neither Party shall assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party.

17.7 Permitted Assignments. The Buyer may assign its rights, delegate its duties or otherwise transfer its interests hereunder, in whole or in part to another entity having a long-term credit rating assigned thereto by a "nationally recognized statistical rating organization" (as that term is used in Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934) that equals or exceeds the Buyer's long term credit rating as of the date of such assignment.

17.8 Entire Agreement. This Agreement (including all attached Exhibits, which are incorporated by this reference) supersedes all prior agreements, proposals, representations,

negotiations, discussions or letters, whether oral or in writing, regarding the subject matter of this Agreement. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

17.9 Amendments. This Agreement shall not be altered or amended except by an instrument in writing specifically identifying the provisions to be amended and executed by authorized representatives of both parties.

17.10 No Third Party Beneficiaries. Notwithstanding anything to the contrary herein, this Agreement does not confer any rights upon any person other than the parties and their respective successors and permitted assigns. There are no third party beneficiaries of this Agreement.

17.11 Agents and Subcontractors. This Agreement may be performed by Buyer through the use of agents and subcontractors (but such use shall not relieve Buyer of any obligation hereunder).

17.12 Notices. All notices, requests, statements or payments shall be (a) made to the addresses set forth below, (b) in writing, and (c) delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day during which the notice is received or hand delivered. Notice by overnight mail or courier shall be deemed to have been received upon delivery as evidenced by the delivery receipt.

To Seller: _____

with a copy to: _____

To Buyer: PacifiCorp
825 NE Multnomah, Suite 2000
Portland, Oregon 97232-2315
Attn: Sr. Vice President, Commercial & Trading

with copies to: PacifiCorp
825 NE Multnomah, Suite 600
Portland, Oregon 97232-2315
Attn: Director of Contract Administration, Commercial & Trading

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

17.13 Mobile-Sierra. The rates for service specified in this Agreement 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 to this Agreement proposed by a Party, a non-party or the FERC acting *sua sponte* shall be the “public interest” 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). To the extent that the FERC adopts specific language that parties must incorporate into agreements in order to bind FERC, third parties and themselves to a public interest standard of review, the Parties hereby incorporate such language herein by reference.

17.14 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which is an original and all of which taken together constitute one and the same instrument.

[SIGNATURES ON NEXT PAGE]

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

[SELLER],
as Seller

By: _____

Name: _____

Title: _____

PACIFICORP,
as Buyer

By: _____

Name: _____

Title:

EXHIBIT T

FORM OF LENDER CONSENT

This CONSENT AND AGREEMENT (this “Consent”), dated as of _____, 200__, is entered into by and among PacifiCorp, an Oregon corporation, acting in its merchant function capacity (together with its permitted successors and assigns, “PacifiCorp”), _____, in its capacity as [Administrative Agent] for the Lenders referred to below (together with its successors, designees and assigns in such capacity, “Administrative Agent”), and _____, a _____ formed and existing under the laws of the State of _____ (together with its permitted successors and assigns, “Borrower”). Unless otherwise defined, all capitalized terms have the meaning given in the Contract (as hereinafter defined).

RECITALS

A. Borrower intends to develop, construct, install, test, own, operate and use an approximately ___ MW electric generating facility located _____, known as the _____ Generation Project (the “Project”).

B. In order to partially finance the development, construction, installation, testing, operation and use of the Project, Borrower has entered into that certain [Financing Agreement,] dated as of _____ (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Financing Agreement”), among Borrower, the financial institutions from time to time parties thereto (collectively, the “Lenders”), and Administrative Agent for the Lenders, pursuant to which, among other things, Lenders have extended commitments to make loans and other financial accommodations to, and for the benefit of, Borrower.

C. Borrower anticipates that, prior to the completion of construction of the Project; it will seek an additional investor (the “Tax Investor”) to make an investment in Borrower to provide additional funds to finance the operation and use of the Project. [if applicable]

D. PacifiCorp and Borrower have entered into that certain Power Purchase Agreement, dated as of _____ (collectively with all documents entered into in connection therewith that are listed on [Schedule A] attached hereto and incorporated herein by reference, as all are amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “Contract”).

E. Pursuant to a security agreement executed by Borrower and Administrative Agent for the Lenders (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”), Borrower has agreed, among other things, to assign, as collateral security for its obligations under the Financing Agreement and related documents (collectively, the “Financing Documents”), all of its right, title and interest in, to and under the Contract to Administrative Agent for the benefit of itself, the Lenders and each other entity or person providing collateral security under the Financing Documents.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

SECTION 1. CONSENT TO ASSIGNMENT. PacifiCorp acknowledges the assignment referred to in Recital E above, consents to an assignment of the Contract pursuant thereto, and agrees with Administrative Agent as follows:

(A) Administrative Agent shall be entitled (but not obligated) to exercise all rights and to cure any defaults of Borrower under the Contract, subject to applicable notice and cure periods provided in the Contract. Upon receipt of notice from Administrative Agent, PacifiCorp agrees to accept such exercise and cure by Administrative Agent if timely made by Administrative Agent under the Contract and this Consent. Upon receipt of Administrative Agent's written instructions, PacifiCorp agrees to make directly to Administrative Agent all payments to be made by PacifiCorp to Borrower under the Contract from and after PacifiCorp's receipt of such instructions, and Borrower consents to any such action.

(B) PacifiCorp will not, without the prior written consent of Administrative Agent (such consent not to be unreasonably withheld), (i) cancel or terminate the Contract, or consent to or accept any cancellation, termination or suspension thereof by Borrower, except as provided in the Contract and in accordance with subparagraph 1(C) hereof, (ii) sell, assign or otherwise dispose (by operation of law or otherwise) of any part of its interest in the Contract, except as provided in the Contract, or (iii) amend or modify the Contract in any manner materially adverse to the interest of the Lenders in the Contract as collateral security under the Security Agreement.

(C) PacifiCorp agrees to deliver duplicates or copies of all notices of default delivered by PacifiCorp under or pursuant to the Contract to Administrative Agent in accordance with the notice provisions of this Consent. PacifiCorp may deliver any such notices concurrently with delivery of the notice to Borrower under the Contract. Administrative Agent shall have: (a) the same period of time to cure the breach or default that Borrower is entitled to under the Contract if such default is the failure to pay amounts to PacifiCorp which are due and payable by Borrower under the Contract, except that if PacifiCorp does not deliver the default notice to Administrative Agent concurrently with delivery of the notice to Borrower under the Contract, then as to Administrative Agent, the applicable cure period under the Contract shall begin on the date on which the notice is given to Administrative Agent, or (b) ninety (90) days from the date notice of default or breach is delivered to Administrative Agent to cure such default if such breach or default cannot be cured by the payment of money to PacifiCorp, so long as Administrative Agent continues to perform any monetary obligations under the Contract, Section 11.1.2(c) of the Contract is not being breached, and all other obligations under the Contract are performed by Borrower or Administrative Agent or its designee(s) or assignee(s). If possession of the Project is necessary to cure such breach or default, and Administrative Agent or its designee(s) or assignee(s) declare Borrower in default and commence foreclosure proceedings, Administrative Agent or its designee(s) or assignee(s) will be allowed a reasonable period to complete such proceedings. PacifiCorp consents to the transfer of Borrower's interest

under the Contract to the Lenders or Administrative Agent or their designee(s) or assignee(s) or any of them or a purchaser or grantee at a foreclosure sale by judicial or nonjudicial foreclosure and sale or by a conveyance by Borrower in lieu of foreclosure and agrees that upon such foreclosure, sale or conveyance, PacifiCorp shall recognize the Lenders or Administrative Agent or their designee(s) or assignee(s) or any of them or other purchaser or grantee as the applicable party under the Contract (provided that such Lenders or Administrative Agent or their designee(s) or assignee(s) or purchaser or grantee assume the obligations of Borrower under the Contract, including, without limitation, satisfaction and compliance with all requirements of Sections 8.1 and 8.2 of the Contract, and provided further that PacifiCorp's subordinated lien rights with respect to the Project are preserved in the event of any transfer of Borrower's interest under the Contract).

(D) Notwithstanding subparagraph 1(C) above, in the event that the Contract is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, or if the Contract is terminated for any reason other than a default which could have been but was not cured by Administrative Agent or its designee(s) or assignee(s) as provided in subparagraph 1(C) above, and if, within forty-five (45) days after such rejection or termination, the Lenders or their successors or assigns shall so request, to the extent permitted by applicable law, PacifiCorp and the Lenders or Administrative Agent or their designee(s) or assignee(s) will enter into a new contract. Such new contract shall be on the same terms and conditions as the original Contract for the remaining term of the original Contract before giving effect to such termination, and shall require the Lenders or Administrative Agent or their designee(s) or assignee(s) to cure any payment defaults then existing under the original Contract.

(E) In the event Administrative Agent, the Lenders or their designee(s) or assignee(s) elect to perform Borrower's obligations under the Contract as provided in subparagraph 1(C) above or enter into a new contract as provided in subparagraph 1(D) above, the recourse of PacifiCorp against Administrative Agent, Lenders or their designee(s) and assignee(s) shall be limited to such parties' interests in the Project, the credit support required under Section 7 of the Contract, and recourse against the assets of any party or entity that assumes the Contract or that enters into such new contract.

(F) In the event Administrative Agent, the Lenders or their designee(s) or assignee(s) succeed to Borrower's interest under the Contract, Administrative Agent, the Lenders or their designee(s) or assignee(s) shall cure any then-existing payment and performance defaults under the Contract, except any performance defaults of Borrower itself which by their nature are not susceptible of being cured. Administrative Agent, the Lenders and their designee(s) or assignee(s) shall have the right to assign all or a pro rata interest in the Contract or the new contract entered into pursuant to subparagraph 1(d) above to a person or entity to whom Borrower's interest in the Project is transferred, provided such transferee assumes the obligations of Borrower under the Contract. Upon such assignment, Administrative Agent and the Lenders and their designee(s) or assignee(s) (including their agents and employees, but excluding Seller) shall be released from any further liability thereunder accruing from and after the date of such assignment, to the extent of the interest assigned.

SECTION 2. REPRESENTATIONS AND WARRANTIES [PacifiCorp shall have the right to qualify the factual information contained in this Section to ensure that such representation is a true statement as of the date of this Consent]

PacifiCorp, acting in its merchant function capacity (and therefore specifically excluding the knowledge of PacifiCorp, acting in its transmission function capacity (“PacifiCorp Transmission”), as to any of the matters stated below, and without imputation to PacifiCorp of any knowledge whatsoever relating to the PacifiCorp Transmission, whether as a result of information publicly posted to the open access same-time information system or otherwise), hereby represents and warrants that as of the date of this Consent:

(A) It (i) is a corporation duly formed and validly existing under the laws of the state of its organization, (ii) is duly qualified, authorized to do business and in good standing in every jurisdiction necessary to perform its obligations under this Consent, and (iii) has all requisite corporate power and authority to enter into and to perform its obligations hereunder and under the Contract, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby;

(B) the execution, delivery and performance of this Consent and the Contract have been duly authorized by all necessary corporate action on its part and do not require any approvals, material filings with, or consents of any entity or person which have not previously been obtained or made;

(C) each of this Consent and the Contract is in full force and effect;

(D) each of this Consent and the Contract has been duly executed and delivered on its behalf and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as the enforceability thereof may be limited as set forth in Section 3.1.5 of the Contract;

(E) there is no litigation, arbitration, investigation or other proceeding pending for which PacifiCorp has received service of process or, to PacifiCorp’s actual knowledge, threatened, against PacifiCorp relating solely to this Consent or the Contract and the transactions contemplated hereby and thereby;

(F) the execution, delivery and performance by it of this Consent and the Contract, and the consummation of the transactions contemplated hereby, will not result in any violation of, breach of or default under any term of (i) its formation or governance documents, or (ii) any material contract or material agreement to which it is a party or by which it or its property is bound, or of any material Requirements of Law presently in effect having applicability to it, the violation, breach or default of which could have a material adverse effect on its ability to perform its obligations under this Consent;

(G) neither PacifiCorp nor, to PacifiCorp’s actual knowledge, any other party to the Contract, is in default of any of its obligations thereunder;

(H) to the best of PacifiCorp's actual knowledge, (i) no Force Majeure Event exists under, and as defined in, the Contract and (ii) no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either PacifiCorp or Borrower to terminate or suspend its obligations under the Contract; and

(I) the Contract and the documents and instruments contemplated therein and this Consent are the only agreements between Borrower and PacifiCorp with respect to the Project, and all conditions precedent to effectiveness under the Contract have been satisfied or waived. [Reference to subordinated lien documents per Section 7.3 of the Contract to be inserted.]

Each of the representations and warranties set forth herein shall survive the execution and delivery of this Consent and the consummation of the transactions contemplated hereby.

SECTION 3. NOTICES. All notices required or permitted hereunder shall be in writing and shall be effective (a) upon receipt if hand delivered, (b) upon telephonic verification of receipt if sent by facsimile and (c) if otherwise delivered, upon the earlier of receipt or three (3) Business Days after being sent registered or certified mail, return receipt requested, with proper postage affixed thereto, or by private courier or delivery service with charges prepaid, and addressed as specified below:

If to PacifiCorp:
[_____]
[_____]
[_____]
Telephone No.: [_____]
Telecopy No.: [_____]
Attn: [_____]

<p>If to Administrative Agent:</p> <p>[_____]</p> <p>[_____]</p> <p>[_____]</p> <p>Telephone No.: [_____]</p> <p>Telecopy No.: [_____]</p> <p>Attn: [_____]</p>
<p>If to Borrower:</p> <p>[_____]</p> <p>[_____]</p> <p>[_____]</p> <p>Telephone No.: [_____]</p> <p>Telecopy No.: [_____]</p> <p>Attn: [_____]</p>

Any party shall have the right to change its address for notice hereunder to any other location within the United States by giving thirty (30) days written notice to the other parties in the manner set forth above. Further, the Tax Investor shall be entitled to receive notices from PacifiCorp by providing written notice to PacifiCorp of Tax Investor's address for notices. PacifiCorp's failure to provide any notice to the Tax Investor shall not be a breach of this Consent.

SECTION 4. ASSIGNMENT, TERMINATION, AMENDMENT AND GOVERNING LAW. This Consent shall be binding upon and benefit the successors and assigns of the parties hereto and the Tax Investor and their respective successors, transferees and assigns (including without limitation, any entity that refinances all or any portion of the obligations under the Financing Agreement). PacifiCorp agrees (a) to confirm such continuing obligation in writing upon the reasonable request of (and at the expense of) Borrower, Administrative Agent, the Lenders or any of their respective successors, transferees or assigns, and (b) to cause any successor-in-interest to PacifiCorp with respect to its interest in the Contract to assume, in writing in form and substance reasonably satisfactory to Administrative Agent, the obligations of PacifiCorp hereunder. Any purported assignment or transfer of the Contract not in conjunction with the written instrument of assumption contemplated by the foregoing clause (b) shall be null and void. No termination, amendment, variation or waiver of any provisions of this Consent shall be effective unless in writing and signed by the parties hereto. This Consent shall be governed by the laws of the State of New York (without giving effect to the principles thereof relating to conflicts of law except Section 5-1401 and 5-1402 of the New York General Obligations Law).

SECTION 5. COUNTERPARTS. This Consent may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

SECTION 6. SEVERABILITY. In case any provision of this Consent, or the obligations of any of the parties hereto, shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions, or the obligations of the other parties hereto, shall not in any way be affected or impaired thereby.

SECTION 7. ACKNOWLEDGMENTS BY BORROWER. Borrower, by its execution hereof, acknowledges and agrees that notwithstanding any term to the contrary in the Contract, PacifiCorp may perform as set forth herein and that neither the execution of this Consent, the performance by PacifiCorp of any of the obligations of PacifiCorp hereunder, the exercise of any of the rights of PacifiCorp hereunder, or the acceptance by PacifiCorp of performance of the Contract by any party other than Borrower shall (1) release Borrower from any obligation of Borrower under the Contract, (2) constitute a consent by PacifiCorp to, or impute knowledge to PacifiCorp of, any specific terms or conditions of the Financing Agreement, the Security Agreement or any of the other Financing Documents, or (3) constitute a waiver by PacifiCorp of any of its rights under the Contract. Borrower and Administrative Agent acknowledge hereby for the benefit of PacifiCorp that none of the Financing Agreement, the Security Agreement, the Financing Documents or any other documents executed in connection therewith alter, amend, modify or impair (or purport to alter, amend, modify or impair) any provisions of the Contract. Borrower shall have no rights against PacifiCorp on account of this Consent.

IN WITNESS WHEREOF, the parties hereto by their officers thereunto duly authorized, have duly executed this Consent as of the date first set forth above.

PacifiCorp,
an Oregon corporation

By:
Name:
Title:

_____,
a _____

By:
Name:
Title:

_____,
as Administrative Agent for the Lenders

By:
Name:
Title:

**PACIFICORP RFP-2012
TOLLING AGREEMENT**

dated as of [_____], 2007,

BETWEEN

**[Bidder # [?]],
as Seller,**

AND

**PACIFICORP,
as Buyer**

[_____ Project]

[_____, [State]]

TABLE OF CONTENTS

	Page
SECTION 1 DEFINITIONS; RULES OF INTERPRETATION.....	2
1.1 <u>Defined Terms</u>	2
1.2 <u>Rules of Interpretation</u>	13
SECTION 2 TERM; COMMENCEMENT OF OPERATION.....	14
2.1 <u>Term</u>	14
2.2 <u>Milestones</u>	14
2.3 <u>Daily Delay Damages</u>	15 16
2.4 <u>Damages Invoicing</u>	16
2.5 <u>Buyer’s Right to Monitor</u>	16
SECTION 3 REPRESENTATIONS AND WARRANTIES	1718
3.1 <u>Buyer’s Representations and Warranties</u>	18 7
3.2 <u>Seller’s Representations and Warranties</u>	18
3.3 <u>Notice</u>	20 1
SECTION 4 SALE AND PURCHASE OBLIGATIONS	201
4.1 <u>Sale and Purchase of Contract Capacity, Capacity Rights, Net Energy and Ancillary Services</u>	20 1
4.2 <u>Deliveries; Title and Risk of Loss</u>	22
4.3 <u>Dispatching Deliveries from the Contract Capacity versus the Remaining Capacity</u>	22 3
4.4 <u>Curtailment Due to Failure to Comply with Interconnection Agreement</u>	23
4.5 <u>Sale of Test Energy</u>	23
SECTION 5 PAYMENTS; COSTS.....	234
5.1 <u>Capacity Payments</u>	23 4
5.2 <u>Energy Payment</u>	25 6
5.3 <u>Test Energy</u>	25 6
5.4 <u>Costs and Charges</u>	26
5.5 <u>Station Service</u>	26
SECTION 6 OPERATION AND CONTROL	267
6.1 <u>As-Built Supplement</u>	26 7
6.2 <u>Measurement and Quality of Net Energy</u>	26 7
6.3 <u>Standard of Facility Operation</u>	26 7
6.4 <u>Operating Procedures and Compliance</u>	28
6.5 <u>Scheduling Procedures</u>	29 30
6.6 <u>Outages</u>	33 35
6.7 <u>Schedule Coordination</u>	336
6.8 <u>Electronic Communications</u>	33 6

6.9	<u>Reports and Records</u>	<u>3337</u>
6.10	<u>Access Rights</u>	<u>3338</u>
6.11	<u>EWG</u>	<u>3339</u>
6.12	<u>Facility Images</u>	<u>3339</u>
6.13	<u>Financial and Accounting Information</u>	<u>3339</u>
SECTION 7 SECURITY AND CREDIT SUPPORT		<u>3339</u>
7.1	<u>Credit Support</u>	<u>339</u>
7.2	<u>Subordinated Security Interests</u>	<u>339</u>
7.3	<u>Quarterly Financial Statements</u>	<u>3341</u>
7.4	<u>Security is Not a Limit on Seller’s Liability</u>	<u>3341</u>
7.5	<u>Escrow Account</u>	<u>3342</u>
7.6	<u>Senior Lender Protective Provisions</u>	<u>42</u>
SECTION 8 METERING		<u>3342</u>
8.1	<u>Net Energy</u>	<u>3342</u>
8.2	<u>Records</u>	<u>3344</u>
8.3	<u>Adjustment to Loss Factors</u>	<u>3345</u>
SECTION 9 BILLINGS, COMPUTATIONS AND PAYMENTS		<u>3345</u>
9.1	<u>Monthly Invoices</u>	<u>3345</u>
9.2	<u>Offsets</u>	<u>3345</u>
9.3	<u>Interest on Late Payments</u>	<u>3345</u>
9.4	<u>Disputed Amounts</u>	<u>3345</u>
9.5	<u>Audit Rights</u>	<u>3346</u>
SECTION 10 DEFAULTS AND REMEDIES		<u>3346</u>
10.1	<u>Defaults</u>	<u>3348</u>
10.2	<u>Termination and Remedies</u>	<u>3348</u>
10.3	<u>Specific Performance</u>	<u>3349</u>
10.4	<u>Failure to Meet Availability</u>	<u>3349</u>
10.5	<u>License to Operate Facility</u>	<u>3349</u>
10.6	<u>Termination of Duty to Buy</u>	<u>3349</u>
10.7	<u>Net Replacement Power Costs</u>	<u>3349</u>
10.8	<u>Default Security</u>	<u>3350</u>
10.9	<u>Cumulative Remedies</u>	<u>3350</u>
SECTION 11 INDEMNIFICATION AND LIABILITY		<u>3350</u>
11.1	<u>Indemnities</u>	<u>3350</u>
11.2	<u>No Dedication</u>	<u>3351</u>
11.3	<u>Consequential Damages</u>	<u>3351</u>
SECTION 12 INSURANCE		<u>3351</u>
12.1	<u>Required Policies and Coverages</u>	<u>3351</u>
12.2	<u>Certificates and Certified Copies of Policies</u>	<u>3351</u>

SECTION 13 FORCE MAJEURE	<u>3351</u>
13.1 <u>Definition of Force Majeure</u>	<u>3351</u>
13.2 <u>Suspension of Performance</u>	<u>3352</u>
13.3 <u>Force Majeure Does Not Affect Other Obligations</u>	<u>3352</u>
13.4 <u>Right to Terminate</u>	<u>3352</u>
SECTION 14 CONFIDENTIALITY	<u>353</u>
14.1 <u>Confidential Business Information</u>	<u>353</u>
14.2 <u>Duty to Maintain Confidentiality</u>	<u>353</u>
14.3 <u>Irreparable Injury; Remedies</u>	<u>353</u>
14.4 <u>News Releases and Publicity</u>	<u>353</u>
SECTION 15 DISAGREEMENTS	<u>353</u>
15.1 <u>Negotiations</u>	<u>353</u>
15.2 <u>Mediation</u>	<u>3534</u>
15.3 <u>Choice of Forum</u>	<u>3355</u>
15.4 <u>Settlement Discussions</u>	<u>5633</u>
15.5 <u>Waiver of Jury Trial</u>	<u>3356</u>
15.6 <u>Equitable Remedies</u>	<u>3356</u>
SECTION 16 GUARANTEED PERFORMANCE PARAMETERS.....	<u>3357</u>
16.1 <u>Guaranteed Heat Rate</u>	<u>3357</u>
16.2 <u>Guaranteed Start-Up Time</u>	<u>3357</u>
16.3 <u>Guaranteed Ramp Rate</u>	<u>3357</u>
SECTION 17 MISCELLANEOUS	<u>3357</u>
17.1 <u>Several Obligations</u>	<u>3573</u>
17.2 <u>Choice of Law</u>	<u>3537</u>
17.3 <u>Partial Invalidity</u>	<u>3357</u>
17.4 <u>Waiver</u>	<u>3358</u>
17.5 <u>Governmental Jurisdiction and Authorizations</u>	<u>3358</u>
17.6 <u>Restriction on Assignments</u>	<u>3358</u>
17.7 <u>Permitted Assignments</u>	<u>3358</u>
17.8 <u>Entire Agreement</u>	<u>3358</u>
17.9 <u>Amendments</u>	<u>3358</u>
17.10 <u>No Third Party Beneficiaries</u>	<u>3359</u>
17.11 <u>Agents and Subcontractors</u>	<u>3359</u>
17.12 <u>Notices</u>	<u>3359</u>
17.13 <u>Mobile-Sierra</u>	<u>3359</u>
17.14 <u>Counterparts</u>	<u>3360</u>

EXHIBITS:

Exhibit A	Description of Seller's Facility
Exhibit B	Electricity Delivery Point/Electrical Interconnection Facilities
Exhibit C	Required Facility Documents
Exhibit D	Hourly Scalars
Exhibit E	Start-Up Testing
Exhibit F	Variable Energy Payment
Exhibit G	Examples
Exhibit H	Event Types
Exhibit I	Major Equipment and Maintenance Schedule
Exhibit J	Required Insurance
Exhibit K	Operating Procedures
Exhibit L	Availability Notice
Exhibit M	Ambient Facility Capacity Correction Algorithms
Exhibit N	Buyer's Initial Designated Representatives
Exhibit O	Fuel Specifications and Fuel Delivery Point
Exhibit P	Dispatch Procedures
Exhibit Q	Net Energy Specifications and Dispatchable Quantities of Net Energy
Exhibit R	Guaranteed Performance Parameters; Baseload Heat Rates, Peakload Heat Rates and Simple Cycle Heat Rates
Exhibit S	Dispatch Notice
Exhibit T	Credit Matrix [<i>Note to bidders: Credit Matrix attached as Appendix to RFP 2012</i>]
Exhibit U	<u>Form of Lender Consent</u>

THIS WORKING DRAFT DOES NOT CONSTITUTE A BINDING OFFER, SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE, AND IS CONDITIONED UPON SELECTION OF THE BIDDER, EXECUTION, AND EACH PARTY'S RECEIPT OF ALL REQUIRED MANAGEMENT AND BOARD APPROVALS IN THEIR SOLE AND ABSOLUTE DISCRETION (INCLUDING FINAL CREDIT AND LEGAL APPROVALS). ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS WORKING DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS RELATING TO THIS WORKING DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL THIS WORKING DRAFT IS NEGOTIATED, APPROVED BY ALL APPROPRIATE PARTIES AND EXECUTED BY EACH PARTY'S AUTHORIZED SIGNATORY, NO PARTY SHALL HAVE ANY LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS WORKING DRAFT OR IN THE COURSE OF NEGOTIATIONS. ANY ASSERTION TO THE CONTRARY IN ANY PROCEEDING OR ACTION REGARDING THIS WORKING DRAFT SHALL RENDER THIS WORKING DRAFT NULL AND VOID IN ITS ENTIRETY. DURING DISCUSSIONS AND NEGOTIATIONS ANY PARTY MAY CHANGE ITS POSITION ON ANY MATTER, WHETHER OR NOT SET FORTH IN OR BASED UPON THIS WORKING DRAFT, ANY OTHER DOCUMENT OR ANY COURSE OF DEALING, AT ANY TIME OR FOR ANY REASON.

TOLLING AGREEMENT

THIS TOLLING AGREEMENT dated as of [_____], 2007 (this "Agreement"), is made and entered into between [_____], a [*describe entity*] ("Seller"), and PacifiCorp, an Oregon corporation, acting in its merchant function capacity ("Buyer"). Seller and Buyer are referred to collectively as the "Parties" and individually as a "Party."

RECITALS

A. Seller intends to develop, construct, own, operate and maintain a [Bidder to insert a description of the resource] ~~natural gas fueled, combined cycle electric generation facility~~ [consisting of [? MW] ~~combustion turbines~~ ~~Insert further description~~ for the generation of electric energy located in [township/range], [_____] County, [State], whose initial Facility Capacity shall be [~~525~~ Insert Capacity] MW (as more fully described in Exhibit A, the "Facility").

B. Seller responded to a Request for Proposals – PacifiCorp RFP 2012 which was issued by Buyer in _____ 2006. Buyer's objective in issuing the RFP was to fulfill, through a competitive bid process, a portion of its supply-side resource need as contemplated in Buyer's 2004 Integrated Resource Plan.

C. Buyer's selection of Seller was based upon a competitive bid and was, in part, based upon Seller's representations and warranties, Seller's schedule achieving the Guaranteed Commercial Operation Date (initially capitalized terms not defined in these Recitals are defined in Section 1 below), and the guaranteed performance of the Facility, all as set forth herein. Such matters were a material inducement for the selection of Seller, and Seller's failure to perform in accordance with the terms and conditions or Seller's failure to meet its representations and warranties and schedules for delivery of Net Energy shall cause material damage to Buyer.

D. Seller will make available and sell to Buyer, and Buyer will receive and purchase from Seller, Contract Capacity and Net Energy associated with such Contract Capacity pursuant to the terms and conditions of this Agreement. Seller acknowledges that Buyer will include such Contract Capacity in Buyer's resource planning.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, the Parties agree as follows:

SECTION 1

DEFINITIONS; RULES OF INTERPRETATION

1.1 Defined Terms. Unless otherwise required by the context in which any term appears, defined terms used in this Agreement (as indicated by initial capitalization, except as otherwise provided in this Section 1.1) shall have the following meanings:

“**AAA**” has the meaning set forth in Section 15.2.

“**Affiliate**” means, with respect to any entity, each entity that directly or indirectly, controls or is controlled by or is under common control with such designated entity. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any entity, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities or by contract or otherwise.

“**Alternate Representative**” has the meaning set forth in Section 6.4.2.

“**Ambient Facility Capacity**” means the Contract Capacity determined from the correction algorithms set forth in **Exhibit M**, based upon the Facility Capacity and the ambient conditions in effect in each hour.

“**Ancillary Services**” means those services and energy from time to time now or hereafter available that are necessary to support the Contract Capacity and transmission of energy from resources to loads while maintaining reliable operation of the System in accordance with Prudent Electrical Practices. Such services and energy include regulation reserve, spinning reserve, non-spinning reserve, voltage support, black start Capacity, and reactive power.

“**As-built Supplement**” shall be a supplement to **Exhibit A** that describes the Facility as actually built and shall include all such information as may reasonably be requested by Buyer.

“**Authorized Representative**” has the meaning set forth in Section 6.4.2

“**Availability Notice**” has the meaning set forth in Section 6.5.1.1.

“**Baseload Capacity**” means the Capacity of the Facility achieved when operating at the Reference Conditions with all items of Major Equipment operating at full load, but without duct firing.

“**Baseload Fuel Supply Requirement**” means, with respect to any Day, the product of the applicable Baseload Heat Rate multiplied by the quantity of Net Energy, or equivalent quantity of Ancillary Services, to be delivered from the Baseload Capacity component of the Contract Capacity.

“**Baseload Heat Rate**” has the meaning set forth in Section 6.5.3.8.

“**Business Day**” means any day on which banks in Portland, Oregon 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 Oregon.

“**Btu’s**” means British Thermal Units.

“**Buyer**” has the meaning set forth in the Preamble.

“**CAF_h**” has the meaning set forth in Section 5.1.2.

“**CAF_m**” has the meaning set forth in Section 5.1.2.

“**Capacity**” means the output potential a machine or system can produce under specified conditions as generally expressed in kW or MW.

“**Capacity Payment**” means the Monthly Capacity Payments and the Minimum Monthly Capacity Payments payable in accordance with Section 5.1.

“**Capacity Payment Rate**” means, as of the Commercial Operation Date, \$[?]/kW/month.

“**Capacity Payment Shortfall**” has the meaning set forth in Section 5.1.4.

“**Capacity Rights**” means any current or future defined characteristic, certificate, tag, credit, ancillary service attribute, or accounting construct, including any accounting construct counted towards any current or future resource adequacy or reserve requirements, associated with the Capacity of the Facility or the Facility’s capability and ability to produce energy, but excluding any of the foregoing attributable to any expansion of the Facility occurring after the Commercial Operation Date, unless the output associated therewith is purchased by Buyer.

“**Carry-Over Letter of Credit**” has the meaning set forth in Section 5.1.4.

“**Cash Escrow**” means an escrow account established by Buyer in a commercial bank or trust company organized under the laws of the United States of America or a political subdivision thereof, whose long-term senior unsecured debt is rated at least “A” by S&P or “A2” by Moody’s. Cash deposited to the escrow account shall earn interest at the rate applicable to

money market deposits at the banking institution from time to time, and the interest shall be retained in the escrow account as additional security for Seller's performance under this Agreement.

“**CC**” has the meaning set forth in Section 5.1.2.

“**Collateral**” has the meaning set forth in Section 7.5

“**Combustion Turbine**” or “**CT**” means any one of the combustion turbines comprising the Facility.

“**Commercial Operation Date**” means the date on which the Facility is fully operational, reliable and each condition set forth in Section 2.2.6 is continuously satisfied.

“**Contract Capacity**” means [525] MW of Capacity from the Facility, comprised of [?] MW of Baseload Capacity and [?] MW of Peakload Capacity.

“**Contract Year**” means a twelve (12) month period commencing at 00:00 hours on January 1 and ending on 24:00 hours 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 last Day of the Term.

“**CPR**” has the meaning set forth in Section 5.1.2.

“**CPS**” has the meaning set forth in Section 5.1.2.

“**Credit Matrix**” means the credit matrix attached hereto as **Exhibit T**.

“**Credit Rating**” means, as of any date, the then applicable senior, unsecured, long-term debt or corporate credit rating of a Person published by either Moody's or S&P.

“**Credit Support**” means, prior to the Commercial Operation Date, the amount ~~subject to Section 7.1, (if any)~~ shown as the Project Development Security on the Credit Matrix and, on and after the Commercial Operation Date, the amount (if any) shown on the Credit Matrix as the Default Security.

“**Credit Support Security**” means a guaranty, Letter of Credit or Cash Escrow provided pursuant to Section 7.1.

“**CT Start**” means the process of rotating any of the Facility's Combustion Turbine rotors by means of such Combustion Turbine's starting motor and subsequently introducing and igniting Fuel in the Combustion Turbine's combustor and increasing the rotating speed of the unit's rotor sufficiently that the starting motor can be disengaged, also referred to herein as the Start-Up of a Combustion Turbine.

“**Daily Delay Damages**” for each Day shall be the positive number (and if not a positive number, zero) equal to the sum for all hours of the Day of the product for each hour of the Day

of (1) the Dow JonesTM SP15 Firm On-peak Index (or if on a Sunday or a NERC holiday, the 24-hour firm index) for such Day, expressed in \$/MWh, *multiplied by* (2) the applicable hourly scalar set forth in **Exhibit D** for the hours ending 0700 – 2200 Pacific Prevailing Time, seven (7) days a week, including NERC holidays (each such hour, an “**On-Peak Hour**”) during such Day, *multiplied by* (3) the loss factor of 1.112, *plus* (4) the basis of \$13/MWh for each On-Peak Hour or portion thereof during such Day, *minus* (5) for On-Peak Hours, the market price at the Fuel Delivery Point of the Fuel that would have been required to generate the Net Energy attributable to the Contract Capacity during such On-Peak Hour in such Day using the Guaranteed Heat Rate, *minus* (6) one twenty-fourth of the Capacity Payments that would have been made with respect to such Day, if no Capacity Payments have been paid with respect to such Day. The market price of Fuel at the Fuel Delivery Point will be determined by Buyer using any commercially reasonable method. If the Dow JonesTM SP15 Firm On-peak Index ceases to be published during the Term, Buyer shall select as a replacement electricity price index or component, an index acceptable to Buyer in its discretion that, after any necessary adjustments, provides the most reasonable substitute quotation of the daily price of firm on-peak energy at South of Path 15 for the applicable periods.

“**Day**” means the 24-hour period beginning at midnight Pacific Prevailing Time on a day and ending at midnight Pacific Prevailing Time on the next succeeding day.

“**Dispatch**,” “**Dispatched**,” and “**Dispatching**” means the scheduling and control by the Buyer of Net Energy, through submittal of schedules pursuant to the Dispatch Procedures and other provisions of this Agreement.

“**Dispatch Procedures**” means the procedures under which Buyer is entitled to Dispatch the Facility, as set forth in **Exhibit P**.

“**Dollar**” or “**\$**” means the lawful currency of the United States of America.

“**Effective Date**” has the meaning set forth in Section 2.1.

“**Electrical Interconnection Facilities**” means all the facilities installed by Seller for the purpose of interconnecting the Facility to the Electricity Delivery Point, including electrical transmission lines, upgrades, transformers and associated equipment, substations, relay and switching equipment, and safety equipment, as set forth in **Exhibit B**.

“**Electricity Delivery Point**” means the physical point(s) for Seller’s delivery, and Buyer’s receipt, of Net Energy at which the Facility is connected with the Transmission Provider’s transmission system, as specified in the Interconnection Agreement and in **Exhibit B**. *[Note to Bidders: If energy is to be delivered to a transmission provider other than the Transmission Provider and wheeled to the Electricity Delivery Point, the Electricity Delivery Point will be at a point of interconnection with the Transmission Provider’s transmission system where the resource can be integrated as a Network Resource.]*

“**Electric Metering Equipment**” has the meaning set forth in Section 8.1.

“**Environmental Law**” means any federal, state or local law including statutes, regulations, rulings, orders, administrative interpretations and other governmental restrictions and requirements having the force and effect of law relating to (i) the discharge or disposal of any substance into the air, soil or water, including pollutants, water pollutants or process waste water, (ii) storage, emissions transportation or disposal of any Regulated Material, (iii) the environment or hazardous substances, all as amended from time to time, (iv) land use requirements pertaining to Regulated Materials, including laws requiring environmental impact studies or other similar evaluations, and (v) environmental issues pertaining to the development, construction, operation or maintenance of the Facility.

“**Event of Default**” has the meaning set forth in Section 10.1.

“**EWG**” means an “exempt wholesale generator,” as defined under the Public Utility Holding Company Act of 1935, as amended from time to time.

“**Example**” means an example set forth in **Exhibit G**. Each Example is for purposes of illustration only and is not intended to constitute a representation, warranty or covenant concerning the matters assumed for purposes of each Example. If there is a conflict between an Example and the text of this Agreement, the text shall control.

“**Excused Outage**” has the meaning set forth in Section 5.1.2.

“**Facility**” shall have the meaning given to that term in **Recital A**.

“**Facility Capacity**” means the maximum Capacity of the Facility, expressed in MW, when operated consistent with the manufacturer’s recommended power factor and operating parameters, as set forth in **Exhibit A**.

“**FERC**” means the Federal Energy Regulatory Commission.

“**FIN 46**” has the meaning set forth in Section 6.13.

“**Force Majeure**” has the meaning set forth in Section 13.1.

“**Forced Outage**” means NERC Event Types U1, U2 and U3, as set forth in **Exhibit H**.

“**Fuel**” means natural gas meeting the specifications set forth in **Exhibit O**.

“**Fuel Delivery Point**” means the point at which Fuel is delivered from [_____] to the Facility, as specified in **Exhibit O**.

“**Fuel Metering Point**” means the delivery point specified in **Exhibit O**.

“**Fuel Supply Requirement**” means, for any Day, the sum, without duplication, of (i) the Start-Up Fuel Quantity for each Start-Up that occurs during such Day and (ii) the Operating Fuel Quantity for such Day.

“**Fuel Transporter**” means the pipeline company selected by Buyer to transport the Fuel to the Facility.

“**Governmental Authority**” means any supranational, federal, state or other political subdivision thereof, having jurisdiction over Seller, Buyer or this Agreement, including any municipality, township and county, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing.

“**Guaranteed Commercial Operation Date**” means *[Bidder to insert]*.

“**Guaranteed Heat Rate**” has the meaning assigned to such term in **Exhibit R**.

“**Guaranteed Ramp Rate**” has the meaning set forth in **Exhibit R**.

“**Guaranteed Start-Up Time**” has the meaning set forth in **Exhibit R**.

“**Heat Rate**” means the number of Btu’s used to produce one MW of energy measured at the Electricity Delivery Point.

“**Interconnection Agreement**” means the agreement to be entered into separately between Seller and Transmission Provider providing for the construction and operation of the Electrical Interconnection Facilities.

“**Lender**” means any individual or entity or successor in interest thereof lending money or extending credit (including any financing lease or credit derivative arrangement) to Seller (i) for the construction, term or permanent financing or refinancing of the Facility; (ii) for working capital or other ordinary business requirements for the Facility (including for the maintenance, repair, replacement or improvement of the Facility); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Facility; or (iv) for the purchase of the Facility and related rights from Seller. As used herein, “Lender” includes a Tax Investor (as defined in the Lender Consent).

“**Lender Consent**” means a Consent to Collateral Assignment in favor of one or more Lenders and in substantially the form of **Exhibit U**.

“**Letter of Credit**” means an irrevocable standby letter of credit in form and substance acceptable to Buyer in its discretion, naming Buyer as the party entitled to demand payment and present draw requests thereunder, which letter of credit:

(1) is issued by a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a net worth of at least \$1,000,000,000 and a Credit Rating of:

(a) “A2” or higher from Moody’s; or

(b) “A” or higher from S&P;

(2) on the terms provided in the letter of credit, permits Buyer to draw up to the face amount thereof for the purpose of paying any and all amounts owing by Seller hereunder;

(3) if a letter of credit is issued by a foreign bank with a U.S. branch, permits Buyer to draw upon a U.S. branch;

(4) permits Buyer 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;

(5) permits Buyer to draw the entire amount available thereunder if such letter of credit is not increased, replaced or replenished as and when provided in Section 7;

(6) is transferable by Buyer to any party to which Buyer may assign this Agreement under Section 17.7; and

(7) shall remain in effect for at least ninety (90) days after the end of the Term.

“**Licensed Professional Engineer**” means a person acceptable to Buyer in its reasonable judgment who (i) is licensed to practice engineering in the state in which the Facility is located, (ii) has training and experience in the engineering discipline(s) relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion, (iii) has no economic relationship, association, or nexus with Seller, (iv) 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, (v) is engaged by Seller on terms reasonably acceptable to Buyer, (vi) has its fees paid for by Seller, and (vii) is licensed in an appropriate engineering discipline for the required certification being made. The engagement and payment of a Licensed Professional Engineer solely to provide the certifications, evaluations and opinions required by this Agreement shall not constitute a prohibited economic relationship, association or nexus with Seller, so long as such engineer has no other economic relationship, association or nexus with Seller.

“**MAAF**” has the meaning set forth in Section 5.1.2.

“**Maintenance Outage**” means NERC Event Type MO, as set forth in **Exhibit H**.

“**Major Equipment**” has the meaning set forth in **Exhibit I**.

“**Major Maintenance Cycle**” means, with respect to each item of Major Equipment, the period of time specified therefor in **Exhibit I**.

“**Mediation Notice**” has the meaning set forth in Section 15.2.1.

“**Minimum Monthly Capacity Payment**” has the meaning set forth in Section 5.1.3.

“**Monthly Capacity Payment**” has the meaning set forth in Section 5.1.2.

“**Moody’s**” shall mean Moody’s Investor Services, Inc.

“**MW**” means megawatt.

“**MWh**” means megawatt hour.

“**NERC**” means the North American Electric Reliability Council.

“**Net Energy**” means, for any period, the energy output of the Facility delivered to Buyer at the Electricity Delivery Point pursuant to Buyer’s Dispatch of the Facility of a quantity in MWh not to exceed that associated with Contract Capacity, as measured pursuant to Section 8, less station use and less transformation and transmission losses to the Electricity Delivery Point.

“**Network Resource**” means a generation resource which has been fully integrated into the System.

“**Notifying Party**” has the meaning set forth in Section 8.2.

“**Operating Fuel Quantity**” means, with respect to any hour, the sum of (i) any Baseload Fuel Supply Requirements, (ii) any Peakload Fuel Supply Requirement, and (iii) any Simple Cycle Fuel Requirements.

“**Operating Procedures**” are set out in **Exhibit K**.

“**Pacific Prevailing Time**” means Pacific Standard Time or Pacific Daylight Time, as applicable on the Day in question.

“**Party**” has the meaning set forth in the Preamble.

“**Peakload Capacity**” means incremental Capacity, in excess of the Baseload Capacity, which is generated by the Facility utilizing duct firing.

“**Peakload Fuel Supply Requirement**” means with respect to any Day, the product of the applicable Peakload Heat Rate multiplied by the quantity Net Energy, or equivalent quantity of Ancillary Services, to be delivered from the Peakload Capacity component of the Contract Capacity.

“**Peakload Heat Rate**” has the meaning set forth in Section 6.5.3.8.

“**Permits**” means all permits, licenses, approvals, certificates, entitlements and other authorizations issued by Governmental Authorities required for the development, construction, ownership, operation and maintenance of the Facility, and all amendments, modifications, supplements, general conditions and addenda thereto.

“**Person**” means any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or governmental authority.

“**Planned Outage**” means NERC Event Type PO, as set forth on **Exhibit H**.

“**Pledge Interest**” has the meaning set forth in Section 7.2.2.

“**Potential Event of Default**” means an event which, but for the passing of time or the giving of notice or both, would constitute an Event of Default.

“**Premises**” means the real property on which the Facility is or will be located, as more fully described on **Exhibit A**.

“**Prime Rate**” means 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. 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 based on the prime rate is being paid.

“**Protective Apparatus**” means such equipment and apparatus, including protective relays, circuit breakers and the like, necessary or appropriate to isolate the Facility from the System consistent with Prudent Electrical Practices.

“**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 for gas fired, combined cycle electric generation facilities, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, would have been expected to accomplish the desired result in a cost efficient manner consistent with good business practices, reliability criteria, safety considerations and expediency. 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.

“**Reference Conditions**” means the following conditions: standard ambient air pressure at the Premises of [?]; ambient temperature, dry bulb, of [?] degrees Fahrenheit; and relative humidity of [?] percent ([?]%).

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

“**Remaining Capacity**” means all the Capacity of the Facility in excess of the Contract Capacity.

“**Replacement Price**” means the price at which Buyer, acting in a commercially reasonable manner, purchases for delivery at the Electricity Delivery Point a replacement for any

energy that Seller is required to deliver under this Agreement, plus (i) costs reasonably incurred by Buyer in purchasing such replacement energy, and (ii) additional transmission charges, if any, reasonably incurred by Buyer in causing replacement energy to be delivered to the Electricity Delivery Point. If Buyer elects not to make such a purchase, the Replacement Price shall be the market price at the Electricity Delivery Point for such energy not delivered, plus any additional cost or expense incurred as a result of Seller's failure to deliver, as determined by Buyer in a commercially reasonable manner (but not including any penalties, ratcheted demand or similar charges).

"Reporting Month" has the meaning set forth in Section 6.9.1.

"Requested Net Energy" means, for any period, the Net Energy of the Facility that has been scheduled by Buyer for delivery in accordance with the Dispatch Procedures and other terms of this Agreement.

"Required Facility Documents" means all Permits and agreements now or hereafter necessary for the development, construction, ownership, operation and maintenance of the Facility including the documents (i) to which Seller and Buyer are a party evidencing the Security Interests and (ii) those set forth in **Exhibit C**.

"Requirements of Law" means collectively, as to Seller and *[if Seller is not the ultimate parent, any ultimate parent entity]*, Seller's organizational or governing documents and any federal, state, county or municipal, law, treaty, ordinance, franchise, rule, regulation, order, writ, judgment, injunction, decree, award or determination of any arbitrator, or a court or other Governmental Authority, in each case, now or hereafter applicable to or binding upon this Agreement, the Facility, Seller or *[if Seller is not the ultimate parent, any parent entity]* to which any of their respective properties are subject (including those pertaining to electrical, building, zoning, environmental and occupational health and safety).

"RTO" means any person, other than Transmission Provider, that becomes responsible as system operator for, or directs the operation of, the System.

"S&P" shall mean Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.).

"Schedule" or **"Scheduled"** means the acts of Buyer and Seller pursuant to Section 6.5 setting forth a schedule requesting and accepting the delivery of energy by Seller to Buyer on and after the Commercial Operation Date.

"Scheduling Constraints" means the limitations of the Facility's Capacity arising as a result of the need to observe the physical ramp rates of the Major Equipment and maintain minimum run times, minimum down times, minimum dispatch levels of Net Energy and Capacity per CT, and maximum levels of Net Energy and Capacity, to be generated by any item of Major Equipment, in compliance with the warranty requirements relating to each item of Major Equipment, the operating and maintenance standards recommended by the Facility's equipment suppliers, and Prudent Electrical Practice, as set forth on **Exhibit Q**.

“**Scheduling Fees**” means fees assessed by any person to schedule the delivery of the energy.

“**Security Interests**” has the meaning set forth in Section 7.2.1.

“**Seller**” has the meaning set forth in the Preamble.

“**Senior Lenders**” means the Lenders providing construction financing for the Facility, or any term or permanent take-out financing of such construction financing.

“**Simple Cycle**” means operation of a Combustion Turbine without capturing the waste heat from the Combustion Turbine in the associated heat recovery steam generator and, therefore, without producing additional Net Energy from the steam turbine utilizing steam produced by such heat recovery steam generator. When one or more CTs are operated in Simple Cycle mode, the Facility will produce less Capacity and less Net Energy, while consuming Fuel at a higher heat rate, than when the Facility is operated in combined cycle mode to produce Baseload Capacity. The ramp rates applicable to each CT, as set forth in **Exhibit R**, are faster in Simple Cycle mode than in combined cycle mode.

“**Simple Cycle Fuel Supply Requirement**” means with respect to any Day, the product of the applicable Simple Cycle Heat Rate multiplied by the quantity of Net Energy, or equivalent quantity of Ancillary Services, to be delivered from the Facility while dispatched in Simple Cycle mode.

“**Simple Cycle Heat Rate**” has the meaning set forth in Section 6.5.3.8.

“**Solvency**” or “**Solvent**” has the meaning set forth in Section 3.2.12.

“**Standard Heat Rate**” means the actual Heat Rate of the Facility at varying levels of the Net Energy and varying ambient conditions.

“**Start-Up**” means a firing of one or more of the items constituting Major Equipment when such item or items of Major Equipment is not being operated, including any firing required to perform a CT Start. The period of a Start-Up of any item of Major Equipment begins at the commencement of such firing and ends when such item of Major Equipment obtains and produces on a continuous basis the desired quantity of Net Energy.

“**Start-Up Fuel Quantity**” means, with respect to any Start-Up(s) initiated to supply Net Energy and Ancillary Services to Buyer, the quantity of Fuel actually required by each CT Start.

“**Start-Up Testing**” means the tests set in **Exhibit E**.

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

“**Tariff**” means Buyer’s FERC Electric Tariff Fourth Revised Volume No. 11 Pro Forma Open Access Transmission Tariff, as revised from time to time.

“**Term**” has the meaning set forth in Section 2.1.

“**Transmission Provider**” means [*PacifiCorp, an Oregon corporation, acting in its transmission function capacity.*] [*Note to Bidders: If the Facility is interconnected to another system, identify the appropriate Transmission Provider.*] Seller acknowledges that Buyer, as Buyer under this Agreement, has no responsibility for or control over such Transmission Provider.

“**Unexcused Outage**” has the meaning set forth in Section 5.1.2.

“**Unplanned Outage**” means NERC Event Type U, as set forth on **Exhibit H**.

“**Variable Energy Payment**” means the payment to be made by Buyer to Seller pursuant to Section 5.3 and as specified in **Exhibit F**.

1.2 Rules of Interpretation.

1.2.1 General. Unless otherwise required by the context in which any term appears, (a) the singular shall include the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” (if any) shall be to articles, sections, schedules, annexes, appendices or exhibits of this Agreement; (c) all references to a particular entity or an electricity market price index shall include a reference to such entity’s or index’s successors and (if applicable) permitted assigns; (d) the words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection hereof; (e) all accounting terms not specifically defined in this Agreement shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied; (f) references to this Agreement shall be deemed to include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; (g) the masculine shall include the feminine and neuter and vice versa; (h) the word “including” shall be construed in its broadest sense to mean “without limitation” or “but not limited to” and (i) the word “or” is not necessarily exclusive.

1.2.2 Terms Not to Be Construed for or Against Either Party. Each term of this Agreement 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 of this Agreement 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 of this Agreement are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement.

1.2.4 Interpretation with Interconnection Agreement. Each Party conducts its operations in a manner intended to comply with FERC Order No. 2004, Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions. Moreover, the Parties acknowledge that Transmission 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 separate Interconnection Agreement.

1.2.4.1 The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free standing contract and that the terms of this Agreement are not binding upon Transmission Provider.

1.2.4.2 Notwithstanding any other provision in this Agreement, nothing in the Interconnection Agreement shall alter or modify the Parties' rights, duties, and obligations under this Agreement. This Agreement shall not be construed to create any rights between Seller and Transmission Provider.

1.2.4.3 Seller expressly recognizes that, for purposes of this Agreement, Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Transmission Provider or an Affiliate thereof.

SECTION 2

TERM; COMMENCEMENT OF OPERATION

2.1 Term. This Agreement shall become effective when it is signed and delivered by both Parties (the "**Effective Date**") and, unless earlier terminated as provided in this Agreement, shall remain in effect until the [?] anniversary of the Commercial Operation Date (the "**Term**").

2.2 Milestones. Time is of the essence of this Agreement, and Seller's ability to meet certain milestones before the Commercial Operation Date and to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date is critically important. Therefore, Seller shall achieve the following milestones unless waived or extended by Buyer in its sole and absolute discretion:

2.2.1 By [date], Seller shall demonstrate to Buyer's reasonable satisfaction that Seller has made all arrangements and obtained all means for transporting Fuel in quantities sufficient to operate the Facility at the Facility Capacity and shall assign all such transportation rights to Buyer for the Term;

2.2.2 By [date], Seller shall obtain and provide to Buyer copies of all Required Facility Documents necessary for construction of the Facility;

2.2.3 By [date], Seller shall provide to Buyer evidence acceptable to Buyer that Seller has obtained construction financing for the Facility (or alternatively

permanent financing subject only to construction of the Facility and Seller's execution of the lender's loan documents);

2.2.4 By [date], Seller shall provide Buyer with an As-built Supplement acceptable to Buyer;

2.2.5 By [date], Seller shall begin deliveries of Net Energy for purposes of initiating Start-Up Testing; and

2.2.6 By the Guaranteed Commercial Operation Date, the Commercial Operation Date shall have occurred. This shall require that all of the following conditions shall have been satisfied or waived by Buyer in its sole and absolute discretion:

(1) Buyer shall have received a certificate addressed to Buyer from a Licensed Professional Engineer certifying that the Facility is able to generate energy reliably in amounts required by this Agreement and in accordance with all other terms and conditions of this Agreement;

(2) Start-Up Testing of the Facility shall have been completed;

(3) After Buyer has received notice of the completion of Start-Up Testing, Buyer shall have endorsed a certificate addressed to Buyer from a Licensed Professional Engineer certifying that the Facility has operated for testing purposes under this Agreement uninterrupted for a period of ten (10) consecutive days at a rate of at least the Facility Capacity based upon any sixty (60) minute period for the entire testing period. Seller must provide five (5) Business Days' written notice to Buyer before the start of the Start-Up Testing period. If the operation of the Facility is interrupted during this initial testing period or any subsequent testing period, the Facility shall start a new consecutive ten (10) day testing period and Seller shall provide Buyer forty-eight (48) hour written notice before the start of such testing period;

(4) Buyer shall have received a certificate addressed to Buyer from a Licensed Professional Engineer certifying that, in accordance with the Interconnection Agreement, all required Electrical Interconnection Facilities have been constructed, all required interconnection tests have been completed, the Facility is physically interconnected with the System and the Facility Capacity is a Network Resource;

(5) Buyer shall have received a certificate addressed to Buyer from a Licensed Professional Engineer certifying that Seller has obtained all Required Facility Documents for the construction and operation of the Facility and, if requested by Buyer in writing, Seller shall have provided copies of any or all such requested Required Facility Documents, together with (i) the certificates of insurance coverage or insurance policies required by Section 12.1, and (ii) copies of all Required Facility Documents which Seller is responsible to obtain or are required for the construction and operation of the Facility;

(6) Buyer shall have issued a written certificate to Seller certifying that Buyer has received all Facility drawings, plans, specifications, policies, and other documents required by this Agreement;

(7) Buyer shall have received a certificate addressed to Buyer from Seller's primary construction contractor certifying that the Facility has been turned over to Seller for permanent operation and maintenance and that the primary construction contractor owes no further construction-related obligations to Seller (other than punch list items); and

(8) Buyer shall have received a certificate addressed to Buyer from an office of Seller and acceptable to Buyer certifying that no Event of Default by Seller or Potential Event of Default by Seller exists under this Agreement.

2.3 Daily Delay Damages. Seller shall cause the Commercial Operation Date to occur on or before the Guaranteed Commercial Operation Date but no earlier than [**? months**] prior to the Guaranteed Commercial Operation Date. If the Commercial Operation Date does not occur on or before the Guaranteed Commercial Operation Date, to compensate Buyer for the failure to provide Contract Capacity from the Facility, Seller shall pay Buyer delay damages equal to the Daily Delay Damages times Contract Capacity for each Day or portion of a Day until that Day that the Commercial Operation Date occurs from and after the Guaranteed Commercial Operation Date. Each Party agrees and acknowledges that (a) the damages that Buyer would incur for the failure to provide energy from the Facility due to delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date would be difficult or impossible to predict with certainty, and (b) the Daily Delay Damages mechanism is an appropriate approximation of such damages. This Section 2.3 shall not limit the amount of damages payable to Buyer if this Agreement is terminated as a result of Seller's failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date and any such damages shall be determined in accordance with Section 10.7. In addition, this Section 2.3 shall not limit the damages payable to Buyer for matters resulting from delay in achieving the Commercial Operation Date other than the failure to provide energy from the Facility.

2.4 Damages Invoicing. By the tenth (10th) day following the end of the calendar month of the Guaranteed Commercial Operation Date, and continuing on the tenth (10th) day following the end of any calendar month during which Daily Delay Damages are incurred, Buyer shall deliver to Seller a proper invoice showing Buyer's computation of such damages and any amount due Buyer in respect thereof for the preceding calendar month. No later than ten (10) days after receiving such an invoice, Seller shall pay to Buyer, by wire transfer of immediately available funds to an account specified in writing by Buyer or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice.

2.5 Buyer's Right to Monitor. During the design, procurement, construction, installation, start up and testing of the Facility, Seller shall permit Buyer and its advisors and consultants to:

(a) Review and discuss with Seller and its advisors and consultants monthly status reports on the progress of the development, design, construction and installation of the

Facility. Between the date on which this Agreement is executed and thirty (30) days following the Commercial Operation Date, Seller shall, on or before the tenth (10th) day of each calendar month, provide Buyer with a brief monthly status report for the preceding month.

(b) Monitor the development, design, engineering, procurement, construction and installation of the Facility and the performance of the contractor(s) constructing the Facility.

(c) Review and monitor the contractors' performance and achievement of (i) all initial performance tests and other tests required under the Facility construction contracts that must be performed in order to achieve the Commercial Operation Date and (ii) all tests contemplated by the warranty agreement(s) between the Seller and manufacturer of the Facility's CTs and any other Major Equipment. Buyer reserves the right to require additional performance tests of the Facility's CTs in the event that Seller elects not to have such CTs or other Major Equipment covered by warranty agreements acceptable to Buyer. Seller shall provide Buyer with at least five (5) Business Days' prior notice of each such test.

(d) Witness initial performance tests and other tests and review the results thereof.

(e) Perform such examinations, inspections, and quality surveillance as, in Buyer's reasonable judgment, are appropriate and advisable to determine that all Major Equipment comprising the Facility has been properly commissioned and that the Facility has achieved the Commercial Operation Date.

The Parties acknowledge and agree that Buyer is under no obligation to perform any of the monitoring rights under this Section 2.5. Any information or knowledge obtained by Buyer in the exercise of its rights under this Section 2.5 shall not prevent Buyer from subsequently asserting that Seller failed to perform its obligations under this Agreement or failed to satisfy any of its conditions in Section 2, nor shall the exercise by Buyer of such rights be used as evidence that Seller performed its obligations under this Agreement or satisfied its conditions in Section 2 or that Buyer gave any consent to Seller's action in meeting its obligations under Section 2. Buyer's right to indemnification, payments for damages or other remedy in this Agreement will not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Commercial Operation Date, including with respect to the accuracy or inaccuracy of any representation or warranty, or compliance with any covenant or obligation hereunder. Buyer shall maintain one or more designated representatives for purposes of the monitoring activities contemplated in this Section 2.5, which representatives shall have authority to act for Buyer in all technical matters under this Section 2.5. However, Buyer's representatives, in their capacity as representatives, shall not have the authority to amend or modify any provision of this Agreement. Buyer's initial representatives for purposes of this Section 2.5 and their contact information are listed in **Exhibit N**. Buyer may, by written notice to Seller, change its representatives or the contact information for such representatives.

SECTION 3

REPRESENTATIONS AND WARRANTIES

3.1 Buyer's Representations and Warranties. Buyer represents, covenants, and warrants to Seller that:

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

3.1.2 Authority. Buyer 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 Corporate Actions. Buyer 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 No Contravention. 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 Buyer or any valid order of any court, or any regulatory agency or other body having authority to which Buyer is subject.

3.1.5 Valid and Enforceable Agreement. This Agreement is a valid and legally binding obligation of Buyer, enforceable against Buyer 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's Representations and Warranties. Seller represents, covenants, and warrants to Buyer that:

3.2.1 Organization. Seller is a [*insert legal entity*] duly [*organized*] and validly existing under the laws of [_____].

3.2.2 Authority. Seller (i) has the requisite power and authority to enter into this Agreement and to perform, including all required regulatory authority to make wholesale sales from the Facility; (ii) has the power and authority to own and operate its businesses and properties, to own or lease the property it occupies and to conduct the business in which it currently engaged; and is duly qualified as [_____] in Utah; and (iii) is 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.

3.2.3 Actions. Seller has taken all [*insert appropriate legal entity*] actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.2.4 No Contravention. The execution, delivery, performance and observance by Seller of its obligations under this Agreement do not and will not:

3.2.4.1 contravene, conflict with or violate any provision of any material Requirements of Law presently in effect having applicability to either Seller or [*if Seller is not the ultimate parent, Seller's ultimate parent*];

3.2.4.2 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 C** or (ii) required in connection with the construction and/or operation of the Facility and expected to be obtained in due course;

3.2.4.3 result in a breach of or constitute a default under any provision of any security issued by [*ultimate parent of Seller*] or any of its Affiliates or any material agreement, instrument or undertaking to which either [*ultimate parent of Seller*] or any of its Affiliates is a party or by which [*ultimate parent of Seller*]'s or any of its Affiliates' property is bound; or

3.2.4.4 require Seller to be licensed under the Utah Construction Trades Licensing Act.

3.2.5 Valid and Enforceable Agreement. 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 Litigation. No litigation, arbitration, investigation or other proceeding is pending or, to the best of Seller's knowledge, threatened against either Seller, its parent(s), or any Affiliate with respect to this Agreement and the transactions contemplated hereby and thereby.

3.2.7 Accuracy of Information. To the knowledge of Seller, no exhibit, contract, report or document furnished by Seller to Buyer in connection with this Agreement, or the negotiation or execution of this Agreement contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statements contained therein not misleading.

3.2.8 Required Facility Documents. All Required Facility Documents are set forth in **Exhibit C** attached hereto. To Seller's knowledge, no unusual or burdensome conditions are expected by Seller to be placed upon, or

created by, any of the Required Facility Documents. The anticipated use of the Facility complies with all applicable restrictive covenants affecting the Premises and all Requirements of Law. The representation made in this Section 3.2.8 shall be deemed to be given throughout the entire Term.

3.2.9 Taxes. Seller has filed or caused to be filed all tax returns which were required to be filed and has paid all taxes shown to be due and payable on said returns or on any assessments made against it or any of its property including the Premises, and all other taxes, fees or other charges imposed on it or any of its property by any Governmental Authority, and no tax liens have been filed and no claims are being asserted with respect to any such taxes, fees or other charges, except where such taxes, fees or other charges are being contested in good faith by Seller through appropriate proceedings with adequate reserves set aside in the event of an adverse determination.

3.2.10 Seller's Intent. Seller intends:

3.2.10.1 To construct and operate the Facility in accordance with Prudent Electrical Practices, and in accordance with, and subject to the terms of this Agreement;

3.2.10.2 To supply the Contract Capacity and Net Energy of the Facility throughout the Term of this Agreement in accordance with the provisions of this Agreement; and

3.2.10.3 [if Seller will be a single purpose vehicle, that its sole business shall be the ownership and operation of the Facility.]

3.2.11 No Collusion. Neither Seller nor any of its representatives has entered into any form of collusive arrangement with any person or entity which directly or indirectly has to any extent lessened competition between Seller and any other person or entity for the supply of Capacity and energy sought by Buyer.

3.2.12 Solvency. Seller, its parent(s) and their Affiliates are Solvent. As used herein, “**Solvent**” and “**Solvency**” means with respect to any person or entity on any date of determination, that on such date (a) the book value of the property of such person or entity is greater than the total amount of book liabilities, including contingent liabilities that are probable and estimable, of such person or entity, (b) such person or entity is able to pay its debts as they become absolute and matured, taking into account the possibility of refinancing such obligations and selling assets, (c) such person or entity does not intend to, and does not believe that it will, incur debts or liabilities beyond such person’s or entity’s ability to pay such debts and liabilities as they mature taking into account the possibility of refinancing such obligations and selling assets and (d) such person or entity is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such person’s or entity’s property would constitute an unreasonably small capital. The amount of contingent liabilities at any time shall be computed as the amount that are probable and estimable in the light of all the facts and circumstances existing at

such time, and that can reasonably be expected to become an actual or matured liability.

3.3 Notice. If at any time during the Term, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties made by it in this Section 3 to have been materially untrue or misleading when made, such Party shall provide the other Party with notice in accordance with Section 17.12 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

SALE AND PURCHASE OBLIGATIONS

4.1 Sale and Purchase of Contract Capacity, Capacity Rights, Net Energy and Ancillary Services.

4.1.1 Subject to the terms and conditions of this Agreement, on and after the Commercial Operation Date and for the balance of the Term, Seller shall make available to Buyer from the Facility the Contract Capacity and the Capacity Rights, and all Net Energy and Ancillary Services associated with such Contract Capacity that is Scheduled by Buyer for delivery in accordance with the Dispatch Procedures and Section 6.5.2.

4.1.2 Subject to Section 5.1, Buyer shall purchase the Contract Capacity of the Facility and pay a monthly Capacity Payment to Seller.

4.1.3 Seller shall provide Ancillary Services and Capacity Rights to Buyer without additional charge or expense.

4.1.4 Buyer shall be under no obligation to purchase any Capacity under this Agreement other than Contract Capacity.

4.1.5 For each quantity of Net Energy that Buyer has Scheduled for delivery in any hour from the Facility, Buyer shall deliver the requisite Fuel Supply Requirement to Seller during such hour, comprised of any applicable Startup Fuel Quantity and the applicable Operating Fuel Quantity. As more fully described in Section 6.5.3, the Operating Fuel Quantity shall include: (i) the sum of the Baseload Fuel Supply Requirement for each hour in which Buyer desires to have Seller provide any Scheduled quantity of Net Energy or Ancillary Services utilizing part or all of the Baseload Capacity of Buyer's Contract Capacity, (ii) the sum of the Peakload Fuel Supply Requirements for each hour in which Buyer desires to have Seller provide any Scheduled quantity of Net Energy or Ancillary Services utilizing part or all of the Peakload Capacity of Buyer's Contract Capacity, and (iii) the Simple Cycle Fuel Supply Requirement for each hour in which Buyer desires to have Seller provide any

Scheduled quantity of Net Energy or equivalent quantity of Ancillary Services to be delivered from the Facility in Simple Cycle mode utilizing part of Buyer's Contract Capacity.

4.1.6 For each quantity of Ancillary Services that Buyer has Scheduled for delivery in any hour from the Facility that requires Seller to consume Fuel in the Facility, Buyer shall deliver a quantity of Fuel to Seller equal to the Fuel Supply Requirement applicable to an equivalent quantity of Net Energy. Seller and Buyer shall specify in the Operating Procedures the means by which Seller and Buyer shall determine the precise quantity of the Fuel Supply Requirement applicable to various types of Ancillary Services that Buyer may Schedule from time to time under this Agreement.

4.1.7 In addition to Buyer providing the applicable Fuel Supply Requirement to Seller, Buyer shall also pay the amounts specified in Section 5, and Seller shall then provide to Buyer without additional charge or expense all Net Energy and Ancillary Services that have been Scheduled by Buyer.

4.1.8 Seller shall provide to Buyer from the Facility the Contract Capacity, and associated quantities of Net Energy or Ancillary Services as Scheduled by Buyer in accordance with this Agreement. Subject to Section 4.3, the Contract Capacity, and the Net Energy and Ancillary Services associated with such Contract Capacity, shall be made available exclusively to Buyer and Seller shall be free to sell the Remaining Capacity of the Facility, and the Net Energy and Ancillary Services associated with such Remaining Capacity, to any third party. Subject to Section 6.3.1, Seller shall have absolute discretion over the operation of the Facility to generate the quantities of Capacity, Net Energy and Ancillary Services to be delivered to Buyer in compliance with the provisions of this Agreement. In addition, Seller shall have absolute discretion over the use of the Remaining Capacity in sales to any third party(s).

4.2 Deliveries; Title and Risk of Loss. All Net Energy and Ancillary Services that have been, at Buyer's option, Scheduled by Buyer shall be delivered by Seller to Buyer at the Electricity Delivery Point. Seller shall be deemed to be in exclusive control of, and responsible for any damage or personal injury caused by, Net Energy or Ancillary Services delivered hereunder up to the Electricity Delivery Point; and Buyer shall be deemed to be in exclusive control of, and responsible for any damages or injury caused by, such Net Energy or Ancillary Services from the Electricity Delivery Point. Seller warrants and agrees that it will transfer and deliver Contract Capacity, Capacity Rights, Ancillary Services and Net Energy to Buyer free and clear of all liens or other encumbrances and rights of third parties. Title to and risk of loss of all Net Energy or Ancillary Services shall transfer from Seller to Buyer upon delivery to Buyer at the Electricity Delivery Point. Buyer shall be deemed to be in exclusive control of, and responsible for any damage or personal injury caused by, Fuel delivered hereunder up to the Fuel Delivery Point; and Seller shall be deemed to be in exclusive control of, and responsible for any damages or injury caused by, such Fuel at and from the Fuel Delivery Point. Buyer warrants that

it will deliver Fuel to Seller free and clear of all liens or other encumbrances. Title to and risk of loss of all Fuel shall transfer from Buyer to Seller upon delivery to the Fuel Delivery Point.

4.3 Dispatching Deliveries from the Contract Capacity versus the Remaining Capacity.

4.3.1 Seller shall exclusively make available to Buyer the Contract Capacity of the Facility, and Seller shall deliver to Buyer, and Buyer shall receive, the quantities of Net Energy and Ancillary Services that were Scheduled by Buyer from such Contract Capacity in accordance with this Agreement. Seller retains absolute discretion as to which items of the Major Equipment of the Facility are operated to generate and deliver (i) the quantities of Net Energy and Ancillary Services to be delivered to Buyer from the Contract Capacity and (ii) the quantities of Net Energy and Ancillary Services to be delivered to any third party purchaser from the Remaining Capacity.

4.3.2 During any Excused Outage or Unexcused Outage of the Facility, as defined in Section 5.1.2, which causes a partial outage of the Facility, but not a complete shutdown of the Facility, Buyer's right to the Contract Capacity shall not be affected by any reduction in the Facility Capacity, and to the extent there is a reduction of Facility Capacity, Seller shall make available to Buyer all of such reduced Facility Capacity up to the Contract Capacity. Subject to the foregoing, Seller shall, at all times, have the right to make available for sale to any third party purchasing any of the Remaining Capacity no more than the actual available Capacity of the Facility less the Contract Capacity.

4.3.3 At any time that the Contract Capacity is available, Buyer may elect to Schedule any of the quantities of Net Energy, and equivalent quantities of Ancillary Services, specified in the range of dispatchable quantities of Net Energy on **Exhibit Q** and the quantity of Fuel required to be provided by Buyer with respect to each such Scheduled quantity of Net Energy, or equivalent quantity of Ancillary Services, shall be determined by the Baseload Heat Rates, Peakload Heat Rates, and Simple Cycle Heat Rates, corresponding to such Scheduled quantity of Net Energy, or equivalent quantity of Ancillary Services, as set forth on such **Exhibit Q**.

4.4 Curtailed Due to Failure to Comply with Interconnection Agreement. Buyer shall not be obligated to purchase Contract Capacity or receive or pay for Net Energy to the extent generation or transmission curtailment is required as a result of Seller's non-compliance with the Interconnection Agreement. Nothing in this Section 4.4 shall relieve Seller of its duty to comply with the Interconnection Agreement and Net Energy curtailed as provided under this Section 4.4 shall not be deemed to be an Excused Outage, or credited toward the achievement of Net Energy, as the case may be.

4.5 Sale of Test Energy. During the period between the Effective Date and the Commercial Operation Date, Seller shall sell and make available to Buyer, and Buyer shall purchase and accept, all energy produced by the Facility during such period (the "**Test Energy**")

as if it were Net Energy. Seller shall provide the necessary Fuel, and Buyer shall pay Seller the price specified in Section 5.3, for such Test Energy.

SECTION 5

PAYMENTS; COSTS

5.1 Capacity Payments. Commencing on the last day of the month in which the Commercial Operation Date occurs, Buyer shall, subject to Section 5.1.4, pay to Seller in arrears a Capacity Payment equal to the greater of (i) the Monthly Capacity Payment as determined in Section 5.1.2, or (ii) the Minimum Monthly Capacity Payment as determined in Section 5.1.3.

5.1.1 All Capacity Payments shall be billed on a calendar month basis. In the event that Commercial Operation Date does not occur at the start of a calendar month, the first month's Capacity Payment shall be prorated to reflect the actual number of days of Commercial Operation in such month.

5.1.2 Monthly Capacity Payment. The “**Monthly Capacity Payment**” shall be computed based upon the following formula:

Monthly Capacity Payment = $(CC \times 1000 \times CPR \times MAAF) - CPS$, where:

CC = the Contract Capacity;

CPR = Capacity Payment Rate;

CPS = Capacity Payment Shortfall, if any, from any prior month; and

MAAF = Availability Adjustment Factor for that month, computed as follows:

a. If $CAF_m = [\text{Bidder to insert } 96\%]$, $MAAF = 1$

b. If $CAF_m < [\text{Bidder to insert } 96\%]$, $MAAF = 1 - 2 \times (-[\text{Bidder to insert } 96\% - CAF_m])$

Provided, however, MAAF cannot be less than zero (0).

CAF_m = Average Capacity Availability Factor for a month shall equal the sum of the hourly Capacity Availability Factors (“ CAF_h ”) determined for each hour of such month, divided by the total number of hours in such month; and

CAF_h = $(AD + DD) / AFCE$

Provided, however, CAF_h cannot be more than one (1).

where:

“AD” (Actual Deliveries) means, for any hour, the actual quantity of energy generated by the Facility and delivered by Seller to Buyer at the Electricity Delivery Point;

“DD” (Deemed Deliveries) means, for any hour, (i) a quantity of energy equal to the amount of energy that could have been generated by that portion of the Ambient Facility Capacity that was set forth in the Availability Notice (a) that was not dispatched by Buyer in such hour, ~~unless such failure to dispatch was caused during times and to the extent that Transmission Provider curtails Network Integration Transmission Service (as defined in the Tariff) to Buyer pursuant to the terms of the Tariff,~~ (b) that was not generated and delivered due to a Potential Event of Default or an Event of Default by Buyer, or (c) that was not operated to generate and deliver Net Energy or Ancillary Services to Buyer due to any failure by Buyer, including any failure of Buyer to deliver Fuel to the Facility to the extent Seller’s operations are affected by such complete and/or partial failure to deliver Fuel; (ii) any amount of energy that was not available from the Facility for dispatch and receipt by Buyer, during the relevant hour, due to any outage or derating that meets the requirements for Scheduled Maintenance established in **Exhibit I**; and (iii) any amount of energy that was not available from the Facility for Dispatch and receipt by Buyer, during the relevant hour, due to any Force Majeure event. The unavailability of Capacity for any of the reasons set forth in clauses (i)(c), (ii) or (iii) shall be considered an “**Excused Outage**.” To the extent that the Capacity of the Facility, up to the Contract Capacity, is unavailable to Buyer for any reason other than an Excused Outage shall be considered an “**Unexcused Outage**.”

“AFCE” (Ambient Facility Capacity Energy) means the quantity of energy that could be produced from the Ambient Facility Capacity during such hour.

5.1.3 Minimum Monthly Capacity Payment. During any month, the “**Minimum Monthly Capacity Payment**” shall equal the amount determined by the following formula:

Minimum Monthly Capacity Payment = $CC \times 1000 \times CPR \times [?]\%$, where:

CC = the Contract Capacity;

CPR = Capacity Payment Rate; and

% = [?].

5.1.4 Carry-Over Provisions. With respect to any month in which the calculated Monthly Capacity Payment is less than the Minimum Monthly Capacity Payment, the difference between the two payment amounts shall be set forth in a separate account (the amount in such account is referred to herein as the “**Capacity Payment Shortfall**”). The Capacity Payment Shortfall shall be increased by interest at the Prime Rate divided by 365 on the maximum amount of the Capacity Payment Shortfall on that day and shall be recovered by Buyer as a credit against the

otherwise applicable Monthly Capacity Payment owed to Seller in any following month and by drawing on the Carry-Over-Letter of Credit as provided below. That portion of any Capacity Payment Shortfall which is not recovered in any month shall be carried over to each subsequent month thereafter until recovered by Buyer in full from Seller. If the Capacity Payment Shortfall exceeds \$[?], then Seller shall provide a Letter of Credit for the benefit of Buyer, in form reasonably acceptable to Buyer, with a face amount equal to the full amount of the Capacity Payment Shortfall amounts (“**Carry-Over Letter of Credit**”). The amount of such Carry-Over Letter of Credit shall be adjusted thereafter, at the end of each month, to equal the then-outstanding Capacity Payment Shortfall. At the end of each Contract Year, Buyer shall be entitled to draw down against the Carry-Over Letter of Credit for the amount the Capacity Payment Shortfall that has not been recovered as of that date.

5.2 Energy Payment. Commencing on the last day of the month in which the Commercial Operation Date occurs, Buyer shall pay to Seller in arrears a Variable Energy Payment as set forth in **Exhibit F** for Net Energy.

5.3 Test Energy. For the period between the Effective Date and the Commercial Operation Date, Seller shall sell and deliver Net Energy to Buyer at the Electricity Delivery Point as Test Energy. Buyer shall pay Seller for Test Energy delivered at the Electricity Delivery Point, an amount per MWh equal to eighty-five percent (85%) of the settled price for the applicable hour in the daily (i) firm on-peak, (ii) firm-off peak or (iii) 24-hour firm (on Sundays and NERC holidays) Dow JonesTM SP15 Electricity Price Index; *provided, however*, that the amount to be paid by Buyer for such Test Energy shall in no event exceed seventy-five percent (75%) of the price per MWh specified on **Exhibit M** for the first Contract Year. If the Dow JonesTM SP15 Electricity Price Index ceases to be published during the Term, Buyer shall select as a replacement electricity price index or component, an index acceptable to Buyer in its discretion that, after any necessary adjustments, provides the most reasonable substitute quotation of the daily price of firm on-peak, firm off-peak or 24-hour firm energy at South of Path 15 for the applicable periods.

5.4 Costs and Charges. Seller shall be responsible for all costs or charges imposed in connection with the delivery of Net Energy at the Electricity Delivery Point, including transmission costs and charges. Without limiting the generality of the foregoing, except to the extent otherwise provided in the Interconnection Agreement, Seller shall bear all costs associated with the modifications to Transmission Provider’s interconnection facilities or electric system (including system upgrades) caused by or related to (a) the interconnection of the Facility with Transmission Provider’s system, (b) any increase in Capacity of the Facility, and (c) any increase of delivery of energy from the Facility.

5.5 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.

SECTION 6

OPERATION AND CONTROL

6.1 As-Built Supplement. Upon completion of construction of the Facility, Seller shall provide Buyer the As-built Supplement. The As-built Supplement shall be deemed effective and shall be added to **Exhibit A** of this Agreement when it has been reviewed and approved by Buyer. Buyer shall not unreasonably withhold, condition or delay its approval of the As-built Supplement.

6.2 Measurement and Quality of Net Energy. All Net Energy shall be measured at the Electricity Delivery Point and shall meet all requirements in the Interconnection Agreement and the specifications set forth in **Exhibit Q**. Seller shall instruct the Transmission Provider in writing that Buyer is entitled to receive, directly from Transmission Provider, any and all data associated with the Facility and/or the production of Net Energy that the Transmission Provider has in its possession.

6.3 Standard of Facility Operation-

6.3.1 General.

6.3.1.1 At Seller's sole cost and expense, Seller shall operate, maintain and repair the Facility and the Electrical Interconnection Facilities in accordance with (i) the standards, criteria and formal guidelines of FERC, NERC, any RTO, and any successors to the functions thereof; (ii) the Required Facility Documents; (iii) the Interconnection Agreement; (iv) all Requirements of Law; (v) the requirements of this Agreement; and (vi) Prudent Electrical Practice. During the Term, Seller shall be the sole owner of the Electrical Interconnection Facilities. Seller shall defend, indemnify and hold Buyer harmless from and against any requirements to comply with FERC Open Access requirements respecting the Electrical Interconnection Facilities caused by Seller's act or omission. Seller acknowledges that it shall have no claims under this Agreement against Buyer, acting in its merchant function capacity, with respect to any requirements imposed by or damages caused by Buyer, acting in its transmission function capacity, in connection with the Interconnection Agreement or otherwise.

6.3.1.2 Without limiting the generality of Section 6.3.1.1, Seller shall:

6.3.1.2.1 At all times, employ qualified and trained personnel for managing, operating and maintaining the Facility and for coordinating such managing, operating and maintenance with Buyer. Seller shall ensure that prior to or on the first Day Seller delivers energy to the Electricity Delivery Point such qualified and trained personnel are available to Buyer at all times, twenty-four (24) hours per Day during the Term.

6.3.1.2.2 Operate and maintain the Facility with due regard for the safety, security and reliability of the System and Buyer's customers and in compliance with the general specifications contained in **Exhibit I**.

6.3.1.2.3 Comply with operating and maintenance standards recommended by the Facility's equipment suppliers.

6.3.1.2.4 Coordinate the Facility's relaying and protection to conform with Prudent Electrical Practice.

6.3.1.2.5 Furnish and install, at Seller's sole expense, a manually operable disconnecting device that can be locked by Buyer in the open position and visually checked to be in the open position, so as to be able to electrically isolate the Facility from the System. This device(s) shall be installed at a location at or near the Electricity Delivery Point.

6.3.1.2.6 Have the Facility's protective relays calibrated and operationally checked, at least annually by a person qualified to perform such service and provide Buyer with a written confirmation of the calibration.

6.3.1.2.7 Operate the Facility in such a manner so as not to have an adverse effect on Buyer's voltage level or voltage waveform.

6.3.1.2.8 Operate the Facility in a manner and consistent with the Operating Procedures so as to permit Buyer to dispatch individuals items of Major Equipment required to generate energy Scheduled by Buyer.

6.3.2 Interconnection. Pursuant to the Interconnection Agreement, Seller shall be responsible for the costs and expenses associated with interconnection of the Facility at its Facility Capacity at the Electricity Delivery Point, including the costs of any System upgrades beyond the Electricity Delivery Point necessary to interconnect the Facility with System and to allow the delivery of energy to the Electricity Delivery Point.

6.3.3 Coordination with System. Pursuant to the Interconnection Agreement, Seller shall be responsible for the coordination and synchronization of the Facility's equipment with the System, and shall be solely responsible for (and shall defend and hold Buyer harmless against) any damage that may occur as a direct result of Seller's improper coordination or synchronization of such equipment with the System.

6.4 Operating Procedures and Compliance.

6.4.1 Without limiting the generality of Section 6.2, during the Term, the Parties shall observe the Operating Procedures.

6.4.2 In the Operating Procedures, each Party has designated an authorized representative (an "**Authorized Representative**") and an alternate representative (an "**Alternate Representative**") to act in the Authorized Representative's absence. A Party's appointment of an Authorized Representative and Alternate Representative shall remain in full force and effect until the Party

delivers written notice of substitution to the other Party. The Authorized Representatives and Alternate Representatives shall be managers well-experienced with regard to matters relating to the implementation of the Parties' rights and obligations under this Agreement.

6.4.3 Operational Compliance.

6.4.3.1 Required Facility Documents. Seller shall maintain in full force and effect and available for inspection by Buyer during the Term all Required Facility Documents now or hereafter required.

6.34.3.12 Hazardous Substances. Seller shall operate the Facility in compliance with all Environmental Laws and permits, licenses, rules or orders promulgated, issued or otherwise required by a Governmental Authority having jurisdiction or enforcement power over any Environmental Law and Seller. Seller shall immediately notify Buyer if Seller or any Affiliate of Seller receives or obtains any actual knowledge of or actual notice of any past, present or future actions or plans which may interfere with or prevent compliance or continued compliance with Environmental Laws, affect the construction or operation of the Facility, or may give rise to any material liability under any Environmental Laws or to any common law or legal liability or otherwise form the basis of any claim, action, demand, suit, proceeding, hearing, study or investigation under Environmental Laws.

6.34.4 Taxes. Seller shall pay when due or reimburse Buyer for all existing and any new sales, use, excise, ad valorem, and any other similar taxes, imposed or levied by any Governmental Authority on the sale of Net Energy to Buyer under this Agreement regardless of whether such taxes are payable by Buyer or Seller under Requirements of Law.

6.34.5 Fines and Penalties.

6.34.5.1 Seller shall pay when due, and in no event later than thirty (30) days of assessment, all fines, penalties, or legal costs incurred by Seller or for which Seller is legally responsible for noncompliance by Seller, its agents, employees, contractors or subcontractors, with any provision of this Agreement, any agreement, commitment, obligation or liability incurred in connection with this Agreement or the Facility or any Requirements of Law, except where such fines, penalties or legal costs are being contested in good faith by Seller, its agents or contractors through appropriate proceedings with (i) adequate reserves set aside, or (ii) if requested by Buyer, the posting of adequate security, in the event of an adverse determination.

6.34.5.2 Subject to Section 6.4.4, if fines, penalties, or legal costs are assessed against Buyer by any Governmental Authority due to noncompliance by Seller with any Requirements of Law, or if the performance of Seller is delayed or stopped by order of any Governmental Authority due to Seller's noncompliance with any Requirements of Law, Seller shall indemnify and hold harmless Buyer against any and all losses, liabilities, damages, and claims suffered or incurred by Buyer.

6.34.5.3 Seller shall reimburse Buyer for all fees, damages, or penalties imposed by any Governmental Authority, other person or to other utilities for violations to the extent caused by a Potential Event of Default or an Event of Default by Seller or a failure of performance by Seller under this Agreement.

6.45 Scheduling Procedures.

6.45.1 Availability Notices and Updates.

6.45.1.1 By 5:00 A.M. Pacific Prevailing Time on the Business Day immediately preceding the next three (3) Days on which energy is to be delivered by Seller to Buyer, Seller shall provide Buyer with an hourly forecast of the Capacity of the Facility expected to be available to Buyer, up to the Contract Capacity, and for each hour of the next three (3) Days (as set forth in the form of **Exhibit L**, an “**Availability Notice**”); *provided, however*, that an Availability Notice provided on a Day before any non-Business Day shall include forecasts for each Day to and including the next Business Day. Delivery of an Availability Notice by Seller to Buyer with respect to any item of Major Equipment declared Available shall be deemed a declaration that all Ancillary Services capable of being provided from such Major Equipment are available for the Days for which such Availability Notice shall be effective. Seller shall promptly update Availability Notices any time information becomes available indicating a change in the forecast of generation of energy from the then current forecast; and in any event within 15 minutes of each time it becomes aware of a change (favorable or unfavorable) in the availability, or projected availability, of the Facility or electric transmission capacity, *provided* that such changes to the daily Availability Notices may be delivered by telephone within the fifteen (15) minute initial period and then later confirmed in writing within the hour. To the extent commercially reasonable, the parties shall cooperate to implement and use automatic forecast updates.

6.45.1.2 Availability Notices shall specify any known limitations on the availability of electric transmission capacity made known to Seller that may affect the ability of the Facility to generate and deliver Scheduled Energy to the Electricity Delivery Point. Seller will also provide Buyer with a monthly Availability Notice six Business Days before the commencement of each such month, and a weekly Availability Notice on each Friday for the next week. Availability Notices identifying reductions in availability will include a short description of the nature of the problem, steps taken or being taken to resolve it and Seller’s estimate of the time by which a reduction in availability will be resolved. Availability Notices identifying projected restorations of Capacity availability will specify the time and extent that such restoration is projected to occur, and Seller will issue a further notice after restoration of availability is complete. Without limiting the foregoing, Seller will inform Buyer of any major limitations, restrictions, deratings or outages known to Seller affecting the ability to generate Facility Capacity for the following Day and will promptly update Seller’s notice to the extent of any material changes in this information.

6.45.1.3 Availability Notices will be used by and relied upon by Buyer to establish and adjust electric transmission schedules. If Seller has provided notice to Buyer of a reduction in availability affecting transmission schedules, then prior to increasing Facility generation for delivery to Buyer as a result of restored availability, Seller will

provide Buyer timely notice so as to enable Buyer sufficient time to reestablish its transmission schedules. The failure by Seller to provide revised Availability Notices is not a breach of this Agreement, but rather places Seller at risk for electric imbalance penalties or charges incurred by Buyer due to its lack of notice; *provided, however*, the failure to provide such notices more than [?] times a Contract Year shall constitute the failure to perform a material obligation hereunder that is not capable of being cured.

6.45.2 Dispatch Notice.

6.45.2.1 No later than 5:00 P.M. Pacific Prevailing Time on each Business Day, Buyer shall deliver to Seller a statement (which may be communicated by fax, e-mail or other electronic medium or a recorded telephone line) setting forth the estimated quantity of Net Energy to be Scheduled during each hour of the immediately following Day(s) at the Electricity Delivery Point. These estimates shall not be binding upon Buyer and Buyer may subsequently revise its estimates. The foregoing estimates by Buyer shall not be construed to permit Seller to limit the availability of the Facility such that Buyer is restricted from Dispatching Contract Capacity unless the Facility Capacity is physically unavailable due to Force Majeure, Planned Outage or Unplanned Outage, as the case may be. Buyer's written statement may request the delivery of energy to be Scheduled during any or all hours of any Day.

6.45.2.2 Each Dispatch Notice submitted by Buyer shall specify (i) the quantities of Net Energy or Ancillary Services being Scheduled from the Baseload Capacity component of the Contract Capacity, (ii) the quantities, if any, of Net Energy or Ancillary Services being Scheduled from the Peakload Capacity component of the Contract Capacity, and (iii) the quantities, if any, of Net Energy or Ancillary Services being Scheduled from the Facility in Simple Cycle mode. In order to be included on any Dispatch Notice, each quantity of Net Energy, and each equivalent quantity of Ancillary Services, being Scheduled by Buyer from the Baseload Capacity component of the Contract Capacity, or from the Peakload Capacity component of the Contract Capacity, or in Simple Cycle mode, must be shown as a dispatchable quantity on **Exhibit P**. Any amount not shown on **Exhibit P**, but which falls between listed numbers on **Exhibit P** and is explicitly within the range of allowed dispatch, shall be interpolated from the numbers immediately above and below that amount which are listed on **Exhibit P**, including applicable heat rates. An example of a hypothetical Dispatch Notice is attached hereto as **Exhibit S**.

6.45.2.23 Seller shall be obligated to accept a request for Net Energy that has been provided to Seller in accordance with the requirements of Sections 6.5.2.1 and 6.5.2.2 except to the extent (i) such request exceeds the Contract Capacity or the Scheduling Constraints or (ii) Seller declares that the Facility is not available as a result of a previously declared Planned Outage, a Forced Outage, or an event of Force Majeure. Seller shall promptly notify Buyer if Seller determines that it will not accept a Schedule submitted by Buyer for any of the foregoing reasons.

6.45.2.34 Buyer shall pay or reimburse Seller for all Scheduling Fees charged by any third parties, if any, associated with the Scheduling of Net Energy or Ancillary Services generated by the Facility for delivery to Buyer hereunder or, if applicable, any fees

charged by an independent third party for providing Ancillary Services required to deliver Net Energy or Ancillary Services generated by the Facility to Buyer.

6.45.2.4-5 From time to time during the Term, Buyer may designate a third party to Schedule quantities of Net Energy on behalf of Buyer in accordance with any Requirements of Law. Buyer may also wish to change the designated entity acting in such capacity from time to time. Accordingly, upon request of Buyer, Seller shall make such arrangements in accordance with the Requirements of Law at Buyer's cost as may be reasonably necessary to facilitate the re-designation of the Person who may Schedule quantities of Net Energy on Buyer's behalf.

6.45.2.5-6 As shown in the Scheduling Constraints set forth for the Facility in **Exhibit Q**, the ramp rates applicable to the various items of Major Equipment comprising the Facility are faster for the Facility operating in Simple Cycle mode than in combined cycle mode. To the extent that Buyer elects to Schedule the delivery of Net Energy, and any equivalent quantity of Ancillary Services, from the Facility in Simple Cycle mode the Scheduling Constraints applicable to Simple Cycle mode shall be applicable to such Scheduling by Buyer. For any Scheduling by Buyer of Net Energy or Ancillary Services from the Baseload Capacity component or the Peakload Capacity component of the Contract Capacity, the Scheduling Constraints applicable to combined cycle mode shall be applicable to such Scheduling by Buyer.

6.45.2.6-7 Buyer may Dispatch energy and Ancillary Services on a real time basis, subject to the Operating Procedures. Seller shall be obligated to accept a request for a change to the applicable schedule for energy and Ancillary Services.

6.45.3 Fuel Arrangements.

6.45.3.1 Seller shall be responsible for providing for the construction, operation and maintenance of, at its sole cost and expense, all Fuel delivery, [long term coal contracts] and interconnection facilities, transport or rail-specified in **Exhibit N**.

6.45.3.2 Commencing as of the Commercial Operation Date, Buyer shall at all times arrange, procure, supply, nominate, balance and deliver to Seller at the Fuel Delivery, and Seller will accept from Buyer (except as otherwise excused herein) at the Fuel Delivery Point, all of the Fuel Supply Requirement described herein for the quantity of Net Energy and Ancillary Services that Buyer has Scheduled in accordance with the amounts specified in this Section 6.5.3, less the amounts of such Scheduled Net Energy and Ancillary Services which Seller is not obligated to deliver to Buyer, e.g., due to the unavailability of Capacity. Seller shall notify Buyer from time to time of any expected material deviation of the Standard Heat Rate of the Facility from the Guaranteed Heat Rate so that Buyer is able to nominate its Fuel to match the requirements of the Facility.

6.45.3.3 All Fuel required to be delivered under this Agreement shall be delivered by Buyer to the Fuel Delivery Point at no cost to Seller. Subject to Section 6.5.3.1, Buyer shall have the right to supply Fuel utilizing any or all of the Fuel Delivery Points as specified in **Exhibit N**, and shall have the right to change the quantities nominated and

received from each pipeline on a daily basis, or more frequently, to the extent permitted by the Fuel Transporter, railroad etc so long as such changes do not disrupt Seller's operations.

6.45.3.4 On and after the Commercial Operation Date, and subject to Section 6.5.3.6, Buyer shall be responsible for the cost of Fuel and all other costs associated with the supply and transportation of all Fuel necessary to generate the Requested Net Energy as Dispatched pursuant to Section 6.5.2.

6.45.3.5 Seller shall pay for and deliver the Fuel required during Start-Up Testing to reach the minimum load of the Facility.

6.45.3.6 Imbalances associated with Fuel transportation and any balancing penalties or costs resulting from failure to accept delivery of the confirmed quantity of Fuel shall be the responsibility of Buyer. Payment for any balancing penalties or costs shall be in accordance with the procedures of Section 9. [This may be different depending on fuel source]

6.45.3.7 All Fuel to be supplied by Buyer shall be measured at the Fuel Metering Point set forth in **Exhibit N**, and shall meet the specifications set forth in **Exhibit N**.

6.45.3.8 The Fuel Supply Requirement applicable to any hour, which Buyer shall be obligated to deliver to Seller at the Fuel Delivery Points, shall consist of the Operating Fuel Quantity and any applicable Start-Up Fuel Quantity for such hour, which shall be determined as follows:

(i) The Operating Fuel Quantity for any hour may include Baseload Fuel Supply Requirement, Peakload Fuel Supply Requirement, and Simple Cycle Fuel Supply Requirement.

(ii) For each quantity of Net Energy, or equivalent quantity of Ancillary Services, that may be Scheduled by Buyer in such hour from the Baseload Capacity component of the Contract Capacity, Buyer shall deliver a quantity of Fuel equal to the Baseload Fuel Supply Requirement, which shall be equal to such quantity of Net Energy, or equivalent quantity of Ancillary Services, multiplied by the applicable Baseload Heat Rate. The "**Baseload Heat Rate**" applicable to different quantities of Net Energy, or equivalent quantities of Ancillary Services, that may be Scheduled by Buyer from time to time from the Baseload Capacity component of the Contract Capacity are set forth in **Exhibit R**. Any amount not shown on **Exhibit R**, but which falls between listed numbers on **Exhibit R** and is explicitly within the range of allowed dispatch, shall be interpolated from the numbers immediately above and below that amount which are listed on **Exhibit R**, including applicable heat rates.

(iii) For each quantity of Net Energy, or equivalent quantity of Ancillary Services, that may be Scheduled by Buyer in such hour from the Peakload Capacity component of the Contract Capacity, Buyer shall deliver a quantity of Fuel equal to the Peakload Fuel Supply Requirement, which shall equal such quantity of Net Energy, or equivalent quantity of Ancillary Services, multiplied by the applicable Peakload Heat Rate. The "**Peakload Heat Rate**" applicable to different quantities of Net Energy, or equivalent quantities of Ancillary

Services, that may be Scheduled by Buyer from time to time from the Peakload Capacity component of the Contract Capacity are set forth in **Exhibit R**. Any amount not shown on **Exhibit R**, but which falls between listed numbers on **Exhibit R** and is explicitly within the range of allowed dispatch, shall be interpolated from the numbers immediately above and below that amount which are listed on **Exhibit R**, including applicable heat rates.

(iv) For each quantity of Net Energy, or equivalent quantity of Ancillary Services, that may be Scheduled by Buyer in such hour from the Facility in Simple Cycle mode, Buyer shall deliver a quantity of Fuel equal to the Simple Cycle Fuel Supply Requirement, which shall be equal to such quantity of Net Energy, or equivalent quantity of Ancillary Services, multiplied by the applicable Simple Cycle Heat Rate. The “**Simple Cycle Heat Rate**” applicable to different quantities of Net Energy, or equivalent quantities of Ancillary Services, that may be Scheduled by Buyer from time to time from the Facility in the Simple Cycle mode are set forth in **Exhibit R**. Any amount not shown on **Exhibit R**, but which falls between listed numbers on **Exhibit R** and is explicitly within the range of allowed dispatch, shall be interpolated from the numbers immediately above and below that amount which are listed on **Exhibit R**, including applicable heat rates.

6.45.3.9 Each Party shall cooperate reasonably with the other Party to coordinate the supply and transportation of Fuel for the Facility with the operation of the Facility (x) by providing the other Party such information as the first Party shall reasonably request relating to the supply and transportation of the Fuel to the Facility (on both an historical and estimated future basis) and (y) by maintaining personnel available at all times to address scheduling of Fuel supply and transportation.

6.56 Outages.

6.56.1 Planned Outages. No Planned Outage may be scheduled to occur during any portion of the time period commencing on May 15 and concluding on September 15.

6.56.2 Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall notify Buyer of the proposed Maintenance Outage at least five (5) days before the outage begins (or such shorter period to which Buyer may reasonably consent in light of then existing conditions). Upon such notice, the Parties shall plan the Maintenance Outage to mutually accommodate the reasonable requirements of Seller and the service obligations of Buyer; *provided, however*, that, unless Buyer otherwise consents, such consent not to be unreasonably withheld, no Maintenance Outage may be scheduled between the hour ending 0700 through the hour ending 2200, Monday through Saturday, during the time period commencing on May 15 and concluding on September 15. Notice of a proposed Maintenance Outage shall include the expected start date and time of the outage, the amount of Capacity of the Facility that will not be available, and the expected completion date and time of the outage. Seller shall give Buyer notice of the Maintenance Outage as soon as Seller determines that the Maintenance Outage is necessary. Buyer 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. Seller shall notify Buyer of any subsequent changes in Capacity available to Buyer 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 and exercise its best efforts in accordance with Prudent Electrical Practices to minimize the frequency and duration of Maintenance Outages.

6.56.3 Forced Outages. Seller shall promptly provide to Buyer an oral report of any Forced Outage of the Facility. This report shall include the amount of the Capacity of the Facility that will not be available because of the Forced Outage and the expected return date of such Capacity. Seller shall promptly update the report as necessary to advise Buyer of changed circumstances. As soon as practicable, if the Forced Outage resulted in more than five percent (5%) of the Facility Capacity being unavailable, the oral report shall be confirmed in writing. Seller shall take all reasonable measures and exercise its best efforts in accordance with Prudent Electrical Practices to avoid Forced Outages and to minimize their duration.

6.56.4 Notice of Deratings and Outages. Without limiting the foregoing, Seller will inform Buyer of any major limitations, restrictions, deratings or outages known to Seller affecting the Facility for the following day 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 Facility Capacity.

6.67 Schedule Coordination. If, as a result of this Agreement, Buyer is deemed by an RTO to be financially responsible for Seller's performance under the Interconnection Agreement, due to Seller's lack of a "scheduling coordinator" or other RTO recognized standing or otherwise, then (a) Seller shall use commercially reasonable and diligent efforts to acquire such RTO recognized standing such that Buyer is no longer responsible for Seller's performance under the Interconnection Agreement, and (b) Seller shall defend, indemnify and hold Buyer harmless against any liability arising due to Seller's performance or failure to perform under the Interconnection Agreement.

6.78 Electronic Communications.

6.78.1 Telemetry. Seller shall provide telemetry equipment and facilities capable of transmitting the following information concerning the Facility pursuant to the Interconnection Agreement and to Buyer on a real-time basis and will operate such equipment when requested by Buyer to indicate:

- 6.78.1.1 instantaneous MW output at the Electricity Delivery Point;
- 6.78.1.2 Net Energy; and
- 6.78.1.3 Facility Capacity.

Seller shall also transmit to Buyer any other data from the Facility that Seller receives on a real time basis. Seller shall provide such real time data to Buyer on the same basis as the basis on which Seller receives the data (e.g., if Seller receives the data in four second intervals, Buyer shall also receive the data in four second intervals).

6.78.2 Dedicated Communication Circuit. Seller shall install a dedicated direct communication circuit (which may be by common carrier telephone) between Buyer and the control center in the Facility's control room or such other communication equipment as the Parties may agree.

6.89 Reports and Records.

6.89.1 Monthly Reports. Within thirty (30) days after the end of each calendar month during the Term (each, a "**Reporting Month**"), Seller shall provide to Buyer a report in electronic format, which report shall include (a) summaries of the Facility's output data for the Reporting Month in intervals not to exceed one hour (or such shorter period as is reasonably possible with commercially available technology), including information from the Facility's Computer Monitoring System; (b) summaries of any other significant events related to the construction or operation of the Facility for the Reporting Month; and (c) any supporting information that Buyer may from time to time reasonably request (including historical data for the Facility).

6.89.2 Electronic Fault Log. Seller shall maintain an electronic fault log of operations of the Facility during each hour of the Term beginning as of the Commercial Operation Date. Seller shall provide Buyer 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.

6.8-93 Other Information to Be Provided to Buyer. Seller shall provide to Buyer the following information concerning the Facility:

6.89.3.1 Upon the request of Buyer, the manufacturers' guidelines and recommendations for maintenance of the Facility equipment;

6.89.3.2 A detailed report summarizing the results of maintenance performed during each Planned Outage and any Forced Outage, and upon request of Buyer any of the technical data obtained in connection with such maintenance; and

6.89.3.3 A detailed report describing the facts, circumstances and events that caused and arose out of, or related to, any Forced Outage, failed Start-Up or other item of Major Equipment being taken off-line or tripping for any reason other than in connection with a Planned Outage.

6.8-9.4 Information to Any Governmental Authority. Seller shall, promptly upon written request from Buyer, provide Buyer with all data which is collected by Seller related to the Facility reasonably required for reports to and

information requests from any Governmental Authority. Along with said information, Seller shall provide to Buyer copies of all submittals to any Governmental Authority directed by Buyer 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 Buyer soon enough so that Buyer has time to review such information and meet any submission deadlines imposed by the requesting organization or entity. After the sending or filing any statement, application, and report or any document with any Governmental Authority relating to operation and maintenance of the Facility, Seller shall promptly provide to Buyer with a copy of the same.

6.89.5 Information to Any Intervenor. Seller shall, promptly upon written request from Buyer, provide Buyer with data reasonably required for information requests from any state or federal agency intervenor or any other party achieving intervenor status in any Buyer rate proceeding or other proceeding before any Governmental Authority. Seller shall use best efforts to provide this information to Buyer soon enough so that Buyer has time to review such information and meet any submission deadlines imposed by the requesting organization or entity.

6.89.6 Environmental Information. Seller shall, promptly upon written request from Buyer, provide Buyer with all data reasonably requested by Buyer relating to environmental information under the Required Facility Documents.

6.89.7 Information Relating to Facility Performance. Seller shall provide Buyer monthly operational reports in a form and substance acceptable to Buyer and Seller shall, promptly upon written request from Buyer, provide Buyer with all operational data requested by Buyer with respect to the performance of the Facility and delivery of energy therefrom.

6.89.8 Audited Financial Statements. Seller shall provide Buyer within ninety (90) days after the end of each calendar year, its audited financial statements together with the audited financial statements of any guarantor providing Credit Support, in each case prepared in accordance with generally accepted accounting principles by an accounting firm of nationally recognized standing in the electric power industry reasonably acceptable to Buyer.

6.89.9 Notice of Default. Seller shall promptly notify Buyer of receipt of written notice or actual knowledge 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 in this Agreement.

6.89.10 Notice of Litigation. Following its receipt of written notice or actual knowledge of the commencement of any action, suit, and proceeding before any court or Governmental Authority which would, if adversely determined,

adversely affect Seller, the Premises or the Facility, Seller shall promptly give notice to Buyer of the same.

~~6.89~~.11 Additional Information. Seller shall provide to Buyer such other information respecting the condition or operations of Seller and the Facility as Buyer may, from time to time, reasonably request.

~~6.9—10~~ Access Rights. Upon reasonable prior notice and subject to the safety rules and regulations of Seller, Seller shall provide Buyer and its authorized agents, employees and inspectors with reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment, (b) as necessary to witness any required Capacity tests necessary to determine the amount of Capacity associated with the Facility, (c) in connection with the operation and maintenance of the Electrical Interconnection Facilities for the Facility, (d) to provide tours of the Facility to customers and other guests of Buyer (not more than twelve (12) times per year), (e) for purposes of implementing Section 9.5, and (f) for other reasonable purposes at the reasonable request of Buyer.

~~6.1011~~ EWG. Seller shall provide Buyer with copies of Seller's applications to FERC for EWG status and for authority to sell energy under this Agreement within ten (10) days of filing such application(s). During the Term, Seller shall either (i) maintain its EWG status and its authority to sell power under this Agreement or (ii) otherwise cause Seller to be exempt from federal and state regulations as an electric utility.

~~6.1112~~ Facility Images. Buyer shall be free to use any and all images from or of the Facility for promotional purposes. Upon Buyer's request and at Buyer's expense, Seller shall install equipment as Buyer may request, including without limitation video and or web-based imaging equipment. Buyer shall use its discretion with respect to how images from or of the Facility are presented by Buyer, including without limitation associating images of the Facility with Buyer's corporate logo but not the corporate logo of Seller.

~~6.1213~~ Financial and Accounting Information. If Buyer or one of its Affiliates determines that, under the Financial Accounting Standards Board's revised Interpretation No. 46, Consolidation of Variable Interest Entities ("**FIN 46**"), it may hold a variable interest in Seller, but it lacks the information necessary to make a definitive conclusion, Seller hereby agrees to provide sufficient financial and ownership information so that Buyer or its Affiliate may confirm whether a variable interest does exist under FIN 46. If Buyer or one of its affiliates determines that, under FIN 46, it holds a variable interest in Seller, Seller hereby agrees to provide sufficient financial and other information to Buyer or its Affiliate so that Buyer may properly consolidate the entity in which it holds the variable interest and/or present the disclosures required by FIN 46.

SECTION 7

SECURITY AND CREDIT SUPPORT

7.1 Credit Support. If at any time during the Term, Seller maintains a Credit Rating of (1) "Aa2" or higher by Moody's and (2) "AA" or higher by S&P, then Seller will not be

required to post any Credit Support Security. If Seller does not meet the Credit Rating requirements of (1) and (2) in the preceding sentence, it may have to post Credit Support Security in the amounts outlined on the Credit Matrix based upon its' Credit Rating or that of the entity providing a guaranty as Credit Support Security on behalf of the Seller, and the size of the project. If Seller has a published Credit Rating from each of S&P and Moody's, the lower rating will be used to determine the level of Credit Support in the Credit Matrix. If Seller, or the entity providing a guaranty as Credit Support Security on behalf of the Seller, has no published Credit Rating, an equivalent Credit Rating will be determined by Buyer through the application of Buyer's proprietary credit scoring model developed in conjunction with S&P, and the amount of Credit Support for Seller (as shown on the Credit Matrix) will be based upon this equivalent Credit Rating. If the required Credit Support is greater than zero dollars (\$0.00), upon the request of Buyer, Seller shall within five (5) Business Days provide one of the following in the amount of the Credit Support: (x) a guaranty, in form and substance acceptable to Buyer in its sole discretion from a Person acceptable to Buyer in its sole discretion, (y) a Letter of Credit, or (z) a Cash Escrow. *[IE has requested language to the effect of: Buyer shall be required to post Credit Support Security in the amount of ___ % of the Credit Support if the same is required at any time before the milestone set forth in Section 2.2.3 has been met; and after such milestone has been met, Buyer shall be required to post Credit Support Security in the amount of 100% of the required Credit Support.]*

7.2 Subordinated Security Interests.

7.2.1 Security Interests. Concurrently with the execution of this Agreement and simultaneously with the acquisition by Seller after the Effective Date of any real property in connection with the Facility (including land and water or rights thereto), Seller shall execute, file and record such agreements, documents, instruments, deeds of trust and other writings as Buyer may request, all in form and substance satisfactory to Buyer, to give Buyer a perfected security interest in and lien on the Facility, the Premises and all other assets necessary or in Buyer's opinion desirable for the development, construction, ownership, operation or maintenance of the Facility as security for Seller's performance and any amounts owed by Seller to Buyer pursuant to this Agreement (collectively the "**Security Interests**"). The Security Interests shall be subordinate in right of payment, priority and remedies only to the interests of the financiers for the Facility contemplated by Section 2.2.3 and approved by Buyer.

7.2.2 Pledge of Ownership Interests. [*Note to bidders: This section is applicable only if Seller is a special purpose entity.*] Concurrently with the execution of this Agreement, Seller's equity holders shall execute and file such agreements, documents, instruments, and other writings as Buyer may request, all in form and substance satisfactory to Buyer, to give Buyer a perfected security interest in and lien on all ownership interests in Seller as security for Seller's performance and any amounts owed by Seller to Buyer pursuant to this Agreement (the "**Pledge Interest**"). The Pledge Interest shall be subordinate in right of payment, priority and remedies only to the interests of the financiers for the Facility contemplated by Section 2.2.3 and approved by Buyer.

7.2.3 Maintenance of Security Interests. Seller shall execute and file and record (or cause to be executed and filed and recorded) such Uniform Commercial Code financing statements and deeds of trust and shall take such further action and execute such further instruments and other writings as shall be required by Buyer to confirm and continue the validity, priority, and perfection of the Security Interests [and the Pledge Interest]. The granting of the Security Interests [and the Pledge Interest] shall not be to the exclusion of, nor be construed to limit the amount of any further claims, causes of action or other rights accruing to Buyer by reason of any breach or default by Seller under this Agreement or the termination of this Agreement prior to the expiration of the Term.

7.2.4 Transfer of Required Facility Documents. The Security Interests shall provide that if Buyer acts to obtain title to the Facility pursuant to the interests provided by Seller pursuant to Section 7.2.1, Seller shall take all steps necessary to transfer all Required Facility Documents necessary to operate the Facility to Buyer, and shall diligently prosecute and cooperate in such transfers.

7.3 Quarterly Financial Statements. If requested by Buyer, Seller shall within thirty (30) days provide Buyer with copies of its most recent quarterly financial statements, together with the audited financial statements of any guarantor providing Credit Support, in each case prepared in accordance with generally accepted accounting principles.

7.4 Security is Not a Limit on Seller's Liability. The Credit Support and Security Interests contemplated by this Section 7: (a) constitutes security for, but is not a limitation of, Seller's obligations under this Agreement, and (b) shall not be Buyer's exclusive remedy for Seller's failure to perform in accordance with this Agreement. To the extent that Buyer draws on the Credit Support, Seller shall within five (5) Business Days reinstate the security to the full amount required by this Section 7.

7.5 Escrow Account. With respect to any Cash Escrow established pursuant to this Section 7 as Credit Support, Seller hereby grants Buyer a security interest in the escrow account and all moneys and other amounts in the account to secure payment and performance of Seller's obligations under this Agreement. Buyer shall have, and Seller agrees to take all further action required or reasonably requested by Buyer to ensure that Buyer has, all rights of a secured party under Article 9 of the Uniform Commercial Code and applicable law with respect to the escrow account and all moneys and other amounts in the escrow account. The escrow agreement shall be in form and substance acceptable to Buyer in its discretion and shall contain the following language: "Escrow Agent acknowledges that Seller has granted Buyer a security interest in the amounts held by Escrow Agent in the [*describe escrow accounts and all moneys and other amounts in the account*] (collectively, the "Collateral"). Escrow Agent acknowledges that it (a) has received and holds possession of the Collateral for the benefit of Buyer and not as the agent of or on behalf of Seller and (b) shall continue to hold possession of the Collateral for Buyer's benefit until Escrow Agent receives notice in an authenticated record from Buyer that Buyer's security interest in the Collateral has been terminated. Escrow Agent acknowledges that it has no rights in and to the Collateral other than its right to receive payment of its fees and expenses pursuant to the Escrow Agreement."

7.6 Senior Lender Protective Provisions. PacifiCorp agrees to enter into a consent to collateral assignment in substantially the form of the Lender Consent for the benefit of the Senior Lenders, and to reasonably cooperate with the reasonable requests of such Senior Lenders in conjunction with any financing of the Facility; *provided, however*, that except as provided in the form of the Lender Consent, in no event shall PacifiCorp be required to agree to any modification hereof; and provided further, however, that if and to the extent any Lenders request (a) changes to the form of the Lender Consent (or otherwise attempt to negotiate the form of consent), (b) any additional documents or assurances, or (c) any legal opinion from PacifiCorp with regard hereto, then Seller shall reimburse PacifiCorp for its reasonable out-of-pocket costs in making any such changes or providing any such additional documents or legal opinion, with such costs to be paid to PacifiCorp at the closing of the financing as a condition to the effectiveness of PacifiCorp's consents, documents and opinions.

SECTION 8

METERING

8.1 Net Energy. Meter equipment shall be installed, owned, operated, maintained and tested in accordance with the terms of the Interconnection Agreement and shall automatically account for line losses between such meter equipment and the Electricity Delivery Point (collectively, the "**Electric Metering Equipment**"). The Electric Metering Equipment shall be capable of metering Net Energy delivered at the Electricity Delivery Point on a continuous real time basis.

8.1.1 Seller Electric Metering. Seller shall be responsible for the maintenance, testing and calibration of the Electric Metering Equipment and the maintenance and testing of the electrical facilities and Protective Apparatus, including any transmission equipment and related facilities, necessary to interconnect the Facility at the Electricity Delivery Point. Such installation shall be completed, and the delivery of such data shall be commenced, as promptly as possible but in no event later than one month prior to the commencement of Net Energy deliveries. Seller shall bear all costs and expenses of installing, maintaining and testing all Electric Metering Equipment.

8.1.2 Fuel Meters. Fuel delivered by Buyer to Seller shall be metered at the Fuel Delivery Point by the meters owned by the respective interstate pipelines delivering such Fuel to each of the Fuel delivery points identified in **Exhibit O** (the "**Fuel Metering Point(s)**").

8.1.3 Check Meters. Buyer may at its option and expense install and operate one or more check meters to check Seller's meters. Such check meters shall be for check purposes and shall not be used in the measurement of Net Energy or Ancillary Services for the purposes of this Agreement. The check meters shall be subject at all reasonable times to inspection and examination by the Seller or its designee. The installation and operation thereof shall, however, be done entirely by Buyer at no cost or expense to Seller. The Seller shall grant to Buyer, at no cost or expense, the right to install such check meters at the Electricity Delivery Point and

the right to access such check meters at reasonable times as requested by Buyer if such check meters are located on the Premises.

8.1.4 Change in Measurement Method. If, at any time during the Term a new method or technique is developed with respect to electricity measurement, or the determination of the factors used in electricity measurement, such new method or technique may be substituted for the method set forth in this Section 8.1 when in the opinion of the Parties, employing such new method or technique is advisable, and they so agree in writing.

8.1.5 Industry Standards. All Electric Metering Equipment, whether owned by the Seller or by a third party, shall be operated, maintained and tested by and/or on behalf of the Seller in accordance with Prudent Electrical Practices.

8.1.6 Access. Each Party shall have the right to receive reasonable advance notice with respect to, and to be present at the time of, any installing, cleaning, changing, repairing, inspecting, testing, calibrating or adjusting of Electric Metering Equipment. The records from such Electric Metering Equipment shall be the property of the Seller, but upon reasonable advance notice, the Seller shall make available to Buyer all data, records and charts relating to the Electric Metering Equipment, together with calculations therefrom, for inspection and verification.

8.1.7 Installations. Any installations of Electric Metering Equipment required pursuant to this Agreement shall be scheduled by the Seller; provided, however, that no installation which shall or could affect deliveries of Net Energy shall be made without the prior written consent of Buyer, which shall not be unreasonably withheld. Any installations of check meters by Buyer shall be scheduled by Buyer; provided, however that the installation shall not unreasonably interfere with the operation and maintenance of the Facility by the Seller.

8.1.8 Estimates. During the period after the Effective Date and prior to the installation and commencement of operation of the meters contemplated by this Section 8.1.8, the Net Energy generated and delivered shall be estimated in good faith by the Seller and the Parties shall prepare and submit invoices on the basis of such estimates. Any such invoice shall be adjusted retroactively based on the performance of the Facility during the three month period immediately following the installation of such meters.

8.1.9 Inspection. Seller, at its sole cost and expense, shall inspect and calibrate, or cause to be inspected and calibrated, all Electric Metering Equipment periodically, but not less frequently than annually. When any test, in the case of Electric Metering Equipment, shall show a measurement error of more than one-quarter percent (1/4%), correction shall be made for the period during which the measurement instruments were in error, first, by using the registration of Buyer's check meter, if installed and registering accurately; if no check meter is installed and registering accurately, or if the period cannot be ascertained, correction shall be made

for one-half (1/2) of the period elapsed since the last date of test; and the measuring instrument shall be adjusted immediately to measure accurately.

8.2 Records. The Parties shall, for five (5) years or such longer period as may be required by the applicable Governmental Authority, each keep and maintain accurate and detailed records relating to the Facility's hourly deliveries of Net Energy and Fuel consumption. Such records shall be made available for inspection by either Party or any Governmental Authority having jurisdiction with respect thereto during normal business hours upon reasonable notice. If either Party (the "**Notifying Party**") shall propose to discard any records theretofore required to be retained by this Section 8.2, it shall give notice to the other Party thereof and the other Party may within thirty (30) days elect to take possession of such records by notice to the Notifying Party, and in such case the Notifying Party shall promptly, and in any event, no later than five (5) days following receipt of such notice, deliver such records to the other Party at its expense. If the Party receiving a Notice pursuant to this Section 8.2 shall not respond within such thirty (30) days, the Notifying Party may discard such records without any further obligation hereunder. Upon written request by Buyer, Seller promptly shall request that the Transmission Provider provide in writing any and all meter or other data associated with the Facility and Net Energy directly to Buyer. Notwithstanding any other provision of this Agreement, Buyer shall have the right to provide such meter data to any RTO or generation tracking service.

8.3 Adjustment to Loss Factors. If Buyer or Seller has a reasonable basis for concluding that the Electric Metering Equipment is not accurately measuring losses between the Electric Metering Equipment and the Electricity Delivery Point, it may propose an adjustment to the Electric Metering Equipment by notice to the other Party. Such an adjustment shall be prospective only. The notice will include information explaining in reasonable detail why the loss factor appears to be incorrect. The other Party shall have thirty (30) days in which to approve or disapprove of the proposed adjustment, which approval may not be unreasonably withheld, conditioned or delayed. A proposed loss factor adjustment that is not disapproved by notice to Seller given within the thirty (30) day period shall be deemed approved. The Parties shall cooperate in causing PacifiCorp Transmission to make an appropriate adjustment to the Electric Metering Equipment pursuant to the Interconnection Agreement.

SECTION 9

BILLINGS, COMPUTATIONS AND PAYMENTS

9.1 Monthly Invoices. On or before the tenth (10th) day following the end of each month, Seller shall deliver to Buyer a proper invoice showing Seller's computation of the Variable Energy Payment, MAAF and the Capacity Payment for such month. If such invoice is delivered by Seller to Buyer, Buyer shall send to Seller payment for Seller's deliveries in respect thereof on or before the thirtieth (30th) day following the end of each month.

9.2 Offsets. Buyer may offset any payment due under this Agreement against amounts owing from Seller to Buyer pursuant to this Agreement, any other agreement between the Parties or otherwise.

9.3 Interest on Late Payments. Any amounts that are not paid when due under this Agreement shall bear interest at the Prime Rate plus two hundred (200) basis points from the date due until paid; provided, however, that this interest rate shall at no time exceed the maximum rate allowed by applicable law.

9.4 Disputed Amounts. If either Party, in good faith, disputes any amount due pursuant to an invoice rendered or written demand made under this Agreement, 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) days of such determination or resolution, along with interest accrued at the rate determined under Section 9.3 from the date due until the date paid.

9.5 Audit Rights. Buyer, through its authorized representatives, shall have the right, at its sole expense and during normal business hours, to examine and copy the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made hereunder or to verify the Seller's performance of its obligations hereunder. Upon request, Seller shall provide to Buyer statements evidencing the quantities of energy delivered at the Electricity Delivery Point. 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 calculated at the rate determined under Section 9.3 from the date of the overpayment or underpayment to the date of receipt of the reconciling payment. Notwithstanding the above, no adjustment shall be made with respect to any statement or payment hereunder unless Buyer questions the accuracy of such payment or statement within two (2) years after the date of such statement or payment.

SECTION 10

DEFAULTS AND REMEDIES

10.1 Defaults. The following events are defaults (each, an “**Event of Default**”) under this Agreement:

10.1.1 Events of Default by Either Party.

10.1.1.1 A Party's failure to make a payment when due under this Agreement if the failure is not cured within ten (10) days after the non-defaulting Party gives the defaulting Party a notice of the default, except as provided in Section 9.4.

10.1.1.2 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.

10.1.1.3 A Party's breach of a representation or warranty made by that Party in this Agreement if the breach is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party a notice of the default.

10.1.1.4 A Party otherwise fails to perform any material obligation imposed upon that Party by this Agreement 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 thirty (30) day period shall be extended by an additional sixty (60) 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 sixty (60) 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.

10.1.2 Events of Default by Seller.

10.1.2.1 Seller's failure to post or increase the Carry-Over Letter of Credit within ten (10) Business Days after the end of each month as may be required under Section 5.1.4.

10.1.2.2 Seller's failure to cause the Facility to achieve (a) an average of the applicable CAF_{ms} of at least [?] in any three (3) consecutive quarters in a Contract Year or (b) achieve an average of the applicable CAF_{ms} of at least [?] in three (3) out of any five (5) consecutive Contract Years.

10.1.2.3 Seller's failure to post and maintain Credit Support as required by Section 7 if the failure is not cured within five (5) days after Buyer gives Seller a notice of the default.

10.1.2.4 Seller's failure to achieve a milestone by the date set forth for the achievement of that milestone in Section 2.2 (other than the failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date) if the failure is not cured within thirty (30) days after Buyer gives Seller a notice of the default.

10.1.2.5 Seller's failure to cause the Facility to achieve the Commercial Operation Date on or before [] days following the Guaranteed Commercial Operation Date. *[note to bidders: insert **number of days**; this will be a material component of the evaluation of your bid; the nature of the resource will be considered. The lowest feasible numeral is encouraged.]*

10.1.2.6 Seller's failure to cure any default under any Required Facility Documents (including the Interconnection Agreement) within the time allowed for a cure under such agreement or instrument.

10.1.2.7 Seller's sale of energy from the Facility to a Party other than Buyer in breach of this Agreement if Seller does not permanently cease such sale and compensate Buyer for the damages arising from the breach within ten (10) days after Buyer gives Seller a notice of default.

10.1.2.8 The Facility is unavailable to provide energy for ninety (90) consecutive days or one hundred twenty (120) non-consecutive days in any three hundred sixty-five (365) day period commencing on the Commercial Operation Date and prior to end of the Term.

10.2 Termination and Remedies.

10.2.1 Upon the occurrence of, and during the continuation 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 ten (10) days before such termination date. Further, during the continuation of an Event of Default by Seller, and until it has recovered all damages incurred on account of such Event of Default by Seller, without exercising its termination right, Buyer may offset its damages against any payment due Seller.

10.2.2 In the event of a termination of this Agreement:

10.2.2.1 The Parties' respective obligations under this Agreement shall terminate (other than those obligations which expressly are to be performed after termination).

10.2.2.2 Each Party shall pay to the other all amounts due the other under this Agreement for all periods prior to termination subject to offset by the non-defaulting Party against damages incurred by such Party.

10.2.2.3 The amounts due pursuant to Section 10.2.2.2 shall be paid within thirty (30) days of the billing date for such charges plus interest thereon at the Prime Rate from the date of termination until the date paid.

10.2.2.4 The provisions of Sections 6.4.4, 6.9.4, 6.9.5, 8.2, 9.3, 9.4, 9.5, 10.7, 10.9, 11 and 14 shall survive the termination of this Agreement.

10.3 Specific Performance. Buyer shall be entitled to seek and obtain a decree compelling specific performance or granting injunctive relief with respect to, and shall be entitled, without the necessity of filing any bond, to enjoin any actual or threatened breach of any

material obligation of Seller under this Agreement. Seller agrees that in view of the nature of the bid procedure that caused Seller to be selected, and the importance of the Facility and the Buyer's requirement for Capacity and energy, specific performance (including temporary and preliminary relief) and injunctive and other equitable relief, including access to all records of Seller, are proper in the event of any actual or threatened breach of any material obligation by Seller under this Agreement, and that any liability limits contained in this Agreement shall not operate to limit the exercise of Buyer's remedies in equity to cause Seller to perform its obligations under this Agreement. In any action for specific performance or injunctive relief or other equitable relief, all expenses incurred by the prevailing party in such proceeding, including reasonable counsel fees, shall be awarded to the prevailing party in such proceeding. Seller agrees that it will not assert as a defense to Buyer's action for specific performance of, or injunctive relief or other equitable relief relating to, Seller's obligations hereunder that the amounts payable or paid by Seller in respect of liquidated damages or actual damage constitute an adequate remedy for the breach of such obligation, and Seller hereby conclusively waives such defense.

10.4 Failure to Meet Availability. If an Event of Default by Seller described in Section 10.1.2.2 shall occur, Buyer shall have the right to enter the Facility and do all such things as Buyer may consider necessary or desirable to remedy such situation or to improve the availability of the Contract Capacity, including making any repairs to the Major Equipment or the Facility. Seller shall reimburse Buyer for and shall indemnify and hold harmless Buyer from and against all losses, costs, charges and expenses incurred by Buyer in connection with exercise of its rights under this Section 10.4 other than due to the gross negligence or willful misconduct of Buyer. In connection with the exercise of the rights under this Section 10.4, Buyer shall have the right to recoup and set off all such losses, costs, charges and expenses against amounts otherwise owed by Buyer under this Agreement.

10.5 License to Operate Facility. During the occurrence and continuance of an Event of Default by Seller, Seller hereby irrevocably grants to Buyer the right, license, and authority to enter the Premises, operate the Facility, and to perform Seller's obligations under this Agreement for the Term of this Agreement. Notwithstanding the license granted to Buyer in this Section 10.5, so long as no Event of Default by Seller which would entitle Buyer to terminate this Agreement has occurred and is continuing, Buyer agrees that Seller may operate the Facility and provide the energy and Capacity in accordance with its obligations under this Agreement. Upon the occurrence of an Event of Default and the expiration of all applicable opportunities to cure, Buyer may, but shall not be obligated to, exercise its rights as licensee under this Section 10.5 in lieu of termination. Buyer's right to operate the Facility pursuant to the license granted in this Section 10.5 shall be effective for a period not to exceed 365 days from the date Buyer first exercises its license rights. During any period in which Buyer is operating the Facility pursuant to the license granted in this Section 10.5, Seller shall, upon request from Buyer, reimburse Buyer for all reasonable costs and expenses incurred by Buyer to operate and maintain the Facility. In connection with the exercise of the rights under this Section 10.5, Buyer shall have the right to recoup and set off all such losses, costs, charges and expenses against amounts otherwise owed by Buyer under this Agreement.

10.6 Termination of Duty to Buy. If this Agreement is terminated because of Seller's default, Seller may not require Buyer to purchase energy from the Facility before the date on which the Term would have ended had this Agreement remained in effect. Seller hereby waives its rights to require Buyer to do so.

10.7 Net Replacement Power Costs. If this Agreement is terminated because of Seller's default, Seller shall pay Buyer the positive difference, if any, obtained by subtracting (a) the result of (1) the energy, stated in MWh, that Seller was obligated to provide to Buyer during the remainder of the Term, multiplied by (2) the price per MWh (i) specified in **Exhibit F** for the remaining Contract Years, subtracted from (ii) the market price of such energy as determined in good faith by Buyer, from (b) the Replacement Price for any energy that Seller was obligated to provide during the remainder of the Term. Amounts owed by Seller pursuant to this Section 10.7 shall be due within five (5) Business Days after Buyer gives Seller notice of the amount due.

10.8 Default Security. Buyer may apply the Credit Support Security at any time to reduce amounts due from Seller to Buyer under this Agreement which are not paid when due.

10.9 Cumulative Remedies. The rights and remedies provided to Buyer under this Agreement are cumulative and not exclusive of any rights or remedies which Buyer would otherwise have.

SECTION 11

INDEMNIFICATION AND LIABILITY

11.1 Indemnities.

11.1.1 Indemnity by Seller. Seller hereby releases, indemnifies and holds harmless Buyer, its directors, officers, agents, and representatives against and from any and all losses, claims, actions or suits, including costs and attorney's fees, 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 Electricity Delivery Point, (b) the Fuel delivered by Buyer under this Agreement at and after the Fuel Delivery Point, (c) any facilities on Seller's side of the Electricity Delivery Point, (d) Seller's operation and/or maintenance of the Facility, or (e) arising from Seller's performance under this Agreement, including 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 Buyer, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Buyer, its directors, officers, employees, agents or representatives.

11.1.2 Indemnity by Buyer. Buyer hereby releases, indemnifies and holds harmless Seller, its directors, officers, agents, and representatives against and from any and all losses, claims, actions or suits, including costs and attorney's fees, resulting from, or arising out of or in any way connected with (a) the energy delivered by Seller under this Agreement after the Electricity Delivery Point, and (b) the Fuel

prior to delivery at the Fuel Delivery Point under this Agreement, including 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 or representatives.

11.2 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 Buyer as an independent public utility corporation or Seller as an independent individual or entity.

11.3 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.

SECTION 12

INSURANCE

12.1 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" by the A.M. Best Company the insurance coverage specified on **Exhibit J** during the periods specified on **Exhibit J**.

12.2 Certificates and Certified Copies of Policies. Seller shall provide Buyer with a certified "true and correct" copy of the insurance policies, provisions and endorsements contemplated by **Exhibit J** within ten (10) days after the date by which such policies are required to be obtained (as set forth in **Exhibit J**). If any coverage is written on a "claims-made" basis, the certification accompanying the policy shall conspicuously state that the policy is "claims made."

SECTION 13

FORCE MAJEURE

13.1 Definition of Force Majeure. As used in this Agreement, "**Force Majeure**" or "**an event of Force Majeure**" means an event (a) is not reasonably anticipated as of the date of this Agreement, (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; fire; explosion; civil disturbance; sabotage; 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 Buyer's ability to purchase energy at a more advantageous price than is provided under this Agreement; (ii) economic hardship including lack of money; (iii) the imposition upon Seller of costs or taxes allocated to Seller under Sections 5 or 6; (iv) delay or failure by Seller to obtain any Required Facility Document, other than Permits which Seller is diligently and timely taking all reasonable steps to obtain; (v) strikes or labor disturbances occurring at the Facility, the Premises or any of Buyer's or Seller's facilities; (vi) changes in, or costs of compliance with, Environmental Laws enacted after the date of this Agreement; and (vii) the failure of the Transmission Provider, whether or not Transmission Provider is PacifiCorp acting in its regulated transmission function capacity, for any reason to transmit Contract Capacity or energy.

13.2 Suspension of Performance. If either Party is rendered wholly or in part unable to perform its obligations under this Agreement because of an event of Force Majeure, both Parties shall be excused from the performance affected by the event of Force Majeure, provided that:

13.2.1 the Party affected by the Force Majeure, shall, within two (2) weeks after the occurrence of the event of Force Majeure, give the other Party written notice describing the particulars of the event; and

13.2.2 the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure; and

13.2.3 the affected Party shall use diligent efforts to remedy its inability to perform.

13.3 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.

13.4 Right to Terminate. If a Force Majeure event prevents a Party from substantially performing its obligations under this Agreement for a period exceeding one hundred eighty (180) days, then Buyer may terminate this Agreement by giving ten (10) days' prior notice to Seller. 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 under this Agreement before the effective date of such termination.

SECTION 14

CONFIDENTIALITY

14.1 Confidential Business Information. The Parties' proposals and negotiations prior to the date hereof concerning this Agreement, the terms of this Agreement, and the actual charges billed to Buyer under this Agreement, constitute the "Confidential Business Information" of both Parties. Seller and Buyer each agree to hold such Confidential Business Information wholly confidential.

14.2 Duty to Maintain Confidentiality. Confidential Business Information may only be used by the Parties for purposes related to the approval, administration or enforcement of this Agreement and for no other purpose. Each Party agrees not to disclose Confidential Business Information to any other person (other than its affiliates, counsel, consultants, lenders, prospective lenders, buyers, prospective buyers, contractors constructing or providing services to the Facility, employees, officers and directors who agree to be bound by the provisions of this Section), without the prior written consent of the other Party, provided that either Party may disclose Confidential Business Information, if such disclosure is required by law, required in order for Buyer to receive regulatory recovery of expenses related to the Agreement or pursuant to an order of a court or regulatory agency or in order to enforce this Agreement or to seek approval of this Agreement. In the event a Party is required by law or by a court or regulatory agency to disclose Confidential Business Information, such Party shall to the extent possible notify the other Party at least three (3) Business Days in advance of such disclosure.

14.3 Irreparable Injury; Remedies. Each Party agrees that violation of the terms of this Section 14 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.

14.4 News Releases and Publicity. Before issuing any news release or promotional material regarding the Facility, Seller shall contact Buyer for language that credits Buyer as purchasing the Net Energy and shall use such language in such news releases and promotional material.

SECTION 15

DISAGREEMENTS

15.1 Negotiations. The Parties shall attempt in good faith to resolve all disputes arising out of or 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 from the referral of the dispute to senior executives, or if no meeting of such senior executives has taken place within fifteen (15) days after such referral, either Party may initiate litigation as provided hereinafter if neither Party has requested that the dispute be mediated in accordance with Section 15.2 below. All negotiations pursuant to this clause are confidential.

15.2 Mediation. If the dispute is not resolved within thirty (30) days from the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within fifteen (15) days after such referral, 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 Construction Industry Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Construction Disputes) of the American Arbitration Association

(the “AAA”), as amended and effective on July 1, 2003 (the “**Mediation Procedures**”), notwithstanding any Dollar amounts or Dollar limitations contained therein.

15.2.1 The Party requesting the mediation, may commence the mediation process with AAA by notifying AAA and the other Party in writing (“**Mediation Notice**”) of such Party’s desire that the dispute be resolved through mediation, including therewith a copy of the Dispute Notice and the response thereto, if any, and a copy of the other Party’s written agreement to such mediation.

15.2.2 The mediation shall be conducted through, by and at the office of AAA located in Salt Lake City, Utah.

15.2.3 The mediation shall be conducted by a single mediator. The Parties may select any mutually acceptable member from the panel of retired judges at AAA as a mediator. If the parties cannot agree on a mediator within five (5) days after the date of the Mediation Notice, then the AAA’s Arbitration Administrator shall send a list and resumes of three (3) available mediators to the parties, each of whom shall strike one name, and the remaining person shall be appointed as the mediator. If more than one name remains, either because one or both parties have failed to respond to the AAA’s Arbitration Administrator within five (5) days of receiving the list or because one or both parties have failed to strike a name from the list or because both parties strike the same name, the AAA’s Arbitration Administrator will choose the mediator from the remaining names. If the designated mediator shall die, become incapable or, unwilling to, or unable to serve or proceed with the mediation, a substitute mediator shall be appointed in accordance with the selection procedure described above in this Section 15.2.3, and such substitute mediator shall have all such powers as if he or she has been originally appointed herein.

15.2.4 The mediation shall consist of one or more informal, nonbinding meetings between the Parties and the mediator, jointly and in separate caucuses, out of which the mediator will seek to guide the Parties to a resolution of the dispute. The mediation process shall continue until the resolution of the dispute, or the termination of the mediation process pursuant to Section 15.2.7.

15.2.5 The mediator’s fees and expenses, shall be borne equally by the Parties. Each Party shall bear its own expenses incurred in connection with such mediation; provided, however, that if any dispute hereunder is not fully resolved as a result of such mediation, the prevailing party shall be awarded its reasonable attorney fees in any subsequent dispute resolution proceedings.

15.2.6 All verbal and written communications between the parties and issued or prepared in connection with this Section 15.2 shall be deemed prepared and communicated in furtherance, and in the context, of dispute settlement, and shall be exempt from discovery and production, and shall not be admissible in evidence (whether as admission or otherwise) in any arbitration or other proceedings for the resolution of the dispute.

15.2.7 The initial mediation meeting between the Parties and the mediator shall be held within twenty (20) days after the Mediation Notice. Either Party may terminate the mediation process upon the earlier to occur of (A) the failure of the initial mediation meeting to occur within twenty (20) days after the date of the Mediation Notice, (B) the passage of thirty (30) days from the date of the Mediation Notice without the dispute having been resolved, or (C) such time as the mediator makes a finding that there is no possibility of resolution through mediation. The mediation shall follow and be governed by the laws of the State of Oregon.

15.2.8 All deadlines specified in this Section 15.2 may be extended by mutual agreement.

15.3 Choice of Forum. 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 Oregon, Portland Division. By execution and delivery of this Agreement, 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, (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), (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 in this Agreement, and (e) agrees that nothing in this Agreement shall affect the right to effect service of process in any other manner permitted by law.

15.4 Settlement Discussions. The Parties agree that 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 or arbitration between the Parties, nor will any such statements or offers of settlement be used in any manner against either Party in any such litigation or arbitration. 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 or arbitration. 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.

15.5 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 TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT. EACH PARTY HEREBY WAIVES

ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY MATTER ARISING HEREUNDER OR THEREUNDER IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

15.6 Equitable Remedies. In any action for specific performance or injunctive relief or other equitable relief, all expenses incurred by the prevailing party in such proceeding, including reasonable counsel fees, shall be awarded to the prevailing party in such proceeding. Seller agrees that it will not assert as a defense to Buyer's action for specific performance of, or injunctive or other equitable 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 all Required Facility Documents (as the case may be) relating to the Facility to the extent necessary to prevent a material adverse effect on Buyer's right to specific performance or injunctive relief.

SECTION 16

GUARANTEED PERFORMANCE PARAMETERS

16.1 Guaranteed Heat Rate. Seller shall operate and maintain the Facility so as to achieve the Guaranteed Heat Rate in accordance with the provisions of **Exhibit R**.

16.2 Guaranteed Start-Up Time. Seller shall operate and maintain the Facility so as to achieve the Guaranteed Start-Up Time in accordance with the provisions of **Exhibit R**.

16.3 Guaranteed Ramp Rate. Seller shall operate and maintain the Facility so as to achieve the Guaranteed Ramp Rate in accordance with the provisions of **Exhibit R**.

SECTION 17

MISCELLANEOUS

17.1 Several Obligations. Nothing contained in this Agreement 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. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

17.2 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 that may direct the application of the laws of another jurisdiction.

17.3 Partial Invalidity. The Parties do not intend to violate any Requirements of Law governing the subject matter of this Agreement. If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void as being contrary to any Requirements of Law or public policy, all other terms of the Agreement 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 Requirements of Law, (b) give effect to the intent of the Parties in entering into this Agreement, and (c) preserve the balance of the equities contemplated by this Agreement in all material respects.

17.4 Waiver. No waiver of any provision of this Agreement shall be effective unless the waiver is set forth in a writing that (a) expressly identifies the provision being waived, and (b) is signed 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 of this Agreement shall not be construed as a waiver of any other failure or failures, whether of a like kind or different nature.

17.5 Governmental Jurisdiction and Authorizations. This Agreement is subject to the jurisdiction of those Governmental Authorities having control over either Party or this Agreement. Buyer's duty to comply with this Agreement is conditioned on Seller's submission to Buyer before the Commercial Operation Date and maintaining thereafter copies of all Required Facility Documents.

17.6 Restriction on Assignments. Except as expressly provided in Section 17.7, neither Party shall assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party.

17.7 Permitted Assignments. The Buyer may assign its rights, delegate its duties or otherwise transfer its interests hereunder, in whole or in part to another entity having a long-term credit rating assigned thereto by a "nationally recognized statistical rating organization" (as that term is used in Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934) that equals or exceeds the Buyer's long term credit rating as of the date of such assignment.

17.8 Entire Agreement. This Agreement (including all attached Exhibits, which are incorporated by this reference) supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding the subject matter of this Agreement. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

17.9 Amendments. This Agreement shall not be altered or amended except by an instrument in writing specifically identifying the provisions to be amended and executed by authorized representatives of both parties.

17.10 No Third Party Beneficiaries. Notwithstanding anything to the contrary herein, this Agreement does not confer any rights upon any person other than the parties and their respective successors and permitted assigns. There are no third party beneficiaries of this Agreement.

17.11 Agents and Subcontractors. This Agreement may be performed by Buyer through the use of agents and subcontractors (but such use shall not relieve Buyer of any obligation hereunder).

17.12 Notices. All notices, requests, statements or payments shall be (a) made to the addresses set forth below, (b) in writing, and (c) delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day during which the notice is received or hand delivered. Notice by overnight mail or courier shall be deemed to have been received upon delivery as evidenced by the delivery receipt.

To Seller: _____

with a copy to: _____

To Buyer: PacifiCorp
825 NE Multnomah, Suite 2000
Portland, Oregon 97232-2315
Attn: Sr. Vice President, Commercial & Trading

with copies to: PacifiCorp
825 NE Multnomah, Suite 600
Portland, Oregon 97232-2315
Attn: Director of Contract Administration, Commerical & Trading

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

17.13 Mobile-Sierra. The rates for service specified in this Agreement 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 to this Agreement proposed by a Party, a non-party or the FERC acting *sua sponte* shall be the “public interest” 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). To the extent that the FERC adopts specific language that parties must incorporate into agreements in order to

bind FERC, third parties and themselves to a public interest standard of review, the Parties hereby incorporate such language herein by reference.

17.14 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which is an original and all of which taken together constitute one and the same instrument.

[SIGNATURES ON NEXT PAGE]

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

[SELLER],
as Seller

By: _____

Name: _____

Title: _____

PACIFICORP,
as Buyer

By: _____

Name: _____

Title:

EXHIBIT U

FORM OF LENDER CONSENT

This CONSENT AND AGREEMENT (this “Consent”), dated as of _____, 200__, is entered into by and among PacifiCorp, an Oregon corporation, acting in its merchant function capacity (together with its permitted successors and assigns, “PacifiCorp”), _____, in its capacity as [**Administrative Agent**] for the Lenders referred to below (together with its successors, designees and assigns in such capacity, “Administrative Agent”), and _____, a _____ formed and existing under the laws of the State of _____ (together with its permitted successors and assigns, “Borrower”). Unless otherwise defined, all capitalized terms have the meaning given in the Contract (as hereinafter defined).

RECITALS

A. Borrower intends to develop, construct, install, test, own, operate and use an approximately ___ MW electric generating facility located _____, known as the _____ Generation Project (the “Project”).

B. In order to partially finance the development, construction, installation, testing, operation and use of the Project, Borrower has entered into that certain [**Financing Agreement,**] dated as of _____ (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Financing Agreement”), among Borrower, the financial institutions from time to time parties thereto (collectively, the “Lenders”), and Administrative Agent for the Lenders, pursuant to which, among other things, Lenders have extended commitments to make loans and other financial accommodations to, and for the benefit of, Borrower.

C. Borrower anticipates that, prior to the completion of construction of the Project, it will seek an additional investor (the “Tax Investor”) to make an investment in Borrower to provide additional funds to finance the operation and use of the Project. *[if applicable]*

D. PacifiCorp and Borrower have entered into that certain Tolling Agreement, dated as of _____ (collectively with all documents entered into in connection therewith that are listed on [Schedule A] attached hereto and incorporated herein by reference, as all are amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “Contract”).

E. Pursuant to a security agreement executed by Borrower and Administrative Agent for the Lenders (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”), Borrower has agreed, among other things, to assign, as collateral security for its obligations under the Financing Agreement and related documents (collectively, the “Financing Documents”), all of its right, title and interest in, to and under the Contract to Administrative Agent for the benefit of itself, the Lenders and each other entity or person providing collateral security under the Financing Documents.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

SECTION 1. CONSENT TO ASSIGNMENT. PacifiCorp acknowledges the assignment referred to in Recital E above, consents to an assignment of the Contract pursuant thereto, and agrees with Administrative Agent as follows:

(A) Administrative Agent shall be entitled (but not obligated) to exercise all rights and to cure any defaults of Borrower under the Contract, subject to applicable notice and cure periods provided in the Contract. Upon receipt of notice from Administrative Agent, PacifiCorp agrees to accept such exercise and cure by Administrative Agent if timely made by Administrative Agent under the Contract and this Consent. Upon receipt of Administrative Agent's written instructions, PacifiCorp agrees to make directly to Administrative Agent all payments to be made by PacifiCorp to Borrower under the Contract from and after PacifiCorp's receipt of such instructions, and Borrower consents to any such action.

(B) PacifiCorp will not, without the prior written consent of Administrative Agent (such consent not to be unreasonably withheld), (i) cancel or terminate the Contract, or consent to or accept any cancellation, termination or suspension thereof by Borrower, except as provided in the Contract and in accordance with subparagraph 1(C) hereof, (ii) sell, assign or otherwise dispose (by operation of law or otherwise) of any part of its interest in the Contract, except as provided in the Contract, or (iii) amend or modify the Contract in any manner materially adverse to the interest of the Lenders in the Contract as collateral security under the Security Agreement.

(C) PacifiCorp agrees to deliver duplicates or copies of all notices of default delivered by PacifiCorp under or pursuant to the Contract to Administrative Agent in accordance with the notice provisions of this Consent. PacifiCorp may deliver any such notices concurrently with delivery of the notice to Borrower under the Contract. Administrative Agent shall have: (a) the same period of time to cure the breach or default that Borrower is entitled to under the Contract if such default is the failure to pay amounts to PacifiCorp which are due and payable by Borrower under the Contract, except that if PacifiCorp does not deliver the default notice to Administrative Agent concurrently with delivery of the notice to Borrower under the Contract, then as to Administrative Agent, the applicable cure period under the Contract shall begin on the date on which the notice is given to Administrative Agent, or (b) ninety (90) days from the date notice of default or breach is delivered to Administrative Agent to cure such default if such breach or default cannot be cured by the payment of money to PacifiCorp, so long as Administrative Agent continues to perform any monetary obligations under the Contract, Section 11.1.2(c) of the Contract is not being breached, and all other obligations under the Contract are performed by Borrower or Administrative Agent or its designee(s) or assignee(s). If possession of the Project is necessary to cure such breach or default, and Administrative Agent or its designee(s) or assignee(s) declare Borrower in default and commence foreclosure proceedings, Administrative Agent or its designee(s) or assignee(s) will be allowed a reasonable period to complete such proceedings. PacifiCorp consents to the transfer of Borrower's interest under the Contract to the Lenders or Administrative Agent or their designee(s) or assignee(s) or

any of them or a purchaser or grantee at a foreclosure sale by judicial or nonjudicial foreclosure and sale or by a conveyance by Borrower in lieu of foreclosure and agrees that upon such foreclosure, sale or conveyance, PacifiCorp shall recognize the Lenders or Administrative Agent or their designee(s) or assignee(s) or any of them or other purchaser or grantee as the applicable party under the Contract (provided that such Lenders or Administrative Agent or their designee(s) or assignee(s) or purchaser or grantee assume the obligations of Borrower under the Contract, including, without limitation, satisfaction and compliance with all requirements of Sections 8.1 and 8.2 of the Contract, and provided further that PacifiCorp's subordinated lien rights with respect to the Project are preserved in the event of any transfer of Borrower's interest under the Contract).

(D) Notwithstanding subparagraph 1(C) above, in the event that the Contract is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, or if the Contract is terminated for any reason other than a default which could have been but was not cured by Administrative Agent or its designee(s) or assignee(s) as provided in subparagraph 1(C) above, and if, within forty-five (45) days after such rejection or termination, the Lenders or their successors or assigns shall so request, to the extent permitted by applicable law, PacifiCorp and the Lenders or Administrative Agent or their designee(s) or assignee(s) will enter into a new contract. Such new contract shall be on the same terms and conditions as the original Contract for the remaining term of the original Contract before giving effect to such termination, and shall require the Lenders or Administrative Agent or their designee(s) or assignee(s) to cure any payment defaults then existing under the original Contract.

(E) In the event Administrative Agent, the Lenders or their designee(s) or assignee(s) elect to perform Borrower's obligations under the Contract as provided in subparagraph 1(C) above or enter into a new contract as provided in subparagraph 1(D) above, the recourse of PacifiCorp against Administrative Agent, Lenders or their designee(s) and assignee(s) shall be limited to such parties' interests in the Project, the credit support required under Section 7 of the Contract, and recourse against the assets of any party or entity that assumes the Contract or that enters into such new contract.

(F) In the event Administrative Agent, the Lenders or their designee(s) or assignee(s) succeed to Borrower's interest under the Contract, Administrative Agent, the Lenders or their designee(s) or assignee(s) shall cure any then-existing payment and performance defaults under the Contract, except any performance defaults of Borrower itself which by their nature are not susceptible of being cured. Administrative Agent, the Lenders and their designee(s) or assignee(s) shall have the right to assign all or a pro rata interest in the Contract or the new contract entered into pursuant to subparagraph 1(d) above to a person or entity to whom Borrower's interest in the Project is transferred, provided such transferee assumes the obligations of Borrower under the Contract. Upon such assignment, Administrative Agent and the Lenders and their designee(s) or assignee(s) (including their agents and employees, but excluding Seller) shall be released from any further liability thereunder accruing from and after the date of such assignment, to the extent of the interest assigned.

SECTION 2. REPRESENTATIONS AND WARRANTIES [PacifiCorp shall have the right to qualify the factual information contained in this Section to ensure that such representation is a true statement as of the date of this Consent]

PacifiCorp, acting in its merchant function capacity (and therefore specifically excluding the knowledge of PacifiCorp, acting in its transmission function capacity (“PacifiCorp Transmission”), as to any of the matters stated below, and without imputation to PacifiCorp of any knowledge whatsoever relating to the PacifiCorp Transmission, whether as a result of information publicly posted to the open access same-time information system or otherwise), hereby represents and warrants that as of the date of this Consent:

(A) It (i) is a corporation duly formed and validly existing under the laws of the state of its organization, (ii) is duly qualified, authorized to do business and in good standing in every jurisdiction necessary to perform its obligations under this Consent, and (iii) has all requisite corporate power and authority to enter into and to perform its obligations hereunder and under the Contract, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby;

(B) the execution, delivery and performance of this Consent and the Contract have been duly authorized by all necessary corporate action on its part and do not require any approvals, material filings with, or consents of any entity or person which have not previously been obtained or made;

(C) each of this Consent and the Contract is in full force and effect;

(D) each of this Consent and the Contract has been duly executed and delivered on its behalf and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as the enforceability thereof may be limited as set forth in Section 3.1.5 of the Contract;

(E) there is no litigation, arbitration, investigation or other proceeding pending for which PacifiCorp has received service of process or, to PacifiCorp’s actual knowledge, threatened, against PacifiCorp relating solely to this Consent or the Contract and the transactions contemplated hereby and thereby;

(F) the execution, delivery and performance by it of this Consent and the Contract, and the consummation of the transactions contemplated hereby, will not result in any violation of, breach of or default under any term of (i) its formation or governance documents, or (ii) any material contract or material agreement to which it is a party or by which it or its property is bound, or of any material Requirements of Law presently in effect having applicability to it, the violation, breach or default of which could have a material adverse effect on its ability to perform its obligations under this Consent;

(G) neither PacifiCorp nor, to PacifiCorp’s actual knowledge, any other party to the Contract, is in default of any of its obligations thereunder;

(H) to the best of PacifiCorp's actual knowledge, (i) no Force Majeure Event exists under, and as defined in, the Contract and (ii) no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either PacifiCorp or Borrower to terminate or suspend its obligations under the Contract; and

(I) the Contract and the documents and instruments contemplated therein and this Consent are the only agreements between Borrower and PacifiCorp with respect to the Project, and all conditions precedent to effectiveness under the Contract have been satisfied or waived. *[Reference to subordinated lien documents per Section 7.3 of the Contract to be inserted.]*

Each of the representations and warranties set forth herein shall survive the execution and delivery of this Consent and the consummation of the transactions contemplated hereby.

SECTION 3. NOTICES. All notices required or permitted hereunder shall be in writing and shall be effective (a) upon receipt if hand delivered, (b) upon telephonic verification of receipt if sent by facsimile and (c) if otherwise delivered, upon the earlier of receipt or three (3) Business Days after being sent registered or certified mail, return receipt requested, with proper postage affixed thereto, or by private courier or delivery service with charges prepaid, and addressed as specified below:

If to PacifiCorp:
[_____]
[_____]
[_____]
Telephone No.: [_____]
Telecopy No.: [_____]
Attn: [_____]

<p>If to Administrative Agent:</p> <p>[_____]</p> <p>[_____]</p> <p>[_____]</p> <p>Telephone No.: [_____]</p> <p>Telecopy No.: [_____]</p> <p>Attn: [_____]</p>
<p>If to Borrower:</p> <p>[_____]</p> <p>[_____]</p> <p>[_____]</p> <p>Telephone No.: [_____]</p> <p>Telecopy No.: [_____]</p> <p>Attn: [_____]</p>

Any party shall have the right to change its address for notice hereunder to any other location within the United States by giving thirty (30) days written notice to the other parties in the manner set forth above. Further, the Tax Investor shall be entitled to receive notices from PacifiCorp by providing written notice to PacifiCorp of Tax Investor's address for notices. PacifiCorp's failure to provide any notice to the Tax Investor shall not be a breach of this Consent.

SECTION 4. ASSIGNMENT, TERMINATION, AMENDMENT AND GOVERNING LAW.

This Consent shall be binding upon and benefit the successors and assigns of the parties hereto and the Tax Investor and their respective successors, transferees and assigns (including without limitation, any entity that refinances all or any portion of the obligations under the Financing Agreement). PacifiCorp agrees (a) to confirm such continuing obligation in writing upon the reasonable request of (and at the expense of) Borrower, Administrative Agent, the Lenders or any of their respective successors, transferees or assigns, and (b) to cause any successor-in-interest to PacifiCorp with respect to its interest in the Contract to assume, in writing in form and substance reasonably satisfactory to Administrative Agent, the obligations of PacifiCorp hereunder. Any purported assignment or transfer of the Contract not in conjunction with the written instrument of assumption contemplated by the foregoing clause (b) shall be null and void. No termination, amendment, variation or waiver of any provisions of this Consent shall be effective unless in writing and signed by the parties hereto. This Consent shall be governed by the laws of the State of New York (without giving effect to the principles thereof relating to conflicts of law except Section 5-1401 and 5-1402 of the New York General Obligations Law).

SECTION 5. COUNTERPARTS. This Consent may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

SECTION 6. SEVERABILITY. In case any provision of this Consent, or the obligations of any of the parties hereto, shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions, or the obligations of the other parties hereto, shall not in any way be affected or impaired thereby.

SECTION 7. ACKNOWLEDGMENTS BY BORROWER. Borrower, by its execution hereof, acknowledges and agrees that notwithstanding any term to the contrary in the Contract, PacifiCorp may perform as set forth herein and that neither the execution of this Consent, the performance by PacifiCorp of any of the obligations of PacifiCorp hereunder, the exercise of any of the rights of PacifiCorp hereunder, or the acceptance by PacifiCorp of performance of the Contract by any party other than Borrower shall (1) release Borrower from any obligation of Borrower under the Contract, (2) constitute a consent by PacifiCorp to, or impute knowledge to PacifiCorp of, any specific terms or conditions of the Financing Agreement, the Security Agreement or any of the other Financing Documents, or (3) constitute a waiver by PacifiCorp of any of its rights under the Contract. Borrower and Administrative Agent acknowledge hereby for the benefit of PacifiCorp that none of the Financing Agreement, the Security Agreement, the Financing Documents or any other documents executed in connection therewith alter, amend, modify or impair (or purport to alter, amend, modify or impair) any provisions of the Contract. Borrower shall have no rights against PacifiCorp on account of this Consent.

IN WITNESS WHEREOF, the parties hereto by their officers thereunto duly authorized, have duly executed this Consent as of the date first set forth above.

PacifiCorp,
an Oregon corporation

By: _____
Name: _____
Title: _____

_____,
a _____

By: _____
Name: _____
Title: _____

_____,
as Administrative Agent for the Lenders

By: _____

Name: _____
Title: _____

**PACIFICORP RFP-2012
TOLLING AGREEMENT**

dated as of [_____], 2007,

BETWEEN

**[Bidder # [?]],
as Seller,**

AND

**PACIFICORP,
as Buyer**

[_____ Project]

[_____, [State]]

TABLE OF CONTENTS

	Page
SECTION 1 DEFINITIONS; RULES OF INTERPRETATION.....	2
1.1 <u>Defined Terms</u>	2
1.2 <u>Rules of Interpretation</u>	13
SECTION 2 TERM; COMMENCEMENT OF OPERATION.....	14
2.1 <u>Term</u>	14
2.2 <u>Milestones</u>	14
2.3 <u>Daily Delay Damages</u>	16
2.4 <u>Damages Invoicing</u>	16
2.5 <u>Buyer’s Right to Monitor</u>	17
SECTION 3 REPRESENTATIONS AND WARRANTIES	18
3.1 <u>Buyer’s Representations and Warranties</u>	18
3.2 <u>Seller’s Representations and Warranties</u>	18
3.3 <u>Notice</u>	21
SECTION 4 SALE AND PURCHASE OBLIGATIONS	21
4.1 <u>Sale and Purchase of Contract Capacity, Capacity Rights, Net Energy and Ancillary Services</u>	21
4.2 <u>Deliveries; Title and Risk of Loss</u>	22
4.3 <u>Dispatching Deliveries from the Contract Capacity versus the Remaining Capacity</u>	23
4.4 <u>Curtailment Due to Failure to Comply with Interconnection Agreement</u>	23
4.5 <u>Sale of Test Energy</u>	24
SECTION 5 PAYMENTS; COSTS.....	24
5.1 <u>Capacity Payments</u>	24
5.2 <u>Energy Payment</u>	26
5.3 <u>Test Energy</u>	26
5.4 <u>Costs and Charges</u>	26
5.5 <u>Station Service</u>	27
SECTION 6 OPERATION AND CONTROL	27
6.1 <u>As-Built Supplement</u>	27
6.2 <u>Measurement and Quality of Net Energy</u>	27
6.3 <u>Standard of Facility Operation</u>	27
6.4 <u>Operating Procedures and Compliance</u>	29
6.5 <u>Scheduling Procedures</u>	30
6.6 <u>Outages</u>	35
6.7 <u>Schedule Coordination</u>	36
6.8 <u>Electronic Communications</u>	36
6.9 <u>Reports and Records</u>	37

6.10	<u>Access Rights</u>	39
6.11	<u>EWG</u>	39
6.12	<u>Facility Images</u>	39
6.13	<u>Financial and Accounting Information</u>	39
SECTION 7 SECURITY AND CREDIT SUPPORT		39
7.1	<u>Credit Support</u>	39
7.2	<u>Subordinated Security Interests</u>	40
7.3	<u>Quarterly Financial Statements</u>	41
7.4	<u>Security is Not a Limit on Seller’s Liability</u>	41
7.5	<u>Escrow Account</u>	41
7.6	<u>Senior Lender Protective Provisions</u>	42
SECTION 8 METERING		42
8.1	<u>Net Energy</u>	42
8.2	<u>Records</u>	44
8.3	<u>Adjustment to Loss Factors</u>	44
SECTION 9 BILLINGS, COMPUTATIONS AND PAYMENTS		44
9.1	<u>Monthly Invoices</u>	44
9.2	<u>Offsets</u>	45
9.3	<u>Interest on Late Payments</u>	45
9.4	<u>Disputed Amounts</u>	45
9.5	<u>Audit Rights</u>	45
SECTION 10 DEFAULTS AND REMEDIES		45
10.1	<u>Defaults</u>	45
10.2	<u>Termination and Remedies</u>	47
10.3	<u>Specific Performance</u>	47
10.4	<u>Failure to Meet Availability</u>	48
10.5	<u>License to Operate Facility</u>	48
10.6	<u>Termination of Duty to Buy</u>	49
10.7	<u>Net Replacement Power Costs</u>	49
10.8	<u>Default Security</u>	49
10.9	<u>Cumulative Remedies</u>	49
SECTION 11 INDEMNIFICATION AND LIABILITY.....		49
11.1	<u>Indemnities</u>	49
11.2	<u>No Dedication</u>	50
11.3	<u>Consequential Damages</u>	50
SECTION 12 INSURANCE.....		50
12.1	<u>Required Policies and Coverages</u>	50
12.2	<u>Certificates and Certified Copies of Policies</u>	50
SECTION 13 FORCE MAJEURE.....		50
13.1	<u>Definition of Force Majeure</u>	50

13.2	<u>Suspension of Performance</u>	51
13.3	<u>Force Majeure Does Not Affect Other Obligations</u>	51
13.4	<u>Right to Terminate</u>	51
SECTION 14 CONFIDENTIALITY		52
14.1	<u>Confidential Business Information</u>	52
14.2	<u>Duty to Maintain Confidentiality</u>	52
14.3	<u>Irreparable Injury; Remedies</u>	52
14.4	<u>News Releases and Publicity</u>	52
SECTION 15 DISAGREEMENTS		52
15.1	<u>Negotiations</u>	52
15.2	<u>Mediation</u>	53
15.3	<u>Choice of Forum</u>	54
15.4	<u>Settlement Discussions</u>	54
15.5	<u>Waiver of Jury Trial</u>	55
15.6	<u>Equitable Remedies</u>	55
SECTION 16 GUARANTEED PERFORMANCE PARAMETERS		55
16.1	<u>Guaranteed Heat Rate</u>	55
16.2	<u>Guaranteed Start-Up Time</u>	55
16.3	<u>Guaranteed Ramp Rate</u>	55
SECTION 17 MISCELLANEOUS		56
17.1	<u>Several Obligations</u>	56
17.2	<u>Choice of Law</u>	56
17.3	<u>Partial Invalidity</u>	56
17.4	<u>Waiver</u>	56
17.5	<u>Governmental Jurisdiction and Authorizations</u>	56
17.6	<u>Restriction on Assignments</u>	56
17.7	<u>Permitted Assignments</u>	56
17.8	<u>Entire Agreement</u>	57
17.9	<u>Amendments</u>	57
17.10	<u>No Third Party Beneficiaries</u>	57
17.11	<u>Agents and Subcontractors</u>	57
17.12	<u>Notices</u>	57
17.13	<u>Mobile-Sierra</u>	58
17.14	<u>Counterparts</u>	58

EXHIBITS:

Exhibit A	Description of Seller's Facility
Exhibit B	Electricity Delivery Point/Electrical Interconnection Facilities
Exhibit C	Required Facility Documents
Exhibit D	Hourly Scalars
Exhibit E	Start-Up Testing
Exhibit F	Variable Energy Payment
Exhibit G	Examples
Exhibit H	Event Types
Exhibit I	Major Equipment and Maintenance Schedule
Exhibit J	Required Insurance
Exhibit K	Operating Procedures
Exhibit L	Availability Notice
Exhibit M	Ambient Facility Capacity Correction Algorithms
Exhibit N	Buyer's Initial Designated Representatives
Exhibit O	Fuel Specifications and Fuel Delivery Point
Exhibit P	Dispatch Procedures
Exhibit Q	Net Energy Specifications and Dispatchable Quantities of Net Energy
Exhibit R	Guaranteed Performance Parameters; Baseload Heat Rates, Peakload Heat Rates and Simple Cycle Heat Rates
Exhibit S	Dispatch Notice
Exhibit T	Credit Matrix [<i>Note to bidders: Credit Matrix attached as Appendix to RFP 2012</i>]
Exhibit U	<u>Form of Lender Consent</u>

THIS WORKING DRAFT DOES NOT CONSTITUTE A BINDING OFFER, SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE, AND IS CONDITIONED UPON SELECTION OF THE BIDDER, EXECUTION, AND EACH PARTY'S RECEIPT OF ALL REQUIRED MANAGEMENT AND BOARD APPROVALS IN THEIR SOLE AND ABSOLUTE DISCRETION (INCLUDING FINAL CREDIT AND LEGAL APPROVALS). ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS WORKING DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS RELATING TO THIS WORKING DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL THIS WORKING DRAFT IS NEGOTIATED, APPROVED BY ALL APPROPRIATE PARTIES AND EXECUTED BY EACH PARTY'S AUTHORIZED SIGNATORY, NO PARTY SHALL HAVE ANY LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS WORKING DRAFT OR IN THE COURSE OF NEGOTIATIONS. ANY ASSERTION TO THE CONTRARY IN ANY PROCEEDING OR ACTION REGARDING THIS WORKING DRAFT SHALL RENDER THIS WORKING DRAFT NULL AND VOID IN ITS ENTIRETY. DURING DISCUSSIONS AND NEGOTIATIONS ANY PARTY MAY CHANGE ITS POSITION ON ANY MATTER, WHETHER OR NOT SET FORTH IN OR BASED UPON THIS WORKING DRAFT, ANY OTHER DOCUMENT OR ANY COURSE OF DEALING, AT ANY TIME OR FOR ANY REASON.

TOLLING AGREEMENT

THIS TOLLING AGREEMENT dated as of [_____], 2007 (this "**Agreement**"), is made and entered into between [_____], a [*describe entity*] ("**Seller**"), and PacifiCorp, an Oregon corporation, acting in its merchant function capacity ("**Buyer**"). Seller and Buyer are referred to collectively as the "**Parties**" and individually as a "**Party**."

RECITALS

A. Seller intends to develop, construct, own, operate and maintain a [Bidder to insert a description of the resource] [*consisting of* [? **MW**] – *Insert further description*] for the generation of electric energy located in [township/range], [_____] County, [*State*], whose initial Facility Capacity shall be [**Insert Capacity**] MW (as more fully described in **Exhibit A**, the "**Facility**").

B. Seller responded to a Request for Proposals – PacifiCorp RFP 2012 which was issued by Buyer in _____ 2006. Buyer's objective in issuing the RFP was to fulfill, through a competitive bid process, a portion of its supply-side resource need as contemplated in Buyer's 2004 Integrated Resource Plan.

C. Buyer's selection of Seller was based upon a competitive bid and was, in part, based upon Seller's representations and warranties, Seller's schedule achieving the Guaranteed Commercial Operation Date (initially capitalized terms not defined in these Recitals are defined in Section 1 below), and the guaranteed performance of the Facility, all as set forth herein. Such matters were a material inducement for the selection of Seller, and Seller's failure to perform in accordance with the terms and conditions or Seller's failure to meet its representations and warranties and schedules for delivery of Net Energy shall cause material damage to Buyer.

D. Seller will make available and sell to Buyer, and Buyer will receive and purchase from Seller, Contract Capacity and Net Energy associated with such Contract Capacity pursuant to the terms and conditions of this Agreement. Seller acknowledges that Buyer will include such Contract Capacity in Buyer's resource planning.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, the Parties agree as follows:

SECTION 1

DEFINITIONS; RULES OF INTERPRETATION

1.1 Defined Terms. Unless otherwise required by the context in which any term appears, defined terms used in this Agreement (as indicated by initial capitalization, except as otherwise provided in this Section 1.1) shall have the following meanings:

“**AAA**” has the meaning set forth in Section 15.2.

“**Affiliate**” means, with respect to any entity, each entity that directly or indirectly, controls or is controlled by or is under common control with such designated entity. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any entity, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities or by contract or otherwise.

“**Alternate Representative**” has the meaning set forth in Section 6.4.2.

“**Ambient Facility Capacity**” means the Contract Capacity determined from the correction algorithms set forth in **Exhibit M**, based upon the Facility Capacity and the ambient conditions in effect in each hour.

“**Ancillary Services**” means those services and energy from time to time now or hereafter available that are necessary to support the Contract Capacity and transmission of energy from resources to loads while maintaining reliable operation of the System in accordance with Prudent Electrical Practices. Such services and energy include regulation reserve, spinning reserve, non-spinning reserve, voltage support, black start Capacity, and reactive power.

“**As-built Supplement**” shall be a supplement to **Exhibit A** that describes the Facility as actually built and shall include all such information as may reasonably be requested by Buyer.

“**Authorized Representative**” has the meaning set forth in Section 6.4.2

“**Availability Notice**” has the meaning set forth in Section 6.5.1.1.

“**Baseload Capacity**” means the Capacity of the Facility achieved when operating at the Reference Conditions with all items of Major Equipment operating at full load, but without duct firing.

“**Baseload Fuel Supply Requirement**” means, with respect to any Day, the product of the applicable Baseload Heat Rate multiplied by the quantity of Net Energy, or equivalent quantity of Ancillary Services, to be delivered from the Baseload Capacity component of the Contract Capacity.

“**Baseload Heat Rate**” has the meaning set forth in Section 6.5.3.8.

“**Business Day**” means any day on which banks in Portland, Oregon 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 Oregon.

“**Btu’s**” means British Thermal Units.

“**Buyer**” has the meaning set forth in the Preamble.

“**CAF_h**” has the meaning set forth in Section 5.1.2.

“**CAF_m**” has the meaning set forth in Section 5.1.2.

“**Capacity**” means the output potential a machine or system can produce under specified conditions as generally expressed in kW or MW.

“**Capacity Payment**” means the Monthly Capacity Payments and the Minimum Monthly Capacity Payments payable in accordance with Section 5.1.

“**Capacity Payment Rate**” means, as of the Commercial Operation Date, \$[?]/kW/month.

“**Capacity Payment Shortfall**” has the meaning set forth in Section 5.1.4.

“**Capacity Rights**” means any current or future defined characteristic, certificate, tag, credit, ancillary service attribute, or accounting construct, including any accounting construct counted towards any current or future resource adequacy or reserve requirements, associated with the Capacity of the Facility or the Facility’s capability and ability to produce energy, but excluding any of the foregoing attributable to any expansion of the Facility occurring after the Commercial Operation Date, unless the output associated therewith is purchased by Buyer.

“**Carry-Over Letter of Credit**” has the meaning set forth in Section 5.1.4.

“**Cash Escrow**” means an escrow account established by Buyer in a commercial bank or trust company organized under the laws of the United States of America or a political subdivision thereof, whose long-term senior unsecured debt is rated at least “A” by S&P or “A2” by Moody’s. Cash deposited to the escrow account shall earn interest at the rate applicable to money market deposits at the banking institution from time to time, and the interest shall be

retained in the escrow account as additional security for Seller's performance under this Agreement.

“**CC**” has the meaning set forth in Section 5.1.2.

“**Collateral**” has the meaning set forth in Section 7.5

“**Combustion Turbine**” or “**CT**” means any one of the combustion turbines comprising the Facility.

“**Commercial Operation Date**” means the date on which the Facility is fully operational, reliable and each condition set forth in Section 2.2.6 is continuously satisfied.

“**Contract Capacity**” means [525] MW of Capacity from the Facility, comprised of [?] MW of Baseload Capacity and [?] MW of Peakload Capacity.

“**Contract Year**” means a twelve (12) month period commencing at 00:00 hours on January 1 and ending on 24:00 hours 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 last Day of the Term.

“**CPR**” has the meaning set forth in Section 5.1.2.

“**CPS**” has the meaning set forth in Section 5.1.2.

“**Credit Matrix**” means the credit matrix attached hereto as **Exhibit T**.

“**Credit Rating**” means, as of any date, the then applicable senior, unsecured, long-term debt or corporate credit rating of a Person published by either Moody's or S&P.

“**Credit Support**” means, prior to the Commercial Operation Date, the amount, subject to Section 7.1, shown as the Project Development Security on the Credit Matrix and, on and after the Commercial Operation Date, the amount (if any) shown on the Credit Matrix as the Default Security.

“**Credit Support Security**” means a guaranty, Letter of Credit or Cash Escrow provided pursuant to Section 7.1.

“**CT Start**” means the process of rotating any of the Facility's Combustion Turbine rotors by means of such Combustion Turbine's starting motor and subsequently introducing and igniting Fuel in the Combustion Turbine's combustor and increasing the rotating speed of the unit's rotor sufficiently that the starting motor can be disengaged, also referred to herein as the Start-Up of a Combustion Turbine.

“**Daily Delay Damages**” for each Day shall be the positive number (and if not a positive number, zero) equal to the sum for all hours of the Day of the product for each hour of the Day of (1) the Dow JonesTM SP15 Firm On-peak Index (or if on a Sunday or a NERC holiday, the 24-hour firm index) for such Day, expressed in \$/MWh, *multiplied by* (2) the applicable hourly

scalar set forth in **Exhibit D** for the hours ending 0700 – 2200 Pacific Prevailing Time, seven (7) days a week, including NERC holidays (each such hour, an “**On-Peak Hour**”) during such Day, *multiplied by* (3) the loss factor of 1.112, *plus* (4) the basis of \$13/MWh for each On-Peak Hour or portion thereof during such Day, *minus* (5) for On-Peak Hours, the market price at the Fuel Delivery Point of the Fuel that would have been required to generate the Net Energy attributable to the Contract Capacity during such On-Peak Hour in such Day using the Guaranteed Heat Rate, *minus* (6) one twenty-fourth of the Capacity Payments that would have been made with respect to such Day, if no Capacity Payments have been paid with respect to such Day. The market price of Fuel at the Fuel Delivery Point will be determined by Buyer using any commercially reasonable method. If the Dow JonesTM SP15 Firm On-peak Index ceases to be published during the Term, Buyer shall select as a replacement electricity price index or component, an index acceptable to Buyer in its discretion that, after any necessary adjustments, provides the most reasonable substitute quotation of the daily price of firm on-peak energy at South of Path 15 for the applicable periods.

“**Day**” means the 24-hour period beginning at midnight Pacific Prevailing Time on a day and ending at midnight Pacific Prevailing Time on the next succeeding day.

“**Dispatch**,” “**Dispatched**,” and “**Dispatching**” means the scheduling and control by the Buyer of Net Energy, through submittal of schedules pursuant to the Dispatch Procedures and other provisions of this Agreement.

“**Dispatch Procedures**” means the procedures under which Buyer is entitled to Dispatch the Facility, as set forth in **Exhibit P**.

“**Dollar**” or “**\$**” means the lawful currency of the United States of America.

“**Effective Date**” has the meaning set forth in Section 2.1.

“**Electrical Interconnection Facilities**” means all the facilities installed by Seller for the purpose of interconnecting the Facility to the Electricity Delivery Point, including electrical transmission lines, upgrades, transformers and associated equipment, substations, relay and switching equipment, and safety equipment, as set forth in **Exhibit B**.

“**Electricity Delivery Point**” means the physical point(s) for Seller’s delivery, and Buyer’s receipt, of Net Energy at which the Facility is connected with the Transmission Provider’s transmission system, as specified in the Interconnection Agreement and in **Exhibit B**. [*Note to Bidders: If energy is to be delivered to a transmission provider other than the Transmission Provider and wheeled to the Electricity Delivery Point, the Electricity Delivery Point will be at a point of interconnection with the Transmission Provider’s transmission system where the resource can be integrated as a Network Resource.*]

“**Electric Metering Equipment**” has the meaning set forth in Section 8.1.

“**Environmental Law**” means any federal, state or local law including statutes, regulations, rulings, orders, administrative interpretations and other governmental restrictions and requirements having the force and effect of law relating to (i) the discharge or disposal of

any substance into the air, soil or water, including pollutants, water pollutants or process waste water, (ii) storage, emissions transportation or disposal of any Regulated Material, (iii) the environment or hazardous substances, all as amended from time to time, (iv) land use requirements pertaining to Regulated Materials, including laws requiring environmental impact studies or other similar evaluations, and (v) environmental issues pertaining to the development, construction, operation or maintenance of the Facility.

“**Event of Default**” has the meaning set forth in Section 10.1.

“**EWG**” means an “exempt wholesale generator,” as defined under the Public Utility Holding Company Act of 1935, as amended from time to time.

“**Example**” means an example set forth in **Exhibit G**. Each Example is for purposes of illustration only and is not intended to constitute a representation, warranty or covenant concerning the matters assumed for purposes of each Example. If there is a conflict between an Example and the text of this Agreement, the text shall control.

“**Excused Outage**” has the meaning set forth in Section 5.1.2.

“**Facility**” shall have the meaning given to that term in **Recital A**.

“**Facility Capacity**” means the maximum Capacity of the Facility, expressed in MW, when operated consistent with the manufacturer’s recommended power factor and operating parameters, as set forth in **Exhibit A**.

“**FERC**” means the Federal Energy Regulatory Commission.

“**FIN 46**” has the meaning set forth in Section 6.13.

“**Force Majeure**” has the meaning set forth in Section 13.1.

“**Forced Outage**” means NERC Event Types U1, U2 and U3, as set forth in **Exhibit H**.

“**Fuel**” means natural gas meeting the specifications set forth in **Exhibit O**.

“**Fuel Delivery Point**” means the point at which Fuel is delivered from [_____] to the Facility, as specified in **Exhibit O**.

“**Fuel Metering Point**” means the delivery point specified in **Exhibit O**.

“**Fuel Supply Requirement**” means, for any Day, the sum, without duplication, of (i) the Start-Up Fuel Quantity for each Start-Up that occurs during such Day and (ii) the Operating Fuel Quantity for such Day.

“**Fuel Transporter**” means the pipeline company selected by Buyer to transport the Fuel to the Facility.

“**Governmental Authority**” means any supranational, federal, state or other political subdivision thereof, having jurisdiction over Seller, Buyer or this Agreement, including any municipality, township and county, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing.

“**Guaranteed Commercial Operation Date**” means *[Bidder to insert]*.

“**Guaranteed Heat Rate**” has the meaning assigned to such term in **Exhibit R**.

“**Guaranteed Ramp Rate**” has the meaning set forth in **Exhibit R**.

“**Guaranteed Start-Up Time**” has the meaning set forth in **Exhibit R**.

“**Heat Rate**” means the number of Btu’s used to produce one MW of energy measured at the Electricity Delivery Point.

“**Interconnection Agreement**” means the agreement to be entered into separately between Seller and Transmission Provider providing for the construction and operation of the Electrical Interconnection Facilities.

“**Lender**” means any individual or entity or successor in interest thereof lending money or extending credit (including any financing lease or credit derivative arrangement) to Seller (i) for the construction, term or permanent financing or refinancing of the Facility; (ii) for working capital or other ordinary business requirements for the Facility (including for the maintenance, repair, replacement or improvement of the Facility); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Facility; or (iv) for the purchase of the Facility and related rights from Seller. As used herein, “Lender” includes a Tax Investor (as defined in the Lender Consent).

“**Lender Consent**” means a Consent to Collateral Assignment in favor of one or more Lenders and in substantially the form of **Exhibit U**.

“**Letter of Credit**” means an irrevocable standby letter of credit in form and substance acceptable to Buyer in its discretion, naming Buyer as the party entitled to demand payment and present draw requests thereunder, which letter of credit:

(1) is issued by a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a net worth of at least \$1,000,000,000 and a Credit Rating of:

(a) “A2” or higher from Moody’s; or

(b) “A” or higher from S&P;

(2) on the terms provided in the letter of credit, permits Buyer to draw up to the face amount thereof for the purpose of paying any and all amounts owing by Seller hereunder;

(3) if a letter of credit is issued by a foreign bank with a U.S. branch, permits Buyer to draw upon a U.S. branch;

(4) permits Buyer 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;

(5) permits Buyer to draw the entire amount available thereunder if such letter of credit is not increased, replaced or replenished as and when provided in Section 7;

(6) is transferable by Buyer to any party to which Buyer may assign this Agreement under Section 17.7; and

(7) shall remain in effect for at least ninety (90) days after the end of the Term.

“Licensed Professional Engineer” means a person acceptable to Buyer in its reasonable judgment who (i) is licensed to practice engineering in the state in which the Facility is located, (ii) has training and experience in the engineering discipline(s) relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion, (iii) has no economic relationship, association, or nexus with Seller, (iv) 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, (v) is engaged by Seller on terms reasonably acceptable to Buyer, (vi) has its fees paid for by Seller, and (vii) is licensed in an appropriate engineering discipline for the required certification being made. The engagement and payment of a Licensed Professional Engineer solely to provide the certifications, evaluations and opinions required by this Agreement shall not constitute a prohibited economic relationship, association or nexus with Seller, so long as such engineer has no other economic relationship, association or nexus with Seller.

“MAAF” has the meaning set forth in Section 5.1.2.

“Maintenance Outage” means NERC Event Type MO, as set forth in **Exhibit H**.

“Major Equipment” has the meaning set forth in **Exhibit I**.

“Major Maintenance Cycle” means, with respect to each item of Major Equipment, the period of time specified therefor in **Exhibit I**.

“Mediation Notice” has the meaning set forth in Section 15.2.1.

“Minimum Monthly Capacity Payment” has the meaning set forth in Section 5.1.3.

“Monthly Capacity Payment” has the meaning set forth in Section 5.1.2.

“Moody’s” shall mean Moody’s Investor Services, Inc.

“MW” means megawatt.

“**MWh**” means megawatt hour.

“**NERC**” means the North American Electric Reliability Council.

“**Net Energy**” means, for any period, the energy output of the Facility delivered to Buyer at the Electricity Delivery Point pursuant to Buyer’s Dispatch of the Facility of a quantity in MWh not to exceed that associated with Contract Capacity, as measured pursuant to Section 8, less station use and less transformation and transmission losses to the Electricity Delivery Point.

“**Network Resource**” means a generation resource which has been fully integrated into the System.

“**Notifying Party**” has the meaning set forth in Section 8.2.

“**Operating Fuel Quantity**” means, with respect to any hour, the sum of (i) any Baseload Fuel Supply Requirements, (ii) any Peakload Fuel Supply Requirement, and (iii) any Simple Cycle Fuel Requirements.

“**Operating Procedures**” are set out in **Exhibit K**.

“**Pacific Prevailing Time**” means Pacific Standard Time or Pacific Daylight Time, as applicable on the Day in question.

“**Party**” has the meaning set forth in the Preamble.

“**Peakload Capacity**” means incremental Capacity, in excess of the Baseload Capacity, which is generated by the Facility utilizing duct firing.

“**Peakload Fuel Supply Requirement**” means with respect to any Day, the product of the applicable Peakload Heat Rate multiplied by the quantity Net Energy, or equivalent quantity of Ancillary Services, to be delivered from the Peakload Capacity component of the Contract Capacity.

“**Peakload Heat Rate**” has the meaning set forth in Section 6.5.3.8.

“**Permits**” means all permits, licenses, approvals, certificates, entitlements and other authorizations issued by Governmental Authorities required for the development, construction, ownership, operation and maintenance of the Facility, and all amendments, modifications, supplements, general conditions and addenda thereto.

“**Person**” means any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or governmental authority.

“**Planned Outage**” means NERC Event Type PO, as set forth on **Exhibit H**.

“**Pledge Interest**” has the meaning set forth in Section 7.2.2.

“**Potential Event of Default**” means an event which, but for the passing of time or the giving of notice or both, would constitute an Event of Default.

“**Premises**” means the real property on which the Facility is or will be located, as more fully described on **Exhibit A**.

“**Prime Rate**” means 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. 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 based on the prime rate is being paid.

“**Protective Apparatus**” means such equipment and apparatus, including protective relays, circuit breakers and the like, necessary or appropriate to isolate the Facility from the System consistent with Prudent Electrical Practices.

“**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 for gas fired, combined cycle electric generation facilities, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, would have been expected to accomplish the desired result in a cost efficient manner consistent with good business practices, reliability criteria, safety considerations and expediency. 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.

“**Reference Conditions**” means the following conditions: standard ambient air pressure at the Premises of [?]; ambient temperature, dry bulb, of [?] degrees Fahrenheit; and relative humidity of [?] percent ([?]%).

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

“**Remaining Capacity**” means all the Capacity of the Facility in excess of the Contract Capacity.

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

“**Reporting Month**” has the meaning set forth in Section 6.9.1.

“**Requested Net Energy**” means, for any period, the Net Energy of the Facility that has been scheduled by Buyer for delivery in accordance with the Dispatch Procedures and other terms of this Agreement.

“**Required Facility Documents**” means all Permits and agreements now or hereafter necessary for the development, construction, ownership, operation and maintenance of the Facility including the documents (i) to which Seller and Buyer are a party evidencing the Security Interests and (ii) those set forth in **Exhibit C**.

“**Requirements of Law**” means collectively, as to Seller and *[if Seller is not the ultimate parent, any ultimate parent entity]*, Seller’s organizational or governing documents and any federal, state, county or municipal, law, treaty, ordinance, franchise, rule, regulation, order, writ, judgment, injunction, decree, award or determination of any arbitrator, or a court or other Governmental Authority, in each case, now or hereafter applicable to or binding upon this Agreement, the Facility, Seller or *[if Seller is not the ultimate parent, any parent entity]* to which any of their respective properties are subject (including those pertaining to electrical, building, zoning, environmental and occupational health and safety).

“**RTO**” means any person, other than Transmission Provider, that becomes responsible as system operator for, or directs the operation of, the System.

“**S&P**” shall mean Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.).

“**Schedule**” or “**Scheduled**” means the acts of Buyer and Seller pursuant to Section 6.5 setting forth a schedule requesting and accepting the delivery of energy by Seller to Buyer on and after the Commercial Operation Date.

“**Scheduling Constraints**” means the limitations of the Facility’s Capacity arising as a result of the need to observe the physical ramp rates of the Major Equipment and maintain minimum run times, minimum down times, minimum dispatch levels of Net Energy and Capacity per CT, and maximum levels of Net Energy and Capacity, to be generated by any item of Major Equipment, in compliance with the warranty requirements relating to each item of Major Equipment, the operating and maintenance standards recommended by the Facility’s equipment suppliers, and Prudent Electrical Practice, as set forth on **Exhibit Q**.

“**Scheduling Fees**” means fees assessed by any person to schedule the delivery of the energy.

“**Security Interests**” has the meaning set forth in Section 7.2.1.

“**Seller**” has the meaning set forth in the Preamble.

“**Senior Lenders**” means the Lenders providing construction financing for the Facility, or any term or permanent take-out financing of such construction financing.

“**Simple Cycle**” means operation of a Combustion Turbine without capturing the waste heat from the Combustion Turbine in the associated heat recovery steam generator and, therefore, without producing additional Net Energy from the steam turbine utilizing steam produced by such heat recovery steam generator. When one or more CTs are operated in Simple Cycle mode, the Facility will produce less Capacity and less Net Energy, while consuming Fuel at a higher heat rate, than when the Facility is operated in combined cycle mode to produce Baseload Capacity. The ramp rates applicable to each CT, as set forth in **Exhibit R**, are faster in Simple Cycle mode than in combined cycle mode.

“**Simple Cycle Fuel Supply Requirement**” means with respect to any Day, the product of the applicable Simple Cycle Heat Rate multiplied by the quantity of Net Energy, or equivalent quantity of Ancillary Services, to be delivered from the Facility while dispatched in Simple Cycle mode.

“**Simple Cycle Heat Rate**” has the meaning set forth in Section 6.5.3.8.

“**Solvency**” or “**Solvent**” has the meaning set forth in Section 3.2.12.

“**Standard Heat Rate**” means the actual Heat Rate of the Facility at varying levels of the Net Energy and varying ambient conditions.

“**Start-Up**” means a firing of one or more of the items constituting Major Equipment when such item or items of Major Equipment is not being operated, including any firing required to perform a CT Start. The period of a Start-Up of any item of Major Equipment begins at the commencement of such firing and ends when such item of Major Equipment obtains and produces on a continuous basis the desired quantity of Net Energy.

“**Start-Up Fuel Quantity**” means, with respect to any Start-Up(s) initiated to supply Net Energy and Ancillary Services to Buyer, the quantity of Fuel actually required by each CT Start.

“**Start-Up Testing**” means the tests set in **Exhibit E**.

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

“**Tariff**” means Buyer’s FERC Electric Tariff Fourth Revised Volume No. 11 Pro Forma Open Access Transmission Tariff, as revised from time to time.

“**Term**” has the meaning set forth in Section 2.1.

“**Transmission Provider**” means [*PacifiCorp, an Oregon corporation, acting in its transmission function capacity.*] [*Note to Bidders: If the Facility is interconnected to another system, identify the appropriate Transmission Provider.*] Seller acknowledges that Buyer, as

Buyer under this Agreement, has no responsibility for or control over such Transmission Provider.

“**Unexcused Outage**” has the meaning set forth in Section 5.1.2.

“**Unplanned Outage**” means NERC Event Type U, as set forth on **Exhibit H**.

“**Variable Energy Payment**” means the payment to be made by Buyer to Seller pursuant to Section 5.3 and as specified in **Exhibit F**.

1.2 Rules of Interpretation.

1.2.1 General. Unless otherwise required by the context in which any term appears, (a) the singular shall include the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” (if any) shall be to articles, sections, schedules, annexes, appendices or exhibits of this Agreement; (c) all references to a particular entity or an electricity market price index shall include a reference to such entity’s or index’s successors and (if applicable) permitted assigns; (d) the words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection hereof; (e) all accounting terms not specifically defined in this Agreement shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied; (f) references to this Agreement shall be deemed to include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; (g) the masculine shall include the feminine and neuter and vice versa; (h) the word “including” shall be construed in its broadest sense to mean “without limitation” or “but not limited to” and (i) the word “or” is not necessarily exclusive.

1.2.2 Terms Not to Be Construed for or Against Either Party. Each term of this Agreement 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 of this Agreement 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 of this Agreement are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement.

1.2.4 Interpretation with Interconnection Agreement. Each Party conducts its operations in a manner intended to comply with FERC Order No. 2004, Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions. Moreover, the Parties acknowledge that Transmission 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 separate Interconnection Agreement.

1.2.4.1 The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free standing contract and that the terms of this Agreement are not binding upon Transmission Provider.

1.2.4.2 Notwithstanding any other provision in this Agreement, nothing in the Interconnection Agreement shall alter or modify the Parties' rights, duties, and obligations under this Agreement. This Agreement shall not be construed to create any rights between Seller and Transmission Provider.

1.2.4.3 Seller expressly recognizes that, for purposes of this Agreement, Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Transmission Provider or an Affiliate thereof.

SECTION 2

TERM; COMMENCEMENT OF OPERATION

2.1 Term. This Agreement shall become effective when it is signed and delivered by both Parties (the "**Effective Date**") and, unless earlier terminated as provided in this Agreement, shall remain in effect until the [?] anniversary of the Commercial Operation Date (the "**Term**").

2.2 Milestones. Time is of the essence of this Agreement, and Seller's ability to meet certain milestones before the Commercial Operation Date and to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date is critically important. Therefore, Seller shall achieve the following milestones unless waived or extended by Buyer in its sole and absolute discretion:

2.2.1 By [date], Seller shall demonstrate to Buyer's reasonable satisfaction that Seller has made all arrangements and obtained all means for transporting Fuel in quantities sufficient to operate the Facility at the Facility Capacity and shall assign all such transportation rights to Buyer for the Term;

2.2.2 By [date], Seller shall obtain and provide to Buyer copies of all Required Facility Documents necessary for construction of the Facility;

2.2.3 By [date], Seller shall provide to Buyer evidence acceptable to Buyer that Seller has obtained construction financing for the Facility (or alternatively permanent financing subject only to construction of the Facility and Seller's execution of the lender's loan documents);

2.2.4 By [date], Seller shall provide Buyer with an As-built Supplement acceptable to Buyer;

2.2.5 By [date], Seller shall begin deliveries of Net Energy for purposes of initiating Start-Up Testing; and

2.2.6 By the Guaranteed Commercial Operation Date, the Commercial Operation Date shall have occurred. This shall require that all of the following conditions shall have been satisfied or waived by Buyer in its sole and absolute discretion:

(1) Buyer shall have received a certificate addressed to Buyer from a Licensed Professional Engineer certifying that the Facility is able to generate energy reliably in amounts required by this Agreement and in accordance with all other terms and conditions of this Agreement;

(2) Start-Up Testing of the Facility shall have been completed;

(3) After Buyer has received notice of the completion of Start-Up Testing, Buyer shall have endorsed a certificate addressed to Buyer from a Licensed Professional Engineer certifying that the Facility has operated for testing purposes under this Agreement uninterrupted for a period of ten (10) consecutive days at a rate of at least the Facility Capacity based upon any sixty (60) minute period for the entire testing period. Seller must provide five (5) Business Days' written notice to Buyer before the start of the Start-Up Testing period. If the operation of the Facility is interrupted during this initial testing period or any subsequent testing period, the Facility shall start a new consecutive ten (10) day testing period and Seller shall provide Buyer forty-eight (48) hour written notice before the start of such testing period;

(4) Buyer shall have received a certificate addressed to Buyer from a Licensed Professional Engineer certifying that, in accordance with the Interconnection Agreement, all required Electrical Interconnection Facilities have been constructed, all required interconnection tests have been completed, the Facility is physically interconnected with the System and the Facility Capacity is a Network Resource;

(5) Buyer shall have received a certificate addressed to Buyer from a Licensed Professional Engineer certifying that Seller has obtained all Required Facility Documents for the construction and operation of the Facility and, if requested by Buyer in writing, Seller shall have provided copies of any or all such requested Required Facility Documents, together with (i) the certificates of insurance coverage or insurance policies required by Section 12.1, and (ii) copies of all Required Facility Documents which Seller is responsible to obtain or are required for the construction and operation of the Facility;

(6) Buyer shall have issued a written certificate to Seller certifying that Buyer has received all Facility drawings, plans, specifications, policies, and other documents required by this Agreement;

(7) Buyer shall have received a certificate addressed to Buyer from Seller's primary construction contractor certifying that the Facility has been turned over to Seller for permanent operation and maintenance and that the primary construction

contractor owes no further construction-related obligations to Seller (other than punch list items); and

(8) Buyer shall have received a certificate addressed to Buyer from an office of Seller and acceptable to Buyer certifying that no Event of Default by Seller or Potential Event of Default by Seller exists under this Agreement.

2.3 Daily Delay Damages. Seller shall cause the Commercial Operation Date to occur on or before the Guaranteed Commercial Operation Date but no earlier than [**? months**] prior to the Guaranteed Commercial Operation Date. If the Commercial Operation Date does not occur on or before the Guaranteed Commercial Operation Date, to compensate Buyer for the failure to provide Contract Capacity from the Facility, Seller shall pay Buyer delay damages equal to the Daily Delay Damages times Contract Capacity for each Day or portion of a Day until that Day that the Commercial Operation Date occurs from and after the Guaranteed Commercial Operation Date. Each Party agrees and acknowledges that (a) the damages that Buyer would incur for the failure to provide energy from the Facility due to delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date would be difficult or impossible to predict with certainty, and (b) the Daily Delay Damages mechanism is an appropriate approximation of such damages. This Section 2.3 shall not limit the amount of damages payable to Buyer if this Agreement is terminated as a result of Seller's failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date and any such damages shall be determined in accordance with Section 10.7. In addition, this Section 2.3 shall not limit the damages payable to Buyer for matters resulting from delay in achieving the Commercial Operation Date other than the failure to provide energy from the Facility.

2.4 Damages Invoicing. By the tenth (10th) day following the end of the calendar month of the Guaranteed Commercial Operation Date, and continuing on the tenth (10th) day following the end of any calendar month during which Daily Delay Damages are incurred, Buyer shall deliver to Seller a proper invoice showing Buyer's computation of such damages and any amount due Buyer in respect thereof for the preceding calendar month. No later than ten (10) days after receiving such an invoice, Seller shall pay to Buyer, by wire transfer of immediately available funds to an account specified in writing by Buyer or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice.

2.5 Buyer's Right to Monitor. During the design, procurement, construction, installation, start up and testing of the Facility, Seller shall permit Buyer and its advisors and consultants to:

(a) Review and discuss with Seller and its advisors and consultants monthly status reports on the progress of the development, design, construction and installation of the Facility. Between the date on which this Agreement is executed and thirty (30) days following the Commercial Operation Date, Seller shall, on or before the tenth (10th) day of each calendar month, provide Buyer with a brief monthly status report for the preceding month.

(b) Monitor the development, design, engineering, procurement, construction and installation of the Facility and the performance of the contractor(s) constructing the Facility.

(c) Review and monitor the contractors' performance and achievement of (i) all initial performance tests and other tests required under the Facility construction contracts that must be performed in order to achieve the Commercial Operation Date and (ii) all tests contemplated by the warranty agreement(s) between the Seller and manufacturer of the Facility's CTs and any other Major Equipment. Buyer reserves the right to require additional performance tests of the Facility's CTs in the event that Seller elects not to have such CTs or other Major Equipment covered by warranty agreements acceptable to Buyer. Seller shall provide Buyer with at least five (5) Business Days' prior notice of each such test.

(d) Witness initial performance tests and other tests and review the results thereof.

(e) Perform such examinations, inspections, and quality surveillance as, in Buyer's reasonable judgment, are appropriate and advisable to determine that all Major Equipment comprising the Facility has been properly commissioned and that the Facility has achieved the Commercial Operation Date.

The Parties acknowledge and agree that Buyer is under no obligation to perform any of the monitoring rights under this Section 2.5. Any information or knowledge obtained by Buyer in the exercise of its rights under this Section 2.5 shall not prevent Buyer from subsequently asserting that Seller failed to perform its obligations under this Agreement or failed to satisfy any of its conditions in Section 2, nor shall the exercise by Buyer of such rights be used as evidence that Seller performed its obligations under this Agreement or satisfied its conditions in Section 2 or that Buyer gave any consent to Seller's action in meeting its obligations under Section 2. Buyer's right to indemnification, payments for damages or other remedy in this Agreement will not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Commercial Operation Date, including with respect to the accuracy or inaccuracy of any representation or warranty, or compliance with any covenant or obligation hereunder. Buyer shall maintain one or more designated representatives for purposes of the monitoring activities contemplated in this Section 2.5, which representatives shall have authority to act for Buyer in all technical matters under this Section 2.5. However, Buyer's representatives, in their capacity as representatives, shall not have the authority to amend or modify any provision of this Agreement. Buyer's initial representatives for purposes of this Section 2.5 and their contact information are listed in **Exhibit N**. Buyer may, by written notice to Seller, change its representatives or the contact information for such representatives.

SECTION 3

REPRESENTATIONS AND WARRANTIES

3.1 Buyer's Representations and Warranties. Buyer represents, covenants, and warrants to Seller that:

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

3.1.2 Authority. Buyer 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 Corporate Actions. Buyer 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 No Contravention. 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 Buyer or any valid order of any court, or any regulatory agency or other body having authority to which Buyer is subject.

3.1.5 Valid and Enforceable Agreement. This Agreement is a valid and legally binding obligation of Buyer, enforceable against Buyer 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's Representations and Warranties. Seller represents, covenants, and warrants to Buyer that:

3.2.1 Organization. Seller is a [*insert legal entity*] duly [*organized*] and validly existing under the laws of [_____].

3.2.2 Authority. Seller (i) has the requisite power and authority to enter into this Agreement and to perform, including all required regulatory authority to make wholesale sales from the Facility; (ii) has the power and authority to own and operate its businesses and properties, to own or lease the property it occupies and to conduct the business in which it currently engaged; and is duly qualified as [____] in Utah; and (iii) is 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.

3.2.3 Actions. Seller has taken all [*insert appropriate legal entity*] actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.2.4 No Contravention. The execution, delivery, performance and observance by Seller of its obligations under this Agreement do not and will not:

3.2.4.1 contravene, conflict with or violate any provision of any material Requirements of Law presently in effect having applicability to either Seller or [*if Seller is not the ultimate parent, Seller's ultimate parent*];

3.2.4.2 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 C** or (ii) required in connection with the construction and/or operation of the Facility and expected to be obtained in due course;

3.2.4.3 result in a breach of or constitute a default under any provision of any security issued by [*ultimate parent of Seller*] or any of its Affiliates or any material agreement, instrument or undertaking to which either [*ultimate parent of Seller*] or any of its Affiliates is a party or by which [*ultimate parent of Seller*]'s or any of its Affiliates' property is bound; or

3.2.4.4 require Seller to be licensed under the Utah Construction Trades Licensing Act.

3.2.5 Valid and Enforceable Agreement. 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 Litigation. No litigation, arbitration, investigation or other proceeding is pending or, to the best of Seller's knowledge, threatened against either Seller, its parent(s), or any Affiliate with respect to this Agreement and the transactions contemplated hereby and thereby.

3.2.7 Accuracy of Information. To the knowledge of Seller, no exhibit, contract, report or document furnished by Seller to Buyer in connection with this Agreement, or the negotiation or execution of this Agreement contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statements contained therein not misleading.

3.2.8 Required Facility Documents. All Required Facility Documents are set forth in **Exhibit C** attached hereto. To Seller's knowledge, no unusual or burdensome conditions are expected by Seller to be placed upon, or created by, any of the Required Facility Documents. The anticipated use of the Facility complies with all applicable restrictive covenants affecting the Premises and all Requirements of Law. The representation made in this Section 3.2.8 shall be deemed to be given throughout the entire Term.

3.2.9 Taxes. Seller has filed or caused to be filed all tax returns which were required to be filed and has paid all taxes shown to be due and payable on said returns or on any assessments made against it or any of its property including the Premises, and all other taxes, fees or other charges imposed on it or any of its property by any Governmental Authority, and no tax liens have been filed and no

claims are being asserted with respect to any such taxes, fees or other charges, except where such taxes, fees or other charges are being contested in good faith by Seller through appropriate proceedings with adequate reserves set aside in the event of an adverse determination.

3.2.10 Seller's Intent. Seller intends:

3.2.10.1 To construct and operate the Facility in accordance with Prudent Electrical Practices, and in accordance with, and subject to the terms of this Agreement;

3.2.10.2 To supply the Contract Capacity and Net Energy of the Facility throughout the Term of this Agreement in accordance with the provisions of this Agreement; and

3.2.10.3 *[if Seller will be a single purpose vehicle, that its sole business shall be the ownership and operation of the Facility.]*

3.2.11 No Collusion. Neither Seller nor any of its representatives has entered into any form of collusive arrangement with any person or entity which directly or indirectly has to any extent lessened competition between Seller and any other person or entity for the supply of Capacity and energy sought by Buyer.

3.2.12 Solvency. Seller, its parent(s) and their Affiliates are Solvent. As used herein, “**Solvent**” and “**Solvency**” means with respect to any person or entity on any date of determination, that on such date (a) the book value of the property of such person or entity is greater than the total amount of book liabilities, including contingent liabilities that are probable and estimable, of such person or entity, (b) such person or entity is able to pay its debts as they become absolute and matured, taking into account the possibility of refinancing such obligations and selling assets, (c) such person or entity does not intend to, and does not believe that it will, incur debts or liabilities beyond such person’s or entity’s ability to pay such debts and liabilities as they mature taking into account the possibility of refinancing such obligations and selling assets and (d) such person or entity is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such person’s or entity’s property would constitute an unreasonably small capital. The amount of contingent liabilities at any time shall be computed as the amount that are probable and estimable in the light of all the facts and circumstances existing at such time, and that can reasonably be expected to become an actual or matured liability.

3.3 Notice. If at any time during the Term, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties made by it in this Section 3 to have been materially untrue or misleading when made, such Party shall provide the other Party with notice in accordance with Section 17.12 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

SALE AND PURCHASE OBLIGATIONS

4.1 Sale and Purchase of Contract Capacity, Capacity Rights, Net Energy and Ancillary Services.

4.1.1 Subject to the terms and conditions of this Agreement, on and after the Commercial Operation Date and for the balance of the Term, Seller shall make available to Buyer from the Facility the Contract Capacity and the Capacity Rights, and all Net Energy and Ancillary Services associated with such Contract Capacity that is Scheduled by Buyer for delivery in accordance with the Dispatch Procedures and Section 6.5.2.

4.1.2 Subject to Section 5.1, Buyer shall purchase the Contract Capacity of the Facility and pay a monthly Capacity Payment to Seller.

4.1.3 Seller shall provide Ancillary Services and Capacity Rights to Buyer without additional charge or expense.

4.1.4 Buyer shall be under no obligation to purchase any Capacity under this Agreement other than Contract Capacity.

4.1.5 For each quantity of Net Energy that Buyer has Scheduled for delivery in any hour from the Facility, Buyer shall deliver the requisite Fuel Supply Requirement to Seller during such hour, comprised of any applicable Startup Fuel Quantity and the applicable Operating Fuel Quantity. As more fully described in Section 6.5.3, the Operating Fuel Quantity shall include: (i) the sum of the Baseload Fuel Supply Requirement for each hour in which Buyer desires to have Seller provide any Scheduled quantity of Net Energy or Ancillary Services utilizing part or all of the Baseload Capacity of Buyer's Contract Capacity, (ii) the sum of the Peakload Fuel Supply Requirements for each hour in which Buyer desires to have Seller provide any Scheduled quantity of Net Energy or Ancillary Services utilizing part or all of the Peakload Capacity of Buyer's Contract Capacity, and (iii) the Simple Cycle Fuel Supply Requirement for each hour in which Buyer desires to have Seller provide any Scheduled quantity of Net Energy or equivalent quantity of Ancillary Services to be delivered from the Facility in Simple Cycle mode utilizing part of Buyer's Contract Capacity.

4.1.6 For each quantity of Ancillary Services that Buyer has Scheduled for delivery in any hour from the Facility that requires Seller to consume Fuel in the Facility, Buyer shall deliver a quantity of Fuel to Seller equal to the Fuel Supply Requirement applicable to an equivalent quantity of Net Energy. Seller and Buyer shall specify in the Operating Procedures the means by which Seller and Buyer

shall determine the precise quantity of the Fuel Supply Requirement applicable to various types of Ancillary Services that Buyer may Schedule from time to time under this Agreement.

4.1.7 In addition to Buyer providing the applicable Fuel Supply Requirement to Seller, Buyer shall also pay the amounts specified in Section 5, and Seller shall then provide to Buyer without additional charge or expense all Net Energy and Ancillary Services that have been Scheduled by Buyer.

4.1.8 Seller shall provide to Buyer from the Facility the Contract Capacity, and associated quantities of Net Energy or Ancillary Services as Scheduled by Buyer in accordance with this Agreement. Subject to Section 4.3, the Contract Capacity, and the Net Energy and Ancillary Services associated with such Contract Capacity, shall be made available exclusively to Buyer and Seller shall be free to sell the Remaining Capacity of the Facility, and the Net Energy and Ancillary Services associated with such Remaining Capacity, to any third party. Subject to Section 6.3.1, Seller shall have absolute discretion over the operation of the Facility to generate the quantities of Capacity, Net Energy and Ancillary Services to be delivered to Buyer in compliance with the provisions of this Agreement. In addition, Seller shall have absolute discretion over the use of the Remaining Capacity in sales to any third party(s).

4.2 Deliveries; Title and Risk of Loss. All Net Energy and Ancillary Services that have been, at Buyer's option, Scheduled by Buyer shall be delivered by Seller to Buyer at the Electricity Delivery Point. Seller shall be deemed to be in exclusive control of, and responsible for any damage or personal injury caused by, Net Energy or Ancillary Services delivered hereunder up to the Electricity Delivery Point; and Buyer shall be deemed to be in exclusive control of, and responsible for any damages or injury caused by, such Net Energy or Ancillary Services from the Electricity Delivery Point. Seller warrants and agrees that it will transfer and deliver Contract Capacity, Capacity Rights, Ancillary Services and Net Energy to Buyer free and clear of all liens or other encumbrances and rights of third parties. Title to and risk of loss of all Net Energy or Ancillary Services shall transfer from Seller to Buyer upon delivery to Buyer at the Electricity Delivery Point. Buyer shall be deemed to be in exclusive control of, and responsible for any damage or personal injury caused by, Fuel delivered hereunder up to the Fuel Delivery Point; and Seller shall be deemed to be in exclusive control of, and responsible for any damages or injury caused by, such Fuel at and from the Fuel Delivery Point. Buyer warrants that it will deliver Fuel to Seller free and clear of all liens or other encumbrances. Title to and risk of loss of all Fuel shall transfer from Buyer to Seller upon delivery to the Fuel Delivery Point.

4.3 Dispatching Deliveries from the Contract Capacity versus the Remaining Capacity.

4.3.1 Seller shall exclusively make available to Buyer the Contract Capacity of the Facility, and Seller shall deliver to Buyer, and Buyer shall receive, the quantities of Net Energy and Ancillary Services that were Scheduled by Buyer from such Contract Capacity in accordance with this Agreement. Seller retains absolute discretion as to which items of the Major Equipment of the Facility are

operated to generate and deliver (i) the quantities of Net Energy and Ancillary Services to be delivered to Buyer from the Contract Capacity and (ii) the quantities of Net Energy and Ancillary Services to be delivered to any third party purchaser from the Remaining Capacity.

4.3.2 During any Excused Outage or Unexcused Outage of the Facility, as defined in Section 5.1.2, which causes a partial outage of the Facility, but not a complete shutdown of the Facility, Buyer's right to the Contract Capacity shall not be affected by any reduction in the Facility Capacity, and to the extent there is a reduction of Facility Capacity, Seller shall make available to Buyer all of such reduced Facility Capacity up to the Contract Capacity. Subject to the foregoing, Seller shall, at all times, have the right to make available for sale to any third party purchasing any of the Remaining Capacity no more than the actual available Capacity of the Facility less the Contract Capacity.

4.3.3 At any time that the Contract Capacity is available, Buyer may elect to Schedule any of the quantities of Net Energy, and equivalent quantities of Ancillary Services, specified in the range of dispatchable quantities of Net Energy on **Exhibit Q** and the quantity of Fuel required to be provided by Buyer with respect to each such Scheduled quantity of Net Energy, or equivalent quantity of Ancillary Services, shall be determined by the Baseload Heat Rates, Peakload Heat Rates, and Simple Cycle Heat Rates, corresponding to such Scheduled quantity of Net Energy, or equivalent quantity of Ancillary Services, as set forth on such **Exhibit Q**.

4.4 Curtailement Due to Failure to Comply with Interconnection Agreement. Buyer shall not be obligated to purchase Contract Capacity or receive or pay for Net Energy to the extent generation or transmission curtailment is required as a result of Seller's non-compliance with the Interconnection Agreement. Nothing in this Section 4.4 shall relieve Seller of its duty to comply with the Interconnection Agreement and Net Energy curtailed as provided under this Section 4.4 shall not be deemed to be an Excused Outage, or credited toward the achievement of Net Energy, as the case may be.

4.5 Sale of Test Energy. During the period between the Effective Date and the Commercial Operation Date, Seller shall sell and make available to Buyer, and Buyer shall purchase and accept, all energy produced by the Facility during such period (the "**Test Energy**") as if it were Net Energy. Seller shall provide the necessary Fuel, and Buyer shall pay Seller the price specified in Section 5.3, for such Test Energy.

SECTION 5

PAYMENTS; COSTS

5.1 Capacity Payments. Commencing on the last day of the month in which the Commercial Operation Date occurs, Buyer shall, subject to Section 5.1.4, pay to Seller in arrears a Capacity Payment equal to the greater of (i) the Monthly Capacity Payment as determined in Section 5.1.2, or (ii) the Minimum Monthly Capacity Payment as determined in Section 5.1.3.

5.1.1 All Capacity Payments shall be billed on a calendar month basis. In the event that Commercial Operation Date does not occur at the start of a calendar month, the first month's Capacity Payment shall be prorated to reflect the actual number of days of Commercial Operation in such month.

5.1.2 Monthly Capacity Payment. The “**Monthly Capacity Payment**” shall be computed based upon the following formula:

Monthly Capacity Payment = $(CC \times 1000 \times CPR \times MAAF) - CPS$, where:

CC = the Contract Capacity;

CPR = Capacity Payment Rate;

CPS = Capacity Payment Shortfall, if any, from any prior month; and

MAAF = Availability Adjustment Factor for that month, computed as follows:

a. If $CAF_m = [\text{Bidder to insert \%}]$, $MAAF = 1$

b. If $CAF_m < [\text{Bidder to insert \%}]$, $MAAF = 1 - 2 \times ([\text{Bidder to insert}] - CAF_m)$

Provided, however, MAAF cannot be less than zero (0).

CAF_m = Average Capacity Availability Factor for a month shall equal the sum of the hourly Capacity Availability Factors (“ CAF_h ”) determined for each hour of such month, divided by the total number of hours in such month; and

CAF_h = $(AD + DD) / AFCE$

Provided, however, CAF_h cannot be more than one (1).

where:

“**AD**” (Actual Deliveries) means, for any hour, the actual quantity of energy generated by the Facility and delivered by Seller to Buyer at the Electricity Delivery Point;

“**DD**” (Deemed Deliveries) means, for any hour, (i) a quantity of energy equal to the amount of energy that could have been generated by that portion of the Ambient Facility Capacity that was set forth in the Availability Notice (a) that was not dispatched by Buyer in such hour, (b) that was not generated and delivered due to a Potential Event of Default or an Event of Default by Buyer, or (c) that was not operated to generate and deliver Net Energy or Ancillary Services to Buyer due to any failure by Buyer, including any failure of Buyer to deliver Fuel to the Facility to the extent Seller's operations are affected by such complete and/or partial failure to

deliver Fuel; (ii) any amount of energy that was not available from the Facility for dispatch and receipt by Buyer, during the relevant hour, due to any outage or derating that meets the requirements for Scheduled Maintenance established in **Exhibit I**; and (iii) any amount of energy that was not available from the Facility for Dispatch and receipt by Buyer, during the relevant hour, due to any Force Majeure event. The unavailability of Capacity for any of the reasons set forth in clauses (i)(c), (ii) or (iii) shall be considered an “**Excused Outage**.” To the extent that the Capacity of the Facility, up to the Contract Capacity, is unavailable to Buyer for any reason other than an Excused Outage shall be considered an “**Unexcused Outage**.”

“**AFCE**” (Ambient Facility Capacity Energy) means the quantity of energy that could be produced from the Ambient Facility Capacity during such hour.

5.1.3 Minimum Monthly Capacity Payment. During any month, the “**Minimum Monthly Capacity Payment**” shall equal the amount determined by the following formula:

Minimum Monthly Capacity Payment = $CC \times 1000 \times CPR \times [?]\%$, where:

CC = the Contract Capacity;

CPR = Capacity Payment Rate; and

% = [?].

5.1.4 Carry-Over Provisions. With respect to any month in which the calculated Monthly Capacity Payment is less than the Minimum Monthly Capacity Payment, the difference between the two payment amounts shall be set forth in a separate account (the amount in such account is referred to herein as the “**Capacity Payment Shortfall**”). The Capacity Payment Shortfall shall be increased by interest at the Prime Rate divided by 365 on the maximum amount of the Capacity Payment Shortfall on that day and shall be recovered by Buyer as a credit against the otherwise applicable Monthly Capacity Payment owed to Seller in any following month and by drawing on the Carry-Over-Letter of Credit as provided below. That portion of any Capacity Payment Shortfall which is not recovered in any month shall be carried over to each subsequent month thereafter until recovered by Buyer in full from Seller. If the Capacity Payment Shortfall exceeds \$[?], then Seller shall provide a Letter of Credit for the benefit of Buyer, in form reasonably acceptable to Buyer, with a face amount equal to the full amount of the Capacity Payment Shortfall amounts (“**Carry-Over Letter of Credit**”). The amount of such Carry-Over Letter of Credit shall be adjusted thereafter, at the end of each month, to equal the then-outstanding Capacity Payment Shortfall. At the end of each Contract Year, Buyer shall be entitled to draw down against the Carry-Over Letter of Credit for the amount the Capacity Payment Shortfall that has not been recovered as of that date.

5.2 Energy Payment. Commencing on the last day of the month in which the Commercial Operation Date occurs, Buyer shall pay to Seller in arrears a Variable Energy Payment as set forth in **Exhibit F** for Net Energy.

5.3 Test Energy. For the period between the Effective Date and the Commercial Operation Date, Seller shall sell and deliver Net Energy to Buyer at the Electricity Delivery Point as Test Energy. Buyer shall pay Seller for Test Energy delivered at the Electricity Delivery Point, an amount per MWh equal to eighty-five percent (85%) of the settled price for the applicable hour in the daily (i) firm on-peak, (ii) firm-off peak or (iii) 24-hour firm (on Sundays and NERC holidays) Dow JonesTM SP15 Electricity Price Index; *provided, however*, that the amount to be paid by Buyer for such Test Energy shall in no event exceed seventy-five percent (75%) of the price per MWh specified on **Exhibit M** for the first Contract Year. If the Dow JonesTM SP15 Electricity Price Index ceases to be published during the Term, Buyer shall select as a replacement electricity price index or component, an index acceptable to Buyer in its discretion that, after any necessary adjustments, provides the most reasonable substitute quotation of the daily price of firm on-peak, firm off-peak or 24-hour firm energy at South of Path 15 for the applicable periods.

5.4 Costs and Charges. Seller shall be responsible for all costs or charges imposed in connection with the delivery of Net Energy at the Electricity Delivery Point, including transmission costs and charges. Without limiting the generality of the foregoing, except to the extent otherwise provided in the Interconnection Agreement, Seller shall bear all costs associated with the modifications to Transmission Provider's interconnection facilities or electric system (including system upgrades) caused by or related to (a) the interconnection of the Facility with Transmission Provider's system, (b) any increase in Capacity of the Facility, and (c) any increase of delivery of energy from the Facility.

5.5 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.

SECTION 6

OPERATION AND CONTROL

6.1 As-Built Supplement. Upon completion of construction of the Facility, Seller shall provide Buyer the As-built Supplement. The As-built Supplement shall be deemed effective and shall be added to **Exhibit A** of this Agreement when it has been reviewed and approved by Buyer. Buyer shall not unreasonably withhold, condition or delay its approval of the As-built Supplement.

6.2 Measurement and Quality of Net Energy. All Net Energy shall be measured at the Electricity Delivery Point and shall meet all requirements in the Interconnection Agreement and the specifications set forth in **Exhibit Q**. Seller shall instruct the Transmission Provider in writing that Buyer is entitled to receive, directly from Transmission Provider, any and all data

associated with the Facility and/or the production of Net Energy that the Transmission Provider has in its possession.

6.3 Standard of Facility Operation

6.3.1 General.

6.3.1.1 At Seller's sole cost and expense, Seller shall operate, maintain and repair the Facility and the Electrical Interconnection Facilities in accordance with (i) the standards, criteria and formal guidelines of FERC, NERC, any RTO, and any successors to the functions thereof; (ii) the Required Facility Documents; (iii) the Interconnection Agreement; (iv) all Requirements of Law; (v) the requirements of this Agreement; and (vi) Prudent Electrical Practice. During the Term, Seller shall be the sole owner of the Electrical Interconnection Facilities. Seller shall defend, indemnify and hold Buyer harmless from and against any requirements to comply with FERC Open Access requirements respecting the Electrical Interconnection Facilities caused by Seller's act or omission. Seller acknowledges that it shall have no claims under this Agreement against Buyer, acting in its merchant function capacity, with respect to any requirements imposed by or damages caused by Buyer, acting in its transmission function capacity, in connection with the Interconnection Agreement or otherwise.

6.3.1.2 Without limiting the generality of Section 6.3.1.1, Seller shall:

6.3.1.2.1 At all times, employ qualified and trained personnel for managing, operating and maintaining the Facility and for coordinating such managing, operating and maintenance with Buyer. Seller shall ensure that prior to or on the first Day Seller delivers energy to the Electricity Delivery Point such qualified and trained personnel are available to Buyer at all times, twenty-four (24) hours per Day during the Term.

6.3.1.2.2 Operate and maintain the Facility with due regard for the safety, security and reliability of the System and Buyer's customers and in compliance with the general specifications contained in **Exhibit I**.

6.3.1.2.3 Comply with operating and maintenance standards recommended by the Facility's equipment suppliers.

6.3.1.2.4 Coordinate the Facility's relaying and protection to conform with Prudent Electrical Practice.

6.3.1.2.5 Furnish and install, at Seller's sole expense, a manually operable disconnecting device that can be locked by Buyer in the open position and visually checked to be in the open position, so as to be able to electrically isolate the Facility from the System. This device(s) shall be installed at a location at or near the Electricity Delivery Point.

6.3.1.2.6 Have the Facility's protective relays calibrated and operationally checked, at least annually by a person qualified to perform such service and provide Buyer with a written confirmation of the calibration.

6.3.1.2.7 Operate the Facility in such a manner so as not to have an adverse effect on Buyer's voltage level or voltage waveform.

6.3.1.2.8 Operate the Facility in a manner and consistent with the Operating Procedures so as to permit Buyer to dispatch individual items of Major Equipment required to generate energy Scheduled by Buyer.

6.3.2 Interconnection. Pursuant to the Interconnection Agreement, Seller shall be responsible for the costs and expenses associated with interconnection of the Facility at its Facility Capacity at the Electricity Delivery Point, including the costs of any System upgrades beyond the Electricity Delivery Point necessary to interconnect the Facility with System and to allow the delivery of energy to the Electricity Delivery Point.

6.3.3 Coordination with System. Pursuant to the Interconnection Agreement, Seller shall be responsible for the coordination and synchronization of the Facility's equipment with the System, and shall be solely responsible for (and shall defend and hold Buyer harmless against) any damage that may occur as a direct result of Seller's improper coordination or synchronization of such equipment with the System.

6.4 Operating Procedures and Compliance.

6.4.1 Without limiting the generality of Section 6.2, during the Term, the Parties shall observe the Operating Procedures.

6.4.2 In the Operating Procedures, each Party has designated an authorized representative (an "**Authorized Representative**") and an alternate representative (an "**Alternate Representative**") to act in the Authorized Representative's absence. A Party's appointment of an Authorized Representative and Alternate Representative shall remain in full force and effect until the Party delivers written notice of substitution to the other Party. The Authorized Representatives and Alternate Representatives shall be managers well-experienced with regard to matters relating to the implementation of the Parties' rights and obligations under this Agreement.

6.4.3 Operational Compliance.

6.4.3.1 Required Facility Documents. Seller shall maintain in full force and effect and available for inspection by Buyer during the Term all Required Facility Documents now or hereafter required.

6.4.3.2 Hazardous Substances. Seller shall operate the Facility in compliance with all Environmental Laws and permits, licenses, rules or orders promulgated, issued or otherwise required by a Governmental Authority having jurisdiction or enforcement power over any Environmental Law and Seller. Seller shall immediately notify Buyer if Seller or any Affiliate of Seller receives or obtains any actual knowledge of or actual notice of any past, present or future actions or plans which may interfere with or prevent compliance or continued compliance with Environmental Laws, affect the construction or operation of the Facility, or may give rise to any material liability under any Environmental Laws or to any common law or legal liability or otherwise form the basis of any claim, action, demand, suit, proceeding, hearing, study or investigation under Environmental Laws.

6.4.4 Taxes. Seller shall pay when due or reimburse Buyer for all existing and any new sales, use, excise, ad valorem, and any other similar taxes, imposed or levied by any Governmental Authority on the sale of Net Energy to Buyer under this Agreement regardless of whether such taxes are payable by Buyer or Seller under Requirements of Law.

6.4.5 Fines and Penalties.

6.4.5.1 Seller shall pay when due, and in no event later than thirty (30) days of assessment, all fines, penalties, or legal costs incurred by Seller or for which Seller is legally responsible for noncompliance by Seller, its agents, employees, contractors or subcontractors, with any provision of this Agreement, any agreement, commitment, obligation or liability incurred in connection with this Agreement or the Facility or any Requirements of Law, except where such fines, penalties or legal costs are being contested in good faith by Seller, its agents or contractors through appropriate proceedings with (i) adequate reserves set aside, or (ii) if requested by Buyer, the posting of adequate security, in the event of an adverse determination.

6.4.5.2 Subject to Section 6.4.4, if fines, penalties, or legal costs are assessed against Buyer by any Governmental Authority due to noncompliance by Seller with any Requirements of Law, or if the performance of Seller is delayed or stopped by order of any Governmental Authority due to Seller's noncompliance with any Requirements of Law, Seller shall indemnify and hold harmless Buyer against any and all losses, liabilities, damages, and claims suffered or incurred by Buyer.

6.4.5.3 Seller shall reimburse Buyer for all fees, damages, or penalties imposed by any Governmental Authority, other person or to other utilities for violations to the extent caused by a Potential Event of Default or an Event of Default by Seller or a failure of performance by Seller under this Agreement.

6.5 Scheduling Procedures.

6.5.1 Availability Notices and Updates.

6.5.1.1 By 5:00 A.M. Pacific Prevailing Time on the Business Day immediately preceding the next three (3) Days on which energy is to be delivered by Seller to Buyer, Seller shall provide Buyer with an hourly forecast of the Capacity of the Facility expected to be available to Buyer, up to the Contract Capacity, and for each hour of the next three (3) Days (as set forth in the form of **Exhibit L**, an “**Availability Notice**”); *provided, however*, that an Availability Notice provided on a Day before any non-Business Day shall include forecasts for each Day to and including the next Business Day. Delivery of an Availability Notice by Seller to Buyer with respect to any item of Major Equipment declared Available shall be deemed a declaration that all Ancillary Services capable of being provided from such Major Equipment are available for the Days for which such Availability Notice shall be effective. Seller shall promptly update Availability Notices any time information becomes available indicating a change in the forecast of generation of energy from the then current forecast; and in any event within 15 minutes of each time it becomes aware of a change (favorable or unfavorable) in the availability, or projected availability, of the Facility or electric transmission capacity, *provided* that such changes to the daily Availability Notices may be delivered by telephone within the fifteen (15) minute initial period and then later confirmed in writing within the hour. To the extent commercially reasonable, the parties shall cooperate to implement and use automatic forecast updates.

6.5.1.2 Availability Notices shall specify any known limitations on the availability of electric transmission capacity made known to Seller that may affect the ability of the Facility to generate and deliver Scheduled Energy to the Electricity Delivery Point. Seller will also provide Buyer with a monthly Availability Notice six Business Days before the commencement of each such month, and a weekly Availability Notice on each Friday for the next week. Availability Notices identifying reductions in availability will include a short description of the nature of the problem, steps taken or being taken to resolve it and Seller’s estimate of the time by which a reduction in availability will be resolved. Availability Notices identifying projected restorations of Capacity availability will specify the time and extent that such restoration is projected to occur, and Seller will issue a further notice after restoration of availability is complete. Without limiting the foregoing, Seller will inform Buyer of any major limitations, restrictions, deratings or outages known to Seller affecting the ability to generate Facility Capacity for the following Day and will promptly update Seller’s notice to the extent of any material changes in this information.

6.5.1.3 Availability Notices will be used by and relied upon by Buyer to establish and adjust electric transmission schedules. If Seller has provided notice to Buyer of a reduction in availability affecting transmission

schedules, then prior to increasing Facility generation for delivery to Buyer as a result of restored availability, Seller will provide Buyer timely notice so as to enable Buyer sufficient time to reestablish its transmission schedules. The failure by Seller to provide revised Availability Notices is not a breach of this Agreement, but rather places Seller at risk for electric imbalance penalties or charges incurred by Buyer due to its lack of notice; *provided, however*, the failure to provide such notices more than [?] times a Contract Year shall constitute the failure to perform a material obligation hereunder that is not capable of being cured.

6.5.2 Dispatch Notice.

6.5.2.1 No later than 5:00 P.M. Pacific Prevailing Time on each Business Day, Buyer shall deliver to Seller a statement (which may be communicated by fax, e-mail or other electronic medium or a recorded telephone line) setting forth the estimated quantity of Net Energy to be Scheduled during each hour of the immediately following Day(s) at the Electricity Delivery Point. These estimates shall not be binding upon Buyer and Buyer may subsequently revise its estimates. The foregoing estimates by Buyer shall not be construed to permit Seller to limit the availability of the Facility such that Buyer is restricted from Dispatching Contract Capacity unless the Facility Capacity is physically unavailable due to Force Majeure, Planned Outage or Unplanned Outage, as the case may be. Buyer's written statement may request the delivery of energy to be Scheduled during any or all hours of any Day.

6.5.2.2 Each Dispatch Notice submitted by Buyer shall specify (i) the quantities of Net Energy or Ancillary Services being Scheduled from the Baseload Capacity component of the Contract Capacity, (ii) the quantities, if any, of Net Energy or Ancillary Services being Scheduled from the Peakload Capacity component of the Contract Capacity, and (iii) the quantities, if any, of Net Energy or Ancillary Services being Scheduled from the Facility in Simple Cycle mode. In order to be included on any Dispatch Notice, each quantity of Net Energy, and each equivalent quantity of Ancillary Services, being Scheduled by Buyer from the Baseload Capacity component of the Contract Capacity, or from the Peakload Capacity component of the Contract Capacity, or in Simple Cycle mode, must be shown as a dispatchable quantity on **Exhibit P**. Any amount not shown on **Exhibit P**, but which falls between listed numbers on **Exhibit P** and is explicitly within the range of allowed dispatch, shall be interpolated from the numbers immediately above and below that amount which are listed on **Exhibit P**, including applicable heat rates. An example of a hypothetical Dispatch Notice is attached hereto as **Exhibit S**.

6.5.2.3 Seller shall be obligated to accept a request for Net Energy that has been provided to Seller in accordance with the requirements of Sections 6.5.2.1 and 6.5.2.2 except to the extent (i) such request exceeds the Contract Capacity or the Scheduling Constraints or (ii) Seller declares that the Facility is

not available as a result of a previously declared Planned Outage, a Forced Outage, or an event of Force Majeure. Seller shall promptly notify Buyer if Seller determines that it will not accept a Schedule submitted by Buyer for any of the foregoing reasons.

6.5.2.4 Buyer shall pay or reimburse Seller for all Scheduling Fees charged by any third parties, if any, associated with the Scheduling of Net Energy or Ancillary Services generated by the Facility for delivery to Buyer hereunder or, if applicable, any fees charged by an independent third party for providing Ancillary Services required to deliver Net Energy or Ancillary Services generated by the Facility to Buyer.

6.5.2.5 From time to time during the Term, Buyer may designate a third party to Schedule quantities of Net Energy on behalf of Buyer in accordance with any Requirements of Law. Buyer may also wish to change the designated entity acting in such capacity from time to time. Accordingly, upon request of Buyer, Seller shall make such arrangements in accordance with the Requirements of Law at Buyer's cost as may be reasonably necessary to facilitate the re-designation of the Person who may Schedule quantities of Net Energy on Buyer's behalf.

6.5.2.6 As shown in the Scheduling Constraints set forth for the Facility in **Exhibit Q**, the ramp rates applicable to the various items of Major Equipment comprising the Facility are faster for the Facility operating in Simple Cycle mode than in combined cycle mode. To the extent that Buyer elects to Schedule the delivery of Net Energy, and any equivalent quantity of Ancillary Services, from the Facility in Simple Cycle mode the Scheduling Constraints applicable to Simple Cycle mode shall be applicable to such Scheduling by Buyer. For any Scheduling by Buyer of Net Energy or Ancillary Services from the Baseload Capacity component or the Peakload Capacity component of the Contract Capacity, the Scheduling Constraints applicable to combined cycle mode shall be applicable to such Scheduling by Buyer.

6.5.2.7 Buyer may Dispatch energy and Ancillary Services on a real time basis, subject to the Operating Procedures. Seller shall be obligated to accept a request for a change to the applicable schedule for energy and Ancillary Services.

6.5.3 Fuel Arrangements.

6.5.3.1 Seller shall be responsible for providing for the construction, operation and maintenance of, at its sole cost and expense, all Fuel delivery, [long term coal contracts] and interconnection facilities, transport or rail specified in **Exhibit N**.

6.5.3.2 Commencing as of the Commercial Operation Date, Buyer shall at all times arrange, procure, supply, nominate, balance and deliver to Seller

at the Fuel Delivery, and Seller will accept from Buyer (except as otherwise excused herein) at the Fuel Delivery Point, all of the Fuel Supply Requirement described herein for the quantity of Net Energy and Ancillary Services that Buyer has Scheduled in accordance with the amounts specified in this Section 6.5.3, less the amounts of such Scheduled Net Energy and Ancillary Services which Seller is not obligated to deliver to Buyer, e.g., due to the unavailability of Capacity. Seller shall notify Buyer from time to time of any expected material deviation of the Standard Heat Rate of the Facility from the Guaranteed Heat Rate so that Buyer is able to nominate its Fuel to match the requirements of the Facility.

6.5.3.3 All Fuel required to be delivered under this Agreement shall be delivered by Buyer to the Fuel Delivery Point at no cost to Seller. Subject to Section 6.5.3.1, Buyer shall have the right to supply Fuel utilizing any or all of the Fuel Delivery Points as specified in **Exhibit N**, and shall have the right to change the quantities nominated and received from each pipeline on a daily basis, or more frequently, to the extent permitted by the Fuel Transporter, railroad etc so long as such changes do not disrupt Seller's operations.

6.5.3.4 On and after the Commercial Operation Date, and subject to Section 6.5.3.6, Buyer shall be responsible for the cost of Fuel and all other costs associated with the supply and transportation of all Fuel necessary to generate the Requested Net Energy as Dispatched pursuant to Section 6.5.2.

6.5.3.5 Seller shall pay for and deliver the Fuel required during Start-Up Testing to reach the minimum load of the Facility.

6.5.3.6 Imbalances associated with Fuel transportation and any balancing penalties or costs resulting from failure to accept delivery of the confirmed quantity of Fuel shall be the responsibility of Buyer. Payment for any balancing penalties or costs shall be in accordance with the procedures of Section 9. [This may be different depending on fuel source]

6.5.3.7 All Fuel to be supplied by Buyer shall be measured at the Fuel Metering Point set forth in **Exhibit N**, and shall meet the specifications set forth in **Exhibit N**.

6.5.3.8 The Fuel Supply Requirement applicable to any hour, which Buyer shall be obligated to deliver to Seller at the Fuel Delivery Points, shall consist of the Operating Fuel Quantity and any applicable Start-Up Fuel Quantity for such hour, which shall be determined as follows:

(i) The Operating Fuel Quantity for any hour may include Baseload Fuel Supply Requirement, Peakload Fuel Supply Requirement, and Simple Cycle Fuel Supply Requirement.

(ii) For each quantity of Net Energy, or equivalent quantity of Ancillary Services, that may be Scheduled by Buyer in such hour from the Baseload Capacity

component of the Contract Capacity, Buyer shall deliver a quantity of Fuel equal to the Baseload Fuel Supply Requirement, which shall be equal to such quantity of Net Energy, or equivalent quantity of Ancillary Services, multiplied by the applicable Baseload Heat Rate. The “**Baseload Heat Rate**” applicable to different quantities of Net Energy, or equivalent quantities of Ancillary Services, that may be Scheduled by Buyer from time to time from the Baseload Capacity component of the Contract Capacity are set forth in **Exhibit R**. Any amount not shown on **Exhibit R**, but which falls between listed numbers on **Exhibit R** and is explicitly within the range of allowed dispatch, shall be interpolated from the numbers immediately above and below that amount which are listed on **Exhibit R**, including applicable heat rates.

(iii) For each quantity of Net Energy, or equivalent quantity of Ancillary Services, that may be Scheduled by Buyer in such hour from the Peakload Capacity component of the Contract Capacity, Buyer shall deliver a quantity of Fuel equal to the Peakload Fuel Supply Requirement, which shall equal such quantity of Net Energy, or equivalent quantity of Ancillary Services, multiplied by the applicable Peakload Heat Rate. The “**Peakload Heat Rate**” applicable to different quantities of Net Energy, or equivalent quantities of Ancillary Services, that may be Scheduled by Buyer from time to time from the Peakload Capacity component of the Contract Capacity are set forth in **Exhibit R**. Any amount not shown on **Exhibit R**, but which falls between listed numbers on **Exhibit R** and is explicitly within the range of allowed dispatch, shall be interpolated from the numbers immediately above and below that amount which are listed on **Exhibit R**, including applicable heat rates.

(iv) For each quantity of Net Energy, or equivalent quantity of Ancillary Services, that may be Scheduled by Buyer in such hour from the Facility in Simple Cycle mode, Buyer shall deliver a quantity of Fuel equal to the Simple Cycle Fuel Supply Requirement, which shall be equal to such quantity of Net Energy, or equivalent quantity of Ancillary Services, multiplied by the applicable Simple Cycle Heat Rate. The “**Simple Cycle Heat Rate**” applicable to different quantities of Net Energy, or equivalent quantities of Ancillary Services, that may be Scheduled by Buyer from time to time from the Facility in the Simple Cycle mode are set forth in **Exhibit R**. Any amount not shown on **Exhibit R**, but which falls between listed numbers on **Exhibit R** and is explicitly within the range of allowed dispatch, shall be interpolated from the numbers immediately above and below that amount which are listed on **Exhibit R**, including applicable heat rates.

6.5.3.9 Each Party shall cooperate reasonably with the other Party to coordinate the supply and transportation of Fuel for the Facility with the operation of the Facility (x) by providing the other Party such information as the first Party shall reasonably request relating to the supply and transportation of the Fuel to the Facility (on both an historical and estimated future basis) and (y) by maintaining personnel available at all times to address scheduling of Fuel supply and transportation.

6.6 Outages.

6.6.1 Planned Outages. No Planned Outage may be scheduled to occur during any portion of the time period commencing on May 15 and concluding on September 15.

6.6.2 Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall notify Buyer of the proposed Maintenance Outage at least five (5) days before the outage begins (or such shorter period to which Buyer may reasonably consent in light of then existing conditions). Upon such notice, the Parties shall plan the Maintenance Outage to mutually accommodate the reasonable requirements of Seller and the service obligations of Buyer; *provided, however*, that, unless Buyer otherwise consents, such consent not to be unreasonably withheld, no Maintenance Outage may be scheduled between the hour ending 0700 through the hour ending 2200, Monday through Saturday, during the time period commencing on May 15 and concluding on September 15. Notice of a proposed Maintenance Outage shall include the expected start date and time of the outage, the amount of Capacity of the Facility that will not be available, and the expected completion date and time of the outage. Seller shall give Buyer notice of the Maintenance Outage as soon as Seller determines that the Maintenance Outage is necessary. Buyer 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. Seller shall notify Buyer of any subsequent changes in Capacity available to Buyer 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 and exercise its best efforts in accordance with Prudent Electrical Practices to minimize the frequency and duration of Maintenance Outages.

6.6.3 Forced Outages. Seller shall promptly provide to Buyer an oral report of any Forced Outage of the Facility. This report shall include the amount of the Capacity of the Facility that will not be available because of the Forced Outage and the expected return date of such Capacity. Seller shall promptly update the report as necessary to advise Buyer of changed circumstances. As soon as practicable, if the Forced Outage resulted in more than five percent (5%) of the Facility Capacity being unavailable, the oral report shall be confirmed in writing. Seller shall take all reasonable measures and exercise its best efforts in accordance with Prudent Electrical Practices to avoid Forced Outages and to minimize their duration.

6.6.4 Notice of Deratings and Outages. Without limiting the foregoing, Seller will inform Buyer of any major limitations, restrictions, deratings or outages known to Seller affecting the Facility for the following day 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 Facility Capacity.

6.7 Schedule Coordination. If, as a result of this Agreement, Buyer is deemed by an RTO to be financially responsible for Seller's performance under the Interconnection Agreement, due to Seller's lack of a "scheduling coordinator" or other RTO recognized standing or otherwise, then (a) Seller shall use commercially reasonable and diligent efforts to acquire such RTO recognized standing such that Buyer is no longer responsible for Seller's performance under the Interconnection Agreement, and (b) Seller shall defend, indemnify and hold Buyer harmless against any liability arising due to Seller's performance or failure to perform under the Interconnection Agreement.

6.8 Electronic Communications.

6.8.1 Telemetry. Seller shall provide telemetry equipment and facilities capable of transmitting the following information concerning the Facility pursuant to the Interconnection Agreement and to Buyer on a real-time basis and will operate such equipment when requested by Buyer to indicate:

6.8.1.1 instantaneous MW output at the Electricity Delivery Point;

6.8.1.2 Net Energy; and

6.8.1.3 Facility Capacity.

Seller shall also transmit to Buyer any other data from the Facility that Seller receives on a real time basis. Seller shall provide such real time data to Buyer on the same basis as the basis on which Seller receives the data (e.g., if Seller receives the data in four second intervals, Buyer shall also receive the data in four second intervals).

6.8.2 Dedicated Communication Circuit. Seller shall install a dedicated direct communication circuit (which may be by common carrier telephone) between Buyer and the control center in the Facility's control room or such other communication equipment as the Parties may agree.

6.9 Reports and Records.

6.9.1 Monthly Reports. Within thirty (30) days after the end of each calendar month during the Term (each, a "**Reporting Month**"), Seller shall provide to Buyer a report in electronic format, which report shall include (a) summaries of the Facility's output data for the Reporting Month in intervals not to exceed one hour (or such shorter period as is reasonably possible with commercially available technology), including information from the Facility's Computer Monitoring System; (b) summaries of any other significant events related to the construction or operation of the Facility for the Reporting Month; and (c) any supporting information that Buyer may from time to time reasonably request (including historical data for the Facility).

6.9.2 Electronic Fault Log. Seller shall maintain an electronic fault log of operations of the Facility during each hour of the Term beginning as of the

Commercial Operation Date. Seller shall provide Buyer 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.

6.93 Other Information to Be Provided to Buyer. Seller shall provide to Buyer the following information concerning the Facility:

6.9.3.1 Upon the request of Buyer, the manufacturers' guidelines and recommendations for maintenance of the Facility equipment;

6.9.3.2 A detailed report summarizing the results of maintenance performed during each Planned Outage and any Forced Outage, and upon request of Buyer any of the technical data obtained in connection with such maintenance; and

6.9.3.3 A detailed report describing the facts, circumstances and events that caused and arose out of, or related to, any Forced Outage, failed Start-Up or other item of Major Equipment being taken off-line or tripping for any reason other than in connection with a Planned Outage.

6.9.4 Information to Any Governmental Authority. Seller shall, promptly upon written request from Buyer, provide Buyer with all data which is collected by Seller related to the Facility reasonably required for reports to and information requests from any Governmental Authority. Along with said information, Seller shall provide to Buyer copies of all submittals to any Governmental Authority directed by Buyer 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 Buyer soon enough so that Buyer has time to review such information and meet any submission deadlines imposed by the requesting organization or entity. After the sending or filing any statement, application, and report or any document with any Governmental Authority relating to operation and maintenance of the Facility, Seller shall promptly provide to Buyer with a copy of the same.

6.9.5 Information to Any Intervenor. Seller shall, promptly upon written request from Buyer, provide Buyer with data reasonably required for information requests from any state or federal agency intervenor or any other party achieving intervenor status in any Buyer rate proceeding or other proceeding before any Governmental Authority. Seller shall use best efforts to provide this information to Buyer soon enough so that Buyer has time to review such information and meet any submission deadlines imposed by the requesting organization or entity.

6.9.6 Environmental Information. Seller shall, promptly upon written request from Buyer, provide Buyer with all data reasonably requested by Buyer relating to environmental information under the Required Facility Documents.

6.9.7 Information Relating to Facility Performance. Seller shall provide Buyer monthly operational reports in a form and substance acceptable to Buyer and Seller shall, promptly upon written request from Buyer, provide Buyer with all operational data requested by Buyer with respect to the performance of the Facility and delivery of energy therefrom.

6.9.8 Audited Financial Statements. Seller shall provide Buyer within ninety (90) days after the end of each calendar year, its audited financial statements together with the audited financial statements of any guarantor providing Credit Support, in each case prepared in accordance with generally accepted accounting principles by an accounting firm of nationally recognized standing in the electric power industry reasonably acceptable to Buyer.

6.9.9 Notice of Default. Seller shall promptly notify Buyer of receipt of written notice or actual knowledge 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 in this Agreement.

6.9.10 Notice of Litigation. Following its receipt of written notice or actual knowledge of the commencement of any action, suit, and proceeding before any court or Governmental Authority which would, if adversely determined, adversely affect Seller, the Premises or the Facility, Seller shall promptly give notice to Buyer of the same.

6.9.11 Additional Information. Seller shall provide to Buyer such other information respecting the condition or operations of Seller and the Facility as Buyer may, from time to time, reasonably request.

6.10 Access Rights. Upon reasonable prior notice and subject to the safety rules and regulations of Seller, Seller shall provide Buyer and its authorized agents, employees and inspectors with reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment, (b) as necessary to witness any required Capacity tests necessary to determine the amount of Capacity associated with the Facility, (c) in connection with the operation and maintenance of the Electrical Interconnection Facilities for the Facility, (d) to provide tours of the Facility to customers and other guests of Buyer (not more than twelve (12) times per year), (e) for purposes of implementing Section 9.5, and (f) for other reasonable purposes at the reasonable request of Buyer.

6.11 EWG. Seller shall provide Buyer with copies of Seller's applications to FERC for EWG status and for authority to sell energy under this Agreement within ten (10) days of filing such application(s). During the Term, Seller shall either (i) maintain its EWG status and its authority to sell power under this Agreement or (ii) otherwise cause Seller to be exempt from federal and state regulations as an electric utility.

6.12 Facility Images. Buyer shall be free to use any and all images from or of the Facility for promotional purposes. Upon Buyer's request and at Buyer's expense, Seller shall install equipment as Buyer may request, including without limitation video and or web-based imaging equipment. Buyer shall use its discretion with respect to how images from or of the Facility are presented by Buyer, including without limitation associating images of the Facility with Buyer's corporate logo but not the corporate logo of Seller.

6.13 Financial and Accounting Information. If Buyer or one of its Affiliates determines that, under the Financial Accounting Standards Board's revised Interpretation No. 46, Consolidation of Variable Interest Entities ("FIN 46"), it may hold a variable interest in Seller, but it lacks the information necessary to make a definitive conclusion, Seller hereby agrees to provide sufficient financial and ownership information so that Buyer or its Affiliate may confirm whether a variable interest does exist under FIN 46. If Buyer or one of its affiliates determines that, under FIN 46, it holds a variable interest in Seller, Seller hereby agrees to provide sufficient financial and other information to Buyer or its Affiliate so that Buyer may properly consolidate the entity in which it holds the variable interest and/or present the disclosures required by FIN 46.

SECTION 7

SECURITY AND CREDIT SUPPORT

7.1 Credit Support. If at any time during the Term, Seller maintains a Credit Rating of (1) "Aa2" or higher by Moody's and (2) "AA" or higher by S&P, then Seller will not be required to post any Credit Support Security. If Seller does not meet the Credit Rating requirements of (1) and (2) in the preceding sentence, it may have to post Credit Support Security in the amounts outlined on the Credit Matrix based upon its' Credit Rating or that of the entity providing a guaranty as Credit Support Security on behalf of the Seller, and the size of the project. If Seller has a published Credit Rating from each of S&P and Moody's, the lower rating will be used to determine the level of Credit Support in the Credit Matrix. If Seller, or the entity providing a guaranty as Credit Support Security on behalf of the Seller, has no published Credit Rating, an equivalent Credit Rating will be determined by Buyer through the application of Buyer's proprietary credit scoring model developed in conjunction with S&P, and the amount of Credit Support for Seller (as shown on the Credit Matrix) will be based upon this equivalent Credit Rating. If the required Credit Support is greater than zero dollars (\$0.00), upon the request of Buyer, Seller shall within five (5) Business Days provide one of the following in the amount of the Credit Support: (x) a guaranty, in form and substance acceptable to Buyer in its sole discretion from a Person acceptable to Buyer in its sole discretion, (y) a Letter of Credit, or (z) a Cash Escrow. ***[IE has requested language to the effect of:*** Buyer shall be required to post Credit Support Security in the amount of ___% of the Credit Support if the same is required at any time before the milestone set forth in Section 2.2.3 has been met; and after such milestone has been met, Buyer shall be required to post Credit Support Security in the amount of 100% of the required Credit Support./

7.2 Subordinated Security Interests.

7.2.1 Security Interests. Concurrently with the execution of this Agreement and simultaneously with the acquisition by Seller after the Effective Date of any real property in connection with the Facility (including land and water or rights thereto), Seller shall execute, file and record such agreements, documents, instruments, deeds of trust and other writings as Buyer may request, all in form and substance satisfactory to Buyer, to give Buyer a perfected security interest in and lien on the Facility, the Premises and all other assets necessary or in Buyer's opinion desirable for the development, construction, ownership, operation or maintenance of the Facility as security for Seller's performance and any amounts owed by Seller to Buyer pursuant to this Agreement (collectively the "**Security Interests**"). The Security Interests shall be subordinate in right of payment, priority and remedies only to the interests of the financiers for the Facility contemplated by Section 2.2.3 and approved by Buyer.

7.2.2 Pledge of Ownership Interests. [*Note to bidders: This section is applicable only if Seller is a special purpose entity.*] Concurrently with the execution of this Agreement, Seller's equity holders shall execute and file such agreements, documents, instruments, and other writings as Buyer may request, all in form and substance satisfactory to Buyer, to give Buyer a perfected security interest in and lien on all ownership interests in Seller as security for Seller's performance and any amounts owed by Seller to Buyer pursuant to this Agreement (the "**Pledge Interest**"). The Pledge Interest shall be subordinate in right of payment, priority and remedies only to the interests of the financiers for the Facility contemplated by Section 2.2.3 and approved by Buyer.

7.2.3 Maintenance of Security Interests. Seller shall execute and file and record (or cause to be executed and filed and recorded) such Uniform Commercial Code financing statements and deeds of trust and shall take such further action and execute such further instruments and other writings as shall be required by Buyer to confirm and continue the validity, priority, and perfection of the Security Interests [and the Pledge Interest]. The granting of the Security Interests [and the Pledge Interest] shall not be to the exclusion of, nor be construed to limit the amount of any further claims, causes of action or other rights accruing to Buyer by reason of any breach or default by Seller under this Agreement or the termination of this Agreement prior to the expiration of the Term.

7.2.4 Transfer of Required Facility Documents. The Security Interests shall provide that if Buyer acts to obtain title to the Facility pursuant to the interests provided by Seller pursuant to Section 7.2.1, Seller shall take all steps necessary to transfer all Required Facility Documents necessary to operate the Facility to Buyer, and shall diligently prosecute and cooperate in such transfers.

7.3 Quarterly Financial Statements. If requested by Buyer, Seller shall within thirty (30) days provide Buyer with copies of its most recent quarterly financial statements, together with the audited financial statements of any guarantor providing Credit Support, in each case prepared in accordance with generally accepted accounting principles.

7.4 Security is Not a Limit on Seller's Liability. The Credit Support and Security Interests contemplated by this Section 7: (a) constitutes security for, but is not a limitation of, Seller's obligations under this Agreement, and (b) shall not be Buyer's exclusive remedy for Seller's failure to perform in accordance with this Agreement. To the extent that Buyer draws on the Credit Support, Seller shall within five (5) Business Days reinstate the security to the full amount required by this Section 7.

7.5 Escrow Account. With respect to any Cash Escrow established pursuant to this Section 7 as Credit Support, Seller hereby grants Buyer a security interest in the escrow account and all moneys and other amounts in the account to secure payment and performance of Seller's obligations under this Agreement. Buyer shall have, and Seller agrees to take all further action required or reasonably requested by Buyer to ensure that Buyer has, all rights of a secured party under Article 9 of the Uniform Commercial Code and applicable law with respect to the escrow account and all moneys and other amounts in the escrow account. The escrow agreement shall be in form and substance acceptable to Buyer in its discretion and shall contain the following language: "Escrow Agent acknowledges that Seller has granted Buyer a security interest in the amounts held by Escrow Agent in the [*describe escrow accounts and all moneys and other amounts in the account*] (collectively, the "**Collateral**"). Escrow Agent acknowledges that it (a) has received and holds possession of the Collateral for the benefit of Buyer and not as the agent of or on behalf of Seller and (b) shall continue to hold possession of the Collateral for Buyer's benefit until Escrow Agent receives notice in an authenticated record from Buyer that Buyer's security interest in the Collateral has been terminated. Escrow Agent acknowledges that it has no rights in and to the Collateral other than its right to receive payment of its fees and expenses pursuant to the Escrow Agreement."

7.6 Senior Lender Protective Provisions. PacifiCorp agrees to enter into a consent to collateral assignment in substantially the form of the Lender Consent for the benefit of the Senior Lenders, and to reasonably cooperate with the reasonable requests of such Senior Lenders in conjunction with any financing of the Facility; *provided, however*, that except as provided in the form of the Lender Consent, in no event shall PacifiCorp be required to agree to any modification hereof; and provided further, however, that if and to the extent any Lenders request (a) changes to the form of the Lender Consent (or otherwise attempt to negotiate the form of consent), (b) any additional documents or assurances, or (c) any legal opinion from PacifiCorp with regard hereto, then Seller shall reimburse PacifiCorp for its reasonable out-of-pocket costs in making any such changes or providing any such additional documents or legal opinion, with such costs to be paid to PacifiCorp at the closing of the financing as a condition to the effectiveness of PacifiCorp's consents, documents and opinions.

SECTION 8

METERING

8.1 Net Energy. Meter equipment shall be installed, owned, operated, maintained and tested in accordance with the terms of the Interconnection Agreement and shall automatically account for line losses between such meter equipment and the Electricity Delivery Point (collectively, the "**Electric Metering Equipment**"). The Electric Metering Equipment shall be

capable of metering Net Energy delivered at the Electricity Delivery Point on a continuous real time basis.

8.1.1 Seller Electric Metering. Seller shall be responsible for the maintenance, testing and calibration of the Electric Metering Equipment and the maintenance and testing of the electrical facilities and Protective Apparatus, including any transmission equipment and related facilities, necessary to interconnect the Facility at the Electricity Delivery Point. Such installation shall be completed, and the delivery of such data shall be commenced, as promptly as possible but in no event later than one month prior to the commencement of Net Energy deliveries. Seller shall bear all costs and expenses of installing, maintaining and testing all Electric Metering Equipment.

8.1.2 Fuel Meters. Fuel delivered by Buyer to Seller shall be metered at the Fuel Delivery Point by the meters owned by the respective interstate pipelines delivering such Fuel to each of the Fuel delivery points identified in **Exhibit O** (the “**Fuel Metering Point(s)**”).

8.1.3 Check Meters. Buyer may at its option and expense install and operate one or more check meters to check Seller’s meters. Such check meters shall be for check purposes and shall not be used in the measurement of Net Energy or Ancillary Services for the purposes of this Agreement. The check meters shall be subject at all reasonable times to inspection and examination by the Seller or its designee. The installation and operation thereof shall, however, be done entirely by Buyer at no cost or expense to Seller. The Seller shall grant to Buyer, at no cost or expense, the right to install such check meters at the Electricity Delivery Point and the right to access such check meters at reasonable times as requested by Buyer if such check meters are located on the Premises.

8.1.4 Change in Measurement Method. If, at any time during the Term a new method or technique is developed with respect to electricity measurement, or the determination of the factors used in electricity measurement, such new method or technique may be substituted for the method set forth in this Section 8.1 when in the opinion of the Parties, employing such new method or technique is advisable, and they so agree in writing.

8.1.5 Industry Standards. All Electric Metering Equipment, whether owned by the Seller or by a third party, shall be operated, maintained and tested by and/or on behalf of the Seller in accordance with Prudent Electrical Practices.

8.1.6 Access. Each Party shall have the right to receive reasonable advance notice with respect to, and to be present at the time of, any installing, cleaning, changing, repairing, inspecting, testing, calibrating or adjusting of Electric Metering Equipment. The records from such Electric Metering Equipment shall be the property of the Seller, but upon reasonable advance notice, the Seller shall make available to Buyer all data, records and charts relating to the Electric Metering Equipment, together with calculations therefrom, for inspection and verification.

8.1.7 Installations. Any installations of Electric Metering Equipment required pursuant to this Agreement shall be scheduled by the Seller; provided, however, that no installation which shall or could affect deliveries of Net Energy shall be made without the prior written consent of Buyer, which shall not be unreasonably withheld. Any installations of check meters by Buyer shall be scheduled by Buyer; provided, however that the installation shall not unreasonably interfere with the operation and maintenance of the Facility by the Seller.

8.1.8 Estimates. During the period after the Effective Date and prior to the installation and commencement of operation of the meters contemplated by this Section 8.1.8, the Net Energy generated and delivered shall be estimated in good faith by the Seller and the Parties shall prepare and submit invoices on the basis of such estimates. Any such invoice shall be adjusted retroactively based on the performance of the Facility during the three month period immediately following the installation of such meters.

8.1.9 Inspection. Seller, at its sole cost and expense, shall inspect and calibrate, or cause to be inspected and calibrated, all Electric Metering Equipment periodically, but not less frequently than annually. When any test, in the case of Electric Metering Equipment, shall show a measurement error of more than one-quarter percent (1/4%), correction shall be made for the period during which the measurement instruments were in error, first, by using the registration of Buyer's check meter, if installed and registering accurately; if no check meter is installed and registering accurately, or if the period cannot be ascertained, correction shall be made for one-half (1/2) of the period elapsed since the last date of test; and the measuring instrument shall be adjusted immediately to measure accurately.

8.2 Records. The Parties shall, for five (5) years or such longer period as may be required by the applicable Governmental Authority, each keep and maintain accurate and detailed records relating to the Facility's hourly deliveries of Net Energy and Fuel consumption. Such records shall be made available for inspection by either Party or any Governmental Authority having jurisdiction with respect thereto during normal business hours upon reasonable notice. If either Party (the "**Notifying Party**") shall propose to discard any records theretofore required to be retained by this Section 8.2, it shall give notice to the other Party thereof and the other Party may within thirty (30) days elect to take possession of such records by notice to the Notifying Party, and in such case the Notifying Party shall promptly, and in any event, no later than five (5) days following receipt of such notice, deliver such records to the other Party at its expense. If the Party receiving a Notice pursuant to this Section 8.2 shall not respond within such thirty (30) days, the Notifying Party may discard such records without any further obligation hereunder. Upon written request by Buyer, Seller promptly shall request that the Transmission Provider provide in writing any and all meter or other data associated with the Facility and Net Energy directly to Buyer. Notwithstanding any other provision of this Agreement, Buyer shall have the right to provide such meter data to any RTO or generation tracking service.

8.3 Adjustment to Loss Factors. If Buyer or Seller has a reasonable basis for concluding that the Electric Metering Equipment is not accurately measuring losses between the Electric Metering Equipment and the Electricity Delivery Point, it may propose an adjustment to the Electric Metering Equipment by notice to the other Party. Such an adjustment shall be prospective only. The notice will include information explaining in reasonable detail why the loss factor appears to be incorrect. The other Party shall have thirty (30) days in which to approve or disapprove of the proposed adjustment, which approval may not be unreasonably withheld, conditioned or delayed. A proposed loss factor adjustment that is not disapproved by notice to Seller given within the thirty (30) day period shall be deemed approved. The Parties shall cooperate in causing PacifiCorp Transmission to make an appropriate adjustment to the Electric Metering Equipment pursuant to the Interconnection Agreement.

SECTION 9

BILLINGS, COMPUTATIONS AND PAYMENTS

9.1 Monthly Invoices. On or before the tenth (10th) day following the end of each month, Seller shall deliver to Buyer a proper invoice showing Seller's computation of the Variable Energy Payment, MAAF and the Capacity Payment for such month. If such invoice is delivered by Seller to Buyer, Buyer shall send to Seller payment for Seller's deliveries in respect thereof on or before the thirtieth (30th) day following the end of each month.

9.2 Offsets. Buyer may offset any payment due under this Agreement against amounts owing from Seller to Buyer pursuant to this Agreement, any other agreement between the Parties or otherwise.

9.3 Interest on Late Payments. Any amounts that are not paid when due under this Agreement shall bear interest at the Prime Rate plus two hundred (200) basis points from the date due until paid; provided, however, that this interest rate shall at no time exceed the maximum rate allowed by applicable law.

9.4 Disputed Amounts. If either Party, in good faith, disputes any amount due pursuant to an invoice rendered or written demand made under this Agreement, 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) days of such determination or resolution, along with interest accrued at the rate determined under Section 9.3 from the date due until the date paid.

9.5 Audit Rights. Buyer, through its authorized representatives, shall have the right, at its sole expense and during normal business hours, to examine and copy the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made hereunder or to verify the Seller's performance of its obligations hereunder. Upon request, Seller shall provide to Buyer statements evidencing the quantities of energy delivered at the Electricity Delivery Point. 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 calculated at the rate determined under Section 9.3 from the date of the overpayment or underpayment to the date of receipt of the reconciling payment. Notwithstanding the above, no adjustment shall be made with respect to any statement or payment hereunder unless Buyer questions the accuracy of such payment or statement within two (2) years after the date of such statement or payment.

SECTION 10

DEFAULTS AND REMEDIES

10.1 Defaults. The following events are defaults (each, an “**Event of Default**”) under this Agreement:

10.1.1 Events of Default by Either Party.

10.1.1.1 A Party’s failure to make a payment when due under this Agreement if the failure is not cured within ten (10) days after the non-defaulting Party gives the defaulting Party a notice of the default, except as provided in Section 9.4.

10.1.1.2 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.

10.1.1.3 A Party’s breach of a representation or warranty made by that Party in this Agreement if the breach is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party a notice of the default.

10.1.1.4 A Party otherwise fails to perform any material obligation imposed upon that Party by this Agreement 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 thirty (30) day period shall be extended by an additional sixty (60) 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 sixty (60) 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.

10.1.2 Events of Default by Seller.

10.1.2.1 Seller’s failure to post or increase the Carry-Over Letter of Credit within ten (10) Business Days after the end of each month as may be required under Section 5.1.4.

10.1.2.2 Seller's failure to cause the Facility to achieve (a) an average of the applicable CAF_{ms} of at least [?%] in any three (3) consecutive quarters in a Contract Year or (b) achieve an average of the applicable CAF_{ms} of at least [?%] in three (3) out of any five (5) consecutive Contract Years.

10.1.2.3 Seller's failure to post and maintain Credit Support as required by Section 7 if the failure is not cured within five (5) days after Buyer gives Seller a notice of the default.

10.1.2.4 Seller's failure to achieve a milestone by the date set forth for the achievement of that milestone in Section 2.2 (other than the failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date) if the failure is not cured within thirty (30) days after Buyer gives Seller a notice of the default.

10.1.2.5 Seller's failure to cause the Facility to achieve the Commercial Operation Date on or before [] days following the Guaranteed Commercial Operation Date. ***[note to bidders: insert number of days; this will be a material component of the evaluation of your bid; the nature of the resource will be considered. The lowest feasible numeral is encouraged.]***

10.1.2.6 Seller's failure to cure any default under any Required Facility Documents (including the Interconnection Agreement) within the time allowed for a cure under such agreement or instrument.

10.1.2.7 Seller's sale of energy from the Facility to a Party other than Buyer in breach of this Agreement if Seller does not permanently cease such sale and compensate Buyer for the damages arising from the breach within ten (10) days after Buyer gives Seller a notice of default.

10.1.2.8 The Facility is unavailable to provide energy for ninety (90) consecutive days or one hundred twenty (120) non-consecutive days in any three hundred sixty-five (365) day period commencing on the Commercial Operation Date and prior to end of the Term.

10.2 Termination and Remedies.

10.2.1 Upon the occurrence of, and during the continuation 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 ten (10) days before such termination date. Further, during the continuation of an Event of Default by Seller, and until it has recovered all damages incurred on account of such Event of Default by Seller, without exercising its termination right, Buyer may offset its damages against any payment due Seller.

10.2.2 In the event of a termination of this Agreement:

10.2.2.1 The Parties' respective obligations under this Agreement shall terminate (other than those obligations which expressly are to be performed after termination).

10.2.2.2 Each Party shall pay to the other all amounts due the other under this Agreement for all periods prior to termination subject to offset by the non-defaulting Party against damages incurred by such Party.

10.2.2.3 The amounts due pursuant to Section 10.2.2.2 shall be paid within thirty (30) days of the billing date for such charges plus interest thereon at the Prime Rate from the date of termination until the date paid.

10.2.2.4 The provisions of Sections 6.4.4, 6.9.4, 6.9.5, 8.2, 9.3, 9.4, 9.5, 10.7, 10.9, 11 and 14 shall survive the termination of this Agreement.

10.3 Specific Performance. Buyer shall be entitled to seek and obtain a decree compelling specific performance or granting injunctive relief with respect to, and shall be entitled, without the necessity of filing any bond, to enjoin any actual or threatened breach of any material obligation of Seller under this Agreement. Seller agrees that in view of the nature of the bid procedure that caused Seller to be selected, and the importance of the Facility and the Buyer's requirement for Capacity and energy, specific performance (including temporary and preliminary relief) and injunctive and other equitable relief, including access to all records of Seller, are proper in the event of any actual or threatened breach of any material obligation by Seller under this Agreement, and that any liability limits contained in this Agreement shall not operate to limit the exercise of Buyer's remedies in equity to cause Seller to perform its obligations under this Agreement. In any action for specific performance or injunctive relief or other equitable relief, all expenses incurred by the prevailing party in such proceeding, including reasonable counsel fees, shall be awarded to the prevailing party in such proceeding. Seller agrees that it will not assert as a defense to Buyer's action for specific performance of, or injunctive relief or other equitable relief relating to, Seller's obligations hereunder that the amounts payable or paid by Seller in respect of liquidated damages or actual damage constitute an adequate remedy for the breach of such obligation, and Seller hereby conclusively waives such defense.

10.4 Failure to Meet Availability. If an Event of Default by Seller described in Section 10.1.2.2 shall occur, Buyer shall have the right to enter the Facility and do all such things as Buyer may consider necessary or desirable to remedy such situation or to improve the availability of the Contract Capacity, including making any repairs to the Major Equipment or the Facility. Seller shall reimburse Buyer for and shall indemnify and hold harmless Buyer from and against all losses, costs, charges and expenses incurred by Buyer in connection with exercise of its rights under this Section 10.4 other than due to the gross negligence or willful misconduct of Buyer. In connection with the exercise of the rights under this Section 10.4, Buyer shall have the right to recoup and set off all such losses, costs, charges and expenses against amounts otherwise owed by Buyer under this Agreement.

10.5 License to Operate Facility. During the occurrence and continuance of an Event of Default by Seller, Seller hereby irrevocably grants to Buyer the right, license, and authority to enter the Premises, operate the Facility, and to perform Seller's obligations under this Agreement for the Term of this Agreement. Notwithstanding the license granted to Buyer in this Section 10.5, so long as no Event of Default by Seller which would entitle Buyer to terminate this Agreement has occurred and is continuing, Buyer agrees that Seller may operate the Facility and provide the energy and Capacity in accordance with its obligations under this Agreement. Upon the occurrence of an Event of Default and the expiration of all applicable opportunities to cure, Buyer may, but shall not be obligated to, exercise its rights as licensee under this Section 10.5 in lieu of termination. Buyer's right to operate the Facility pursuant to the license granted in this Section 10.5 shall be effective for a period not to exceed 365 days from the date Buyer first exercises its license rights. During any period in which Buyer is operating the Facility pursuant to the license granted in this Section 10.5, Seller shall, upon request from Buyer, reimburse Buyer for all reasonable costs and expenses incurred by Buyer to operate and maintain the Facility. In connection with the exercise of the rights under this Section 10.5, Buyer shall have the right to recoup and set off all such losses, costs, charges and expenses against amounts otherwise owed by Buyer under this Agreement.

10.6 Termination of Duty to Buy. If this Agreement is terminated because of Seller's default, Seller may not require Buyer to purchase energy from the Facility before the date on which the Term would have ended had this Agreement remained in effect. Seller hereby waives its rights to require Buyer to do so.

10.7 Net Replacement Power Costs. If this Agreement is terminated because of Seller's default, Seller shall pay Buyer the positive difference, if any, obtained by subtracting (a) the result of (1) the energy, stated in MWh, that Seller was obligated to provide to Buyer during the remainder of the Term, multiplied by (2) the price per MWh (i) specified in **Exhibit F** for the remaining Contract Years subtracted from (ii) the market price of such energy as determined in good faith by Buyer, from (b) the Replacement Price for any energy that Seller was obligated to provide during the remainder of the Term. Amounts owed by Seller pursuant to this Section 10.7 shall be due within five (5) Business Days after Buyer gives Seller notice of the amount due.

10.8 Default Security. Buyer may apply the Credit Support Security at any time to reduce amounts due from Seller to Buyer under this Agreement which are not paid when due.

10.9 Cumulative Remedies. The rights and remedies provided to Buyer under this Agreement are cumulative and not exclusive of any rights or remedies which Buyer would otherwise have.

SECTION 11

INDEMNIFICATION AND LIABILITY

11.1 Indemnities.

11.1.1 Indemnity by Seller. Seller hereby releases, indemnifies and holds harmless Buyer, its directors, officers, agents, and representatives against and from any and all losses, claims, actions or suits, including costs and attorney's fees, 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 Electricity Delivery Point, (b) the Fuel delivered by Buyer under this Agreement at and after the Fuel Delivery Point, (c) any facilities on Seller's side of the Electricity Delivery Point, (d) Seller's operation and/or maintenance of the Facility, or (e) arising from Seller's performance under this Agreement, including 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 Buyer, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Buyer, its directors, officers, employees, agents or representatives.

11.1.2 Indemnity by Buyer. Buyer hereby releases, indemnifies and holds harmless Seller, its directors, officers, agents, and representatives against and from any and all losses, claims, actions or suits, including costs and attorney's fees, resulting from, or arising out of or in any way connected with (a) the energy delivered by Seller under this Agreement after the Electricity Delivery Point, and (b) the Fuel prior to delivery at the Fuel Delivery Point under this Agreement, including 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 or representatives.

11.2 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 Buyer as an independent public utility corporation or Seller as an independent individual or entity.

11.3 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.

SECTION 12

INSURANCE

12.1 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” by the A.M. Best Company the insurance coverage specified on **Exhibit J** during the periods specified on **Exhibit J**.

12.2 Certificates and Certified Copies of Policies. Seller shall provide Buyer with a certified “true and correct” copy of the insurance policies, provisions and endorsements contemplated by **Exhibit J** within ten (10) days after the date by which such policies are required to be obtained (as set forth in **Exhibit J**). If any coverage is written on a “claims-made” basis, the certification accompanying the policy shall conspicuously state that the policy is “claims made.”

SECTION 13

FORCE MAJEURE

13.1 Definition of Force Majeure. As used in this Agreement, “**Force Majeure**” or “**an event of Force Majeure**” means an event (a) is not reasonably anticipated as of the date of this Agreement, (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; fire; explosion; civil disturbance; sabotage; 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 Buyer’s ability to purchase energy at a more advantageous price than is provided under this Agreement; (ii) economic hardship including lack of money; (iii) the imposition upon Seller of costs or taxes allocated to Seller under Sections 5 or 6; (iv) delay or failure by Seller to obtain any Required Facility Document, other than Permits which Seller is diligently and timely taking all reasonable steps to obtain; (v) strikes or labor disturbances occurring at the Facility, the Premises or any of Buyer’s or Seller’s facilities; (vi) changes in, or costs of compliance with, Environmental Laws enacted after the date of this Agreement; and (vii) the failure of the Transmission Provider, whether or not Transmission Provider is PacifiCorp acting in its regulated transmission function capacity, for any reason to transmit Contract Capacity or energy.

13.2 Suspension of Performance. If either Party is rendered wholly or in part unable to perform its obligations under this Agreement because of an event of Force Majeure, both Parties shall be excused from the performance affected by the event of Force Majeure, provided that:

13.2.1 the Party affected by the Force Majeure, shall, within two (2) weeks after the occurrence of the event of Force Majeure, give the other Party written notice describing the particulars of the event; and

13.2.2 the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure; and

13.2.3 the affected Party shall use diligent efforts to remedy its inability to perform.

13.3 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.

13.4 Right to Terminate. If a Force Majeure event prevents a Party from substantially performing its obligations under this Agreement for a period exceeding one hundred eighty (180) days, then Buyer may terminate this Agreement by giving ten (10) days' prior notice to Seller. 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 under this Agreement before the effective date of such termination.

SECTION 14

CONFIDENTIALITY

14.1 Confidential Business Information. The Parties' proposals and negotiations prior to the date hereof concerning this Agreement, the terms of this Agreement, and the actual charges billed to Buyer under this Agreement, constitute the "Confidential Business Information" of both Parties. Seller and Buyer each agree to hold such Confidential Business Information wholly confidential.

14.2 Duty to Maintain Confidentiality. Confidential Business Information may only be used by the Parties for purposes related to the approval, administration or enforcement of this Agreement and for no other purpose. Each Party agrees not to disclose Confidential Business Information to any other person (other than its affiliates, counsel, consultants, lenders, prospective lenders, buyers, prospective buyers, contractors constructing or providing services to the Facility, employees, officers and directors who agree to be bound by the provisions of this Section), without the prior written consent of the other Party, provided that either Party may disclose Confidential Business Information, if such disclosure is required by law, required in order for Buyer to receive regulatory recovery of expenses related to the Agreement or pursuant to an order of a court or regulatory agency or in order to enforce this Agreement or to seek approval of this Agreement. In the event a Party is required by law or by a court or regulatory agency to disclose Confidential Business Information, such Party shall to the extent possible notify the other Party at least three (3) Business Days in advance of such disclosure.

14.3 Irreparable Injury; Remedies. Each Party agrees that violation of the terms of this Section 14 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.

14.4 News Releases and Publicity. Before issuing any news release or promotional material regarding the Facility, Seller shall contact Buyer for language that credits Buyer as purchasing the Net Energy and shall use such language in such news releases and promotional material.

SECTION 15

DISAGREEMENTS

15.1 Negotiations. The Parties shall attempt in good faith to resolve all disputes arising out of or 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 from the referral of the dispute to senior executives, or if no meeting of such senior executives has taken place within fifteen (15) days after such referral, either Party may initiate litigation as provided hereinafter if neither Party has requested that the dispute be mediated in accordance with Section 15.2 below. All negotiations pursuant to this clause are confidential.

15.2 Mediation. If the dispute is not resolved within thirty (30) days from the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within fifteen (15) days after such referral, 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 Construction Industry Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Construction Disputes) of the American Arbitration Association (the “AAA”), as amended and effective on July 1, 2003 (the “**Mediation Procedures**”), notwithstanding any Dollar amounts or Dollar limitations contained therein.

15.2.1 The Party requesting the mediation, may commence the mediation process with AAA by notifying AAA and the other Party in writing (“**Mediation Notice**”) of such Party’s desire that the dispute be resolved through mediation, including therewith a copy of the Dispute Notice and the response thereto, if any, and a copy of the other Party’s written agreement to such mediation.

15.2.2 The mediation shall be conducted through, by and at the office of AAA located in Salt Lake City, Utah.

15.2.3 The mediation shall be conducted by a single mediator. The Parties may select any mutually acceptable member from the panel of retired

judges at AAA as a mediator. If the parties cannot agree on a mediator within five (5) days after the date of the Mediation Notice, then the AAA's Arbitration Administrator shall send a list and resumes of three (3) available mediators to the parties, each of whom shall strike one name, and the remaining person shall be appointed as the mediator. If more than one name remains, either because one or both parties have failed to respond to the AAA's Arbitration Administrator within five (5) days of receiving the list or because one or both parties have failed to strike a name from the list or because both parties strike the same name, the AAA's Arbitration Administrator will choose the mediator from the remaining names. If the designated mediator shall die, become incapable or, unwilling to, or unable to serve or proceed with the mediation, a substitute mediator shall be appointed in accordance with the selection procedure described above in this Section 15.2.3, and such substitute mediator shall have all such powers as if he or she has been originally appointed herein.

15.2.4 The mediation shall consist of one or more informal, nonbinding meetings between the Parties and the mediator, jointly and in separate caucuses, out of which the mediator will seek to guide the Parties to a resolution of the dispute. The mediation process shall continue until the resolution of the dispute, or the termination of the mediation process pursuant to Section 15.2.7.

15.2.5 The mediator's fees and expenses, shall be borne equally by the Parties. Each Party shall bear its own expenses incurred in connection with such mediation; provided, however, that if any dispute hereunder is not fully resolved as a result of such mediation, the prevailing party shall be awarded its reasonable attorney fees in any subsequent dispute resolution proceedings.

15.2.6 All verbal and written communications between the parties and issued or prepared in connection with this Section 15.2 shall be deemed prepared and communicated in furtherance, and in the context, of dispute settlement, and shall be exempt from discovery and production, and shall not be admissible in evidence (whether as admission or otherwise) in any arbitration or other proceedings for the resolution of the dispute.

15.2.7 The initial mediation meeting between the Parties and the mediator shall be held within twenty (20) days after the Mediation Notice. Either Party may terminate the mediation process upon the earlier to occur of (A) the failure of the initial mediation meeting to occur within twenty (20) days after the date of the Mediation Notice, (B) the passage of thirty (30) days from the date of the Mediation Notice without the dispute having been resolved, or (C) such time as the mediator makes a finding that there is no possibility of resolution through mediation. The mediation shall follow and be governed by the laws of the State of Oregon.

15.2.8 All deadlines specified in this Section 15.2 may be extended by mutual agreement.

15.3 Choice of Forum. 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 Oregon, Portland Division. By execution and delivery of this Agreement, 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, (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), (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 in this Agreement, and (e) agrees that nothing in this Agreement shall affect the right to effect service of process in any other manner permitted by law.

15.4 Settlement Discussions. The Parties agree that 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 or arbitration between the Parties, nor will any such statements or offers of settlement be used in any manner against either Party in any such litigation or arbitration. 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 or arbitration. 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.

15.5 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 TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY MATTER ARISING HEREUNDER OR THEREUNDER IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

15.6 Equitable Remedies. In any action for specific performance or injunctive relief or other equitable relief, all expenses incurred by the prevailing party in such proceeding, including reasonable counsel fees, shall be awarded to the prevailing party in such proceeding. Seller agrees that it will not assert as a defense to Buyer's action for specific performance of, or injunctive or other equitable 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 all Required Facility Documents (as the case may be) relating to the Facility to the extent necessary to prevent a material adverse effect on Buyer's right to specific performance or injunctive relief.

SECTION 16

GUARANTEED PERFORMANCE PARAMETERS

16.1 Guaranteed Heat Rate. Seller shall operate and maintain the Facility so as to achieve the Guaranteed Heat Rate in accordance with the provisions of **Exhibit R**.

16.2 Guaranteed Start-Up Time. Seller shall operate and maintain the Facility so as to achieve the Guaranteed Start-Up Time in accordance with the provisions of **Exhibit R**.

16.3 Guaranteed Ramp Rate. Seller shall operate and maintain the Facility so as to achieve the Guaranteed Ramp Rate in accordance with the provisions of **Exhibit R**.

SECTION 17

MISCELLANEOUS

17.1 Several Obligations. Nothing contained in this Agreement 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. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

17.2 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 that may direct the application of the laws of another jurisdiction.

17.3 Partial Invalidity. The Parties do not intend to violate any Requirements of Law governing the subject matter of this Agreement. If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void as being contrary to any Requirements of Law or public policy, all other terms of the Agreement 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 Requirements of Law, (b) give effect to the intent of the Parties in entering into this Agreement, and (c) preserve the balance of the equities contemplated by this Agreement in all material respects.

17.4 Waiver. No waiver of any provision of this Agreement shall be effective unless the waiver is set forth in a writing that (a) expressly identifies the provision being waived, and (b) is signed 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 of this Agreement shall not be construed as a waiver of any other failure or failures, whether of a like kind or different nature.

17.5 Governmental Jurisdiction and Authorizations. This Agreement is subject to the jurisdiction of those Governmental Authorities having control over either Party or this Agreement. Buyer's duty to comply with this Agreement is conditioned on Seller's submission to Buyer before the Commercial Operation Date and maintaining thereafter copies of all Required Facility Documents.

17.6 Restriction on Assignments. Except as expressly provided in Section 17.7, neither Party shall assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party.

17.7 Permitted Assignments. The Buyer may assign its rights, delegate its duties or otherwise transfer its interests hereunder, in whole or in part to another entity having a long-term credit rating assigned thereto by a "nationally recognized statistical rating organization" (as that term is used in Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934) that equals or exceeds the Buyer's long term credit rating as of the date of such assignment.

17.8 Entire Agreement. This Agreement (including all attached Exhibits, which are incorporated by this reference) supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding the subject matter of this Agreement. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

17.9 Amendments. This Agreement shall not be altered or amended except by an instrument in writing specifically identifying the provisions to be amended and executed by authorized representatives of both parties.

17.10 No Third Party Beneficiaries. Notwithstanding anything to the contrary herein, this Agreement does not confer any rights upon any person other than the parties and their respective successors and permitted assigns. There are no third party beneficiaries of this Agreement.

17.11 Agents and Subcontractors. This Agreement may be performed by Buyer through the use of agents and subcontractors (but such use shall not relieve Buyer of any obligation hereunder).

17.12 Notices. All notices, requests, statements or payments shall be (a) made to the addresses set forth below, (b) in writing, and (c) delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day during which the notice is received or hand delivered. Notice by overnight mail or courier shall be deemed to have been received upon delivery as evidenced by the delivery receipt.

To Seller:

with a copy to: _____

To Buyer: PacifiCorp
825 NE Multnomah, Suite 2000
Portland, Oregon 97232-2315
Attn: Sr. Vice President, Commercial & Trading

with copies to: PacifiCorp
825 NE Multnomah, Suite 600
Portland, Oregon 97232-2315
Attn: Director of Contract Administration, Commercial & Trading

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

17.13 Mobile-Sierra. The rates for service specified in this Agreement 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 to this Agreement proposed by a Party, a non-party or the FERC acting *sua sponte* shall be the “public interest” 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). To the extent that the FERC adopts specific language that parties must incorporate into agreements in order to bind FERC, third parties and themselves to a public interest standard of review, the Parties hereby incorporate such language herein by reference.

17.14 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which is an original and all of which taken together constitute one and the same instrument.

[SIGNATURES ON NEXT PAGE]

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

[SELLER],
as Seller

By: _____

Name: _____

Title: _____

PACIFICORP,
as Buyer

By: _____

Name: _____

Title:

EXHIBIT U

FORM OF LENDER CONSENT

This CONSENT AND AGREEMENT (this “Consent”), dated as of _____, 200__, is entered into by and among PacifiCorp, an Oregon corporation, acting in its merchant function capacity (together with its permitted successors and assigns, “PacifiCorp”), _____, in its capacity as [**Administrative Agent**] for the Lenders referred to below (together with its successors, designees and assigns in such capacity, “Administrative Agent”), and _____, a _____ formed and existing under the laws of the State of _____ (together with its permitted successors and assigns, “Borrower”). Unless otherwise defined, all capitalized terms have the meaning given in the Contract (as hereinafter defined).

RECITALS

A. Borrower intends to develop, construct, install, test, own, operate and use an approximately ___ MW electric generating facility located _____, known as the _____ Generation Project (the “Project”).

B. In order to partially finance the development, construction, installation, testing, operation and use of the Project, Borrower has entered into that certain [**Financing Agreement,**] dated as of _____ (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Financing Agreement”), among Borrower, the financial institutions from time to time parties thereto (collectively, the “Lenders”), and Administrative Agent for the Lenders, pursuant to which, among other things, Lenders have extended commitments to make loans and other financial accommodations to, and for the benefit of, Borrower.

C. Borrower anticipates that, prior to the completion of construction of the Project, it will seek an additional investor (the “Tax Investor”) to make an investment in Borrower to provide additional funds to finance the operation and use of the Project. *[if applicable]*

D. PacifiCorp and Borrower have entered into that certain Tolling Agreement, dated as of _____ (collectively with all documents entered into in connection therewith that are listed on [Schedule A] attached hereto and incorporated herein by reference, as all are amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “Contract”).

E. Pursuant to a security agreement executed by Borrower and Administrative Agent for the Lenders (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”), Borrower has agreed, among other things, to assign, as collateral security for its obligations under the Financing Agreement and related documents (collectively, the “Financing Documents”), all of its right, title and interest in, to and under the Contract to Administrative Agent for the benefit of itself, the Lenders and each other entity or person providing collateral security under the Financing Documents.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

SECTION 1. CONSENT TO ASSIGNMENT. PacifiCorp acknowledges the assignment referred to in Recital E above, consents to an assignment of the Contract pursuant thereto, and agrees with Administrative Agent as follows:

(A) Administrative Agent shall be entitled (but not obligated) to exercise all rights and to cure any defaults of Borrower under the Contract, subject to applicable notice and cure periods provided in the Contract. Upon receipt of notice from Administrative Agent, PacifiCorp agrees to accept such exercise and cure by Administrative Agent if timely made by Administrative Agent under the Contract and this Consent. Upon receipt of Administrative Agent's written instructions, PacifiCorp agrees to make directly to Administrative Agent all payments to be made by PacifiCorp to Borrower under the Contract from and after PacifiCorp's receipt of such instructions, and Borrower consents to any such action.

(B) PacifiCorp will not, without the prior written consent of Administrative Agent (such consent not to be unreasonably withheld), (i) cancel or terminate the Contract, or consent to or accept any cancellation, termination or suspension thereof by Borrower, except as provided in the Contract and in accordance with subparagraph 1(C) hereof, (ii) sell, assign or otherwise dispose (by operation of law or otherwise) of any part of its interest in the Contract, except as provided in the Contract, or (iii) amend or modify the Contract in any manner materially adverse to the interest of the Lenders in the Contract as collateral security under the Security Agreement.

(C) PacifiCorp agrees to deliver duplicates or copies of all notices of default delivered by PacifiCorp under or pursuant to the Contract to Administrative Agent in accordance with the notice provisions of this Consent. PacifiCorp may deliver any such notices concurrently with delivery of the notice to Borrower under the Contract. Administrative Agent shall have: (a) the same period of time to cure the breach or default that Borrower is entitled to under the Contract if such default is the failure to pay amounts to PacifiCorp which are due and payable by Borrower under the Contract, except that if PacifiCorp does not deliver the default notice to Administrative Agent concurrently with delivery of the notice to Borrower under the Contract, then as to Administrative Agent, the applicable cure period under the Contract shall begin on the date on which the notice is given to Administrative Agent, or (b) ninety (90) days from the date notice of default or breach is delivered to Administrative Agent to cure such default if such breach or default cannot be cured by the payment of money to PacifiCorp, so long as Administrative Agent continues to perform any monetary obligations under the Contract, Section 11.1.2(c) of the Contract is not being breached, and all other obligations under the Contract are performed by Borrower or Administrative Agent or its designee(s) or assignee(s). If possession of the Project is necessary to cure such breach or default, and Administrative Agent or its designee(s) or assignee(s) declare Borrower in default and commence foreclosure proceedings, Administrative Agent or its designee(s) or assignee(s) will be allowed a reasonable period to complete such proceedings. PacifiCorp consents to the transfer of Borrower's interest under the Contract to the Lenders or Administrative Agent or their designee(s) or assignee(s) or

any of them or a purchaser or grantee at a foreclosure sale by judicial or nonjudicial foreclosure and sale or by a conveyance by Borrower in lieu of foreclosure and agrees that upon such foreclosure, sale or conveyance, PacifiCorp shall recognize the Lenders or Administrative Agent or their designee(s) or assignee(s) or any of them or other purchaser or grantee as the applicable party under the Contract (provided that such Lenders or Administrative Agent or their designee(s) or assignee(s) or purchaser or grantee assume the obligations of Borrower under the Contract, including, without limitation, satisfaction and compliance with all requirements of Sections 8.1 and 8.2 of the Contract, and provided further that PacifiCorp's subordinated lien rights with respect to the Project are preserved in the event of any transfer of Borrower's interest under the Contract).

(D) Notwithstanding subparagraph 1(C) above, in the event that the Contract is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, or if the Contract is terminated for any reason other than a default which could have been but was not cured by Administrative Agent or its designee(s) or assignee(s) as provided in subparagraph 1(C) above, and if, within forty-five (45) days after such rejection or termination, the Lenders or their successors or assigns shall so request, to the extent permitted by applicable law, PacifiCorp and the Lenders or Administrative Agent or their designee(s) or assignee(s) will enter into a new contract. Such new contract shall be on the same terms and conditions as the original Contract for the remaining term of the original Contract before giving effect to such termination, and shall require the Lenders or Administrative Agent or their designee(s) or assignee(s) to cure any payment defaults then existing under the original Contract.

(E) In the event Administrative Agent, the Lenders or their designee(s) or assignee(s) elect to perform Borrower's obligations under the Contract as provided in subparagraph 1(C) above or enter into a new contract as provided in subparagraph 1(D) above, the recourse of PacifiCorp against Administrative Agent, Lenders or their designee(s) and assignee(s) shall be limited to such parties' interests in the Project, the credit support required under Section 7 of the Contract, and recourse against the assets of any party or entity that assumes the Contract or that enters into such new contract.

(F) In the event Administrative Agent, the Lenders or their designee(s) or assignee(s) succeed to Borrower's interest under the Contract, Administrative Agent, the Lenders or their designee(s) or assignee(s) shall cure any then-existing payment and performance defaults under the Contract, except any performance defaults of Borrower itself which by their nature are not susceptible of being cured. Administrative Agent, the Lenders and their designee(s) or assignee(s) shall have the right to assign all or a pro rata interest in the Contract or the new contract entered into pursuant to subparagraph 1(d) above to a person or entity to whom Borrower's interest in the Project is transferred, provided such transferee assumes the obligations of Borrower under the Contract. Upon such assignment, Administrative Agent and the Lenders and their designee(s) or assignee(s) (including their agents and employees, but excluding Seller) shall be released from any further liability thereunder accruing from and after the date of such assignment, to the extent of the interest assigned.

SECTION 2. REPRESENTATIONS AND WARRANTIES [PacifiCorp shall have the right to qualify the factual information contained in this Section to ensure that such representation is a true statement as of the date of this Consent]

PacifiCorp, acting in its merchant function capacity (and therefore specifically excluding the knowledge of PacifiCorp, acting in its transmission function capacity (“PacifiCorp Transmission”), as to any of the matters stated below, and without imputation to PacifiCorp of any knowledge whatsoever relating to the PacifiCorp Transmission, whether as a result of information publicly posted to the open access same-time information system or otherwise), hereby represents and warrants that as of the date of this Consent:

(A) It (i) is a corporation duly formed and validly existing under the laws of the state of its organization, (ii) is duly qualified, authorized to do business and in good standing in every jurisdiction necessary to perform its obligations under this Consent, and (iii) has all requisite corporate power and authority to enter into and to perform its obligations hereunder and under the Contract, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby;

(B) the execution, delivery and performance of this Consent and the Contract have been duly authorized by all necessary corporate action on its part and do not require any approvals, material filings with, or consents of any entity or person which have not previously been obtained or made;

(C) each of this Consent and the Contract is in full force and effect;

(D) each of this Consent and the Contract has been duly executed and delivered on its behalf and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as the enforceability thereof may be limited as set forth in Section 3.1.5 of the Contract;

(E) there is no litigation, arbitration, investigation or other proceeding pending for which PacifiCorp has received service of process or, to PacifiCorp’s actual knowledge, threatened, against PacifiCorp relating solely to this Consent or the Contract and the transactions contemplated hereby and thereby;

(F) the execution, delivery and performance by it of this Consent and the Contract, and the consummation of the transactions contemplated hereby, will not result in any violation of, breach of or default under any term of (i) its formation or governance documents, or (ii) any material contract or material agreement to which it is a party or by which it or its property is bound, or of any material Requirements of Law presently in effect having applicability to it, the violation, breach or default of which could have a material adverse effect on its ability to perform its obligations under this Consent;

(G) neither PacifiCorp nor, to PacifiCorp’s actual knowledge, any other party to the Contract, is in default of any of its obligations thereunder;

(H) to the best of PacifiCorp's actual knowledge, (i) no Force Majeure Event exists under, and as defined in, the Contract and (ii) no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either PacifiCorp or Borrower to terminate or suspend its obligations under the Contract; and

(I) the Contract and the documents and instruments contemplated therein and this Consent are the only agreements between Borrower and PacifiCorp with respect to the Project, and all conditions precedent to effectiveness under the Contract have been satisfied or waived. *[Reference to subordinated lien documents per Section 7.3 of the Contract to be inserted.]*

Each of the representations and warranties set forth herein shall survive the execution and delivery of this Consent and the consummation of the transactions contemplated hereby.

SECTION 3. NOTICES. All notices required or permitted hereunder shall be in writing and shall be effective (a) upon receipt if hand delivered, (b) upon telephonic verification of receipt if sent by facsimile and (c) if otherwise delivered, upon the earlier of receipt or three (3) Business Days after being sent registered or certified mail, return receipt requested, with proper postage affixed thereto, or by private courier or delivery service with charges prepaid, and addressed as specified below:

If to PacifiCorp:
[_____]
[_____]
[_____]
Telephone No.: [_____]
Telecopy No.: [_____]
Attn: [_____]

<p>If to Administrative Agent:</p> <p>[_____]</p> <p>[_____]</p> <p>[_____]</p> <p>Telephone No.: [_____]</p> <p>Telecopy No.: [_____]</p> <p>Attn: [_____]</p>
<p>If to Borrower:</p> <p>[_____]</p> <p>[_____]</p> <p>[_____]</p> <p>Telephone No.: [_____]</p> <p>Telecopy No.: [_____]</p> <p>Attn: [_____]</p>

Any party shall have the right to change its address for notice hereunder to any other location within the United States by giving thirty (30) days written notice to the other parties in the manner set forth above. Further, the Tax Investor shall be entitled to receive notices from PacifiCorp by providing written notice to PacifiCorp of Tax Investor's address for notices. PacifiCorp's failure to provide any notice to the Tax Investor shall not be a breach of this Consent.

SECTION 4. ASSIGNMENT, TERMINATION, AMENDMENT AND GOVERNING LAW.

This Consent shall be binding upon and benefit the successors and assigns of the parties hereto and the Tax Investor and their respective successors, transferees and assigns (including without limitation, any entity that refinances all or any portion of the obligations under the Financing Agreement). PacifiCorp agrees (a) to confirm such continuing obligation in writing upon the reasonable request of (and at the expense of) Borrower, Administrative Agent, the Lenders or any of their respective successors, transferees or assigns, and (b) to cause any successor-in-interest to PacifiCorp with respect to its interest in the Contract to assume, in writing in form and substance reasonably satisfactory to Administrative Agent, the obligations of PacifiCorp hereunder. Any purported assignment or transfer of the Contract not in conjunction with the written instrument of assumption contemplated by the foregoing clause (b) shall be null and void. No termination, amendment, variation or waiver of any provisions of this Consent shall be effective unless in writing and signed by the parties hereto. This Consent shall be governed by the laws of the State of New York (without giving effect to the principles thereof relating to conflicts of law except Section 5-1401 and 5-1402 of the New York General Obligations Law).

SECTION 5. COUNTERPARTS. This Consent may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

SECTION 6. SEVERABILITY. In case any provision of this Consent, or the obligations of any of the parties hereto, shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions, or the obligations of the other parties hereto, shall not in any way be affected or impaired thereby.

SECTION 7. ACKNOWLEDGMENTS BY BORROWER. Borrower, by its execution hereof, acknowledges and agrees that notwithstanding any term to the contrary in the Contract, PacifiCorp may perform as set forth herein and that neither the execution of this Consent, the performance by PacifiCorp of any of the obligations of PacifiCorp hereunder, the exercise of any of the rights of PacifiCorp hereunder, or the acceptance by PacifiCorp of performance of the Contract by any party other than Borrower shall (1) release Borrower from any obligation of Borrower under the Contract, (2) constitute a consent by PacifiCorp to, or impute knowledge to PacifiCorp of, any specific terms or conditions of the Financing Agreement, the Security Agreement or any of the other Financing Documents, or (3) constitute a waiver by PacifiCorp of any of its rights under the Contract. Borrower and Administrative Agent acknowledge hereby for the benefit of PacifiCorp that none of the Financing Agreement, the Security Agreement, the Financing Documents or any other documents executed in connection therewith alter, amend, modify or impair (or purport to alter, amend, modify or impair) any provisions of the Contract. Borrower shall have no rights against PacifiCorp on account of this Consent.

IN WITNESS WHEREOF, the parties hereto by their officers thereunto duly authorized, have duly executed this Consent as of the date first set forth above.

PacifiCorp,
an Oregon corporation

By: _____
Name: _____
Title: _____

_____,
a _____

By: _____
Name: _____
Title: _____

_____,
as Administrative Agent for the Lenders

By: _____
Name: _____
Title: _____