

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 EACH PARTY'S RECEIPT OF ALL REQUIRED MANAGEMENT APPROVALS (INCLUDING FINAL CREDIT AND LEGAL APPROVAL) AND ALL REGULATORY APPROVALS. ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS WORKING DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS PURSUANT TO THIS WORKING DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL THIS AGREEMENT IS NEGOTIATED, APPROVED BY MANAGEMENT, EXECUTED, DELIVERED AND APPROVED BY ALL REQUIRED REGULATORY BODIES, NO PARTY SHALL HAVE ANY OTHER LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS WORKING DRAFT OR IN THE COURSE OF NEGOTIATIONS.

[Date]

[Addressee]

[Counterparty Address]

Dear [addressee]:

\_\_\_\_\_ (“**Seller**”) desires to sell Energy, Green Tags and Capacity Rights to PacifiCorp, an Oregon corporation, acting in its merchant function capacity (“**PacifiCorp**”). This letter (“**Agreement**”) sets forth the terms and conditions governing these transactions, and constitutes a Confirmation Agreement for a transaction under the WSPP Agreement (as those terms are hereinafter defined). The WSPP Agreement is hereby incorporated by reference as though fully set forth herein. Buyer and Seller are individually referred to herein as a "**Party**" and collectively as the "**Parties**". Initially capitalized terms used and not otherwise defined herein are defined in the WSPP Agreement. The Parties agree as follows:

### **Section 1 (Definitions)**

- 1.1 “**Capacity Rights**” means any current or future defined characteristic, certificate, tag, credit, ancillary service or attribute thereof, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility’s capability and ability to produce energy. Capacity Rights are measured in MW and do not include Production Tax Credits or any other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility.

- 1.2 **“CAMD”** means the Clean Air Markets Division of the Environmental Protection Agency or successor administrator, or any state or federal entity given jurisdiction over a program involving transferability of Green Tags.
- 1.3 **“Environmental Attributes”** means any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the generation of renewable energy (other than the energy itself) or the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water, which are deemed of value by PacifiCorp. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), and other pollutants; and (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere. Environmental Attributes do not include (i) PTCs or certain other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility, (ii) matters designated by PacifiCorp as sources of liability, or (iii) adverse wildlife or environmental impacts.
- 1.4 **“Facility”** means \_\_\_\_\_.
- 1.5 **“Governmental Authority”** means any supranational, federal, state or other political subdivision thereof, having jurisdiction over Seller, PacifiCorp or this Agreement, including any municipality, township or county, and any entity or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing.
- 1.6 **“Green Tags”** and **“RECs”** each mean (1) the Environmental Attributes associated with all Output, together with (2) the Green Tag Reporting Rights associated with such energy and Environmental Attributes, however commercially transferred or traded under any or other product names, such as “Renewable Energy Credits,” , or otherwise. One (1) Green Tag represents the Environmental Attributes made available by the generation of one (1) MWh of energy from the Facility.
- 1.7 **“Green Tag Reporting Rights”** means the exclusive right of a purchaser of Environmental Attributes to report ownership of Environmental Attributes in compliance with federal or state law, if applicable, and to federal or state agencies or other parties at such purchaser’s discretion, and include reporting under Section 1605(b) of the Energy Policy Act of 1992, or under any present or future domestic, international, or foreign emissions trading program or renewable portfolio standard.

- 1.8 **“Interconnection Provider”** and **“Transmission Provider”** are \_\_\_\_\_ [in the case of PacifiCorp, if applicable, acting in its regulated transmission function capacity].
- 1.9 **“Net Output”** means all energy produced by the Facility and delivered at the Point of Delivery.
- 1.10 **“Point of Delivery”** means the point of interconnection between the Facility and the System, as specified in the Generation Interconnection Agreement with PacifiCorp Transmission.
- 1.11 **“WREGIS”** means the Western Renewable Energy Generation Information System.
- 1.12 **“WREGIS Certificate”** means “Certificate” as defined by WREGIS in the WREGIS Operating Rules.
- 1.13 **“WREGIS Operating Rules”** means the operating rules and requirements adopted by WREGIS.
- 1.14 **Interpretation with FERC Orders.** Each Party conducts and shall conduct 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 each of Transmission Provider’s and Interconnection Provider’s transmission function offers transmission service on its system in a manner intended to comply with FERC policies and requirements relating to the provision of open-access transmission service. The Parties recognize that Seller will enter into the Generation Interconnection Agreement with the Interconnection Provider. The Parties acknowledge and agree that the Generation Interconnection Agreement shall be a separate and free standing contract and that the terms hereof are not binding upon the Interconnection Provider. Notwithstanding any other provision in this Agreement, nothing in the Generation Interconnection Agreement, nor any other agreement between Seller on the one hand and Transmission Provider or Interconnection Provider on the other hand, nor any alleged event of default thereunder, shall alter or modify the Parties’ rights, duties, and obligation hereunder. This Agreement shall not be construed to create any rights between Seller and the Interconnection Provider or between the Seller and the Transmission Provider. Seller expressly recognizes that, for purposes hereof, the Interconnection Provider and Transmission Provider each shall be deemed to be a separate entity and separate contracting party from PacifiCorp whether or not the Generation Interconnection Agreement is entered into with Interconnection Provider or an Affiliate thereof. Seller acknowledges that PacifiCorp, acting in its merchant capacity function as purchaser hereunder, has no responsibility for or control over Interconnection Provider or Transmission Provider, and is not liable

for any breach of agreement or duty by Interconnection Provider or Transmission Provider.

**Section 2 (Purchase Provisions)**

2.1 **Purchase and Sale.** Seller agrees to cause all electric output of the Facility to be generated to the Point of Delivery as Net Output. Subject to the terms and conditions of this Agreement, Seller agrees to sell, assign and transfer to Buyer, and Buyer agrees to purchase from Seller, all right, title and interest in all Net Output of the Facility, and all Green Tags and Capacity Rights associated therewith.

2.2 **Energy Sale and Delivery Schedule**

<b>Underlying Agreement:</b>	WSPP Agreement
<b>Transaction Type:</b>	Schedule B Energy
<b>Delivery Hours:</b>	All Hours
<b>Point of Delivery:</b>	[]
<b>Delivery Term:</b>	_____.
<b>Price:</b>	\$___/MWhr
<b>Quantity:</b>	all Facility Net Output
<b>Scheduling:</b>	Parties shall notify each other of preschedules on the Business Day preceding the scheduled delivery, or as mutually agreed by the parties, in accordance with WECC guidelines.

2.3 **Voluntary Curtailment by PacifiCorp.** Seller shall curtail deliveries of Net Output at any time, in whole or in part, and for any duration specified by PacifiCorp with no less than ten (10) minutes (or such lesser time as may be provided for, as between Seller and Interconnection Provider, in the Generation Interconnection Agreement) prior notice (which may be given by telephone) from PacifiCorp to Seller.

**Section 3 (Green Tags and Capacity Rights).**

3.1 **Delivery (RECs).** REC deliveries will be followed with deliveries of WREGIS Certificates to Buyer's WREGIS account pursuant to WREGIS Operating Rules, Section 12.3, dated June 4, 2007.

- 3.2 **Transfer of Title to Green Tags; Documentation of Green Tags Transfers.** Title to the Green Tags shall pass from Seller to PacifiCorp immediately upon the generation of the energy at the Facility that gives rise to such Green Tags. The Parties shall execute all additional documents and instruments reasonably requested by PacifiCorp in order to further document the transfer of the Green Tags to PacifiCorp or its designees. Without limiting the generality of the foregoing, Seller shall, on or before the tenth (10th) day of each month, deliver to PacifiCorp a Green Tags Attestation and Bill of Sale in the form provided by PacifiCorp for all Green Tags delivered to PacifiCorp hereunder in the preceding month. Seller, at its own cost and expense, shall register with, pay all fees required by, and comply with, all reporting and other requirements of WREGIS relating to the Facility or Green Tags. Seller shall ensure that the Facility will participate in and comply with, during the Term, all aspects of WREGIS. Seller shall, at its sole expense, use WREGIS as required pursuant to the WREGIS Operating Rules to effectuate the transfer of WREGIS Certificates to PacifiCorp, and transfer such WREGIS Certificates to PacifiCorp, in accordance with WREGIS reporting protocols and WREGIS Operating Rules. PacifiCorp shall be entitled to a refund of the Green Tag Price Component of any Net Output for which WREGIS Certificates are not delivered, and shall not transfer the affected Green Tag back to Seller. Seller shall promptly give PacifiCorp copies of all documentation it submits to WREGIS. Further, in the event of the promulgation of a scheme involving Green Tags administered by CAMD, upon notification by CAMD that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfers can be recorded. Seller shall not report under § 1605(b) of the Energy Policy Act of 1992 or under any applicable program that any of the Green Tags purchased by PacifiCorp hereunder belong to any person other than PacifiCorp. Without limiting the generality of PacifiCorp's ownership of the Green Tag Reporting Rights, PacifiCorp may report under such program that such Environmental Attributes purchased hereunder belong to it. Each Party shall promptly give the other Party copies of all documents it submits to the CAMD to effectuate any transfers.
- 3.3 **WREGIS Metering.** PacifiCorp shall have the right upon notice to Seller to perform the Qualified Reporting Entity (as defined by WREGIS) functions for the Facility to implement all necessary generation information communications in WREGIS, and report generation information to WREGIS pursuant to a WREGIS-approved meter that is dedicated to the Facility and only the Facility.
- 3.4 **Capacity Rights.** For and in consideration of PacifiCorp's agreement to purchase from Seller the Facility's Net Output and Green Tags on the terms and conditions set forth herein, Seller transfers to PacifiCorp, and PacifiCorp accepts from Seller, any right, title, and interest that Seller may have in and to Capacity Rights, if any, existing during the Term. Seller represents that it has not sold, and covenants that during the Term it will not sell or attempt to sell to any other person or entity the Capacity Rights, if any. During the Term, Seller shall not

report to any person or entity that the Capacity Rights, if any, belong to anyone other than PacifiCorp. PacifiCorp may at its own risk and expense report to any person or entity that Capacity Rights exclusively belong to it. At PacifiCorp's request, the Parties shall execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Capacity Rights, if any, to PacifiCorp.

#### **Section 4 (Other Seller Covenants)**

- 4.1 **Seller's Authority.** Seller covenants that before delivering Net Output and associated Green Tags to PacifiCorp hereunder, Seller shall provide PacifiCorp with copies of the appropriate certification of its authority under state and federal law and all applicable Government Authorities to sell Net Output to PacifiCorp hereunder. At any time during the Term, for cause, PacifiCorp may require Seller to provide PacifiCorp with a written legal opinion from an attorney in good standing with recognized expertise in FERC matters and who has no economic relationship, association or nexus with Seller or the Facility (other than an attorney-client relationship), stating that Seller has such authorities. During the Term, Seller shall maintain its authority to sell Net Output hereunder.
- 4.2 **Station Service.** Seller shall be responsible for arranging and obtaining, at its sole risk and expense, any station service required by the Facility.
- 4.3 **Information to Governmental Authorities.** Seller shall, promptly upon written request from PacifiCorp, provide PacifiCorp with all data collected by Seller related to the Facility reasonably required by PacifiCorp or an Affiliate thereof for reports to, and information requests from, any Governmental Authority or electric system authority. Along with this information, Seller shall provide to PacifiCorp copies of all submittals to Governmental Authorities or electric system authorities directed by PacifiCorp and related to the operation of the Facility with a certificate that the contents of the submittals are true and accurate to the best of Seller's knowledge. Seller shall use best efforts to provide this information to PacifiCorp with sufficient advance notice to enable PacifiCorp to review such information and meet any submission deadlines imposed by the requesting organization or entity.
- 4.4 **Data Request.** Seller shall, promptly upon written request from PacifiCorp, provide PacifiCorp with data reasonably required for information requests from any Governmental Authorities, state or federal agency intervener or any other party achieving intervenor status in any PacifiCorp rate proceeding or other proceeding before any Governmental Authority. Seller shall use best efforts to provide this information to PacifiCorp sufficiently in advance to enable PacifiCorp to review it and meet any submission deadlines.
- 4.5 **Environmental Information.** Seller shall, promptly upon written request from PacifiCorp, provide PacifiCorp with all data reasonably requested by PacifiCorp relating to environmental information. Seller shall further provide PacifiCorp

with all environmental impact mitigation measures it is taking in connection with the Facility's construction of operation, as well as copies of all agreements between Seller and federal, state or local environmental agencies.

- 4.6 **Financial and Accounting Information.** If PacifiCorp 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 PacifiCorp or its affiliate may confirm whether a variable interest does exist under FIN 46. If PacifiCorp or its affiliate determines that, under FIN 46, it holds a variable interest in Seller, Seller hereby agrees to provide sufficient financial and other information to PacifiCorp or its affiliate so that PacifiCorp may properly consolidate the entity in which it holds the variable interest or present the disclosures required by FIN 46. PacifiCorp shall reimburse Seller for Seller's reasonable costs and expenses, if any, incurred in connection with PacifiCorp's requests for information under this Section.
- 4.7 **Credit.** [as provided in RFP]
- 4.8 **Facility Images.** PacifiCorp shall be free to use any and all images from or of the Facility for promotional purposes. Upon PacifiCorp's request and at PacifiCorp's expense, Seller shall install imaging equipment at the Facility as PacifiCorp may request, including video and or web-based imaging equipment. PacifiCorp shall retain full discretion on how such images are presented including associating images of the Facility with a PacifiCorp-designated corporate logo

#### **Section 5 (Changes to the WSPP Agreement)**

For purposes of this Agreement as a Confirmation Agreement under the WSPP Agreement as incorporated by reference, the following changes are made to the WSPP Agreement:

- i. Section 4 is amended as follows:
  - (a) Section 4.1f is amended by inserting "RECs," after the phrase "The amount of" and before the phrase "capacity and/or energy".
  - (b) Section 4.16a is amended by inserting "RECs or" before each appearance of the phrase "capacity and/or energy".
  - (c) Section 4.16b is amended by inserting "RECs or" before each appearance of the phrase "capacity and/or energy".
- ii. Section 10 is amended by inserting "RECs or" before each appearance of the phrase "capacity and/or energy".
- iii. Section 12.2 is amended by inserting "RECs or" before the phrase "capacity and/or energy".

- iv. Section 21.3 and Section 21.3(a) are amended by inserting “RECs or” before each appearance of the phrase “capacity and/or energy”. For purposes of the REC portion of this Confirmation only, Section 21.3(a)(1) and Section 21.3(a)(2) are amended by deleting throughout these subsections the phrases “in any hour” and “for all hours” and the word “hourly” every where such phrases and word appear and Section 21.3(a)(3) is deleted in its entirety.
- v. All references to “ten (10) Business Days” in Section 22.2(a) are changed to “two years”. All references to “thirty (30) days” or “thirty days” in the first paragraph of Section 22.2(b) are changed to “two years”.
- vi. Notwithstanding anything to the contrary in the WSPP Agreement, in no event shall the Non-Defaulting Party owe the Defaulting Party a Termination Payment.
- vii. Section 30 is amended by inserting at the end of Section 30.1(6) prior to the semicolon: “or to Deliver RECs pursuant to the requirements of WREGIS or the California RPS”.
- viii. Section 33.2, Title and Risk of Loss, of the WSPP Agreement is amended by inserting “RECs or” before “electric energy”.

## **Section 6 (Damages)**

- 6.1 **Indemnity by Seller.** To the extent permitted by applicable law, Seller shall release, indemnify and hold harmless PacifiCorp, its Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the “**Buyer Indemnities**”) against and from any and all losses, fines, penalties, claims, demands, damages, liabilities, actions or suits of any nature whatsoever (including legal costs and attorney’s fees, both at trial and on appeal, whether or not suit is brought) (collectively, “**Liabilities**”) resulting from, or arising out of, or in any way connected with, the performance by Seller of its obligations hereunder, or relating to the Facility, for or on account of (i) injury, bodily or otherwise, to, or death of, or (ii) for damage to, or destruction or economic loss of property of, any person or entity, excepting only to the extent such Liabilities as may be caused by the gross negligence or willful misconduct of any person or entity within the Buyer Indemnities.
- 6.2 **Consequential Damages.** **EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN ANY LIQUIDATED DAMAGES, INDEMNIFICATION FOR THIRD PARTY DAMAGES, OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR HEREIN, 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. NOTWITHSTANDING THE FOREGOING OR ANYTHING TO THE CONTRARY HEREIN OR IN THE WSPP AGREEMENT, SELLER SHALL BE LIABLE TO BUYER FOR ALL FINES AND PENALTIES INCURRED BY BUYER, HOWSOEVER ARISING, INCURRED BY BUYER BECAUSE BUYER SOLD TO A THIRD PARTY ENERGY, CAPACITY RIGHTS OR RECS THAT IT WAS REQUIRED TO SELL TO BUYER HEREUNDER.**

#### **Section 7 (Purchase Option)**

On the last day of the Term, PacifiCorp shall have the option to purchase the Facility and all rights of Seller therein or relating thereto, for \_\_\_\_\_. Such option shall be exercised by notice from PacifiCorp to Seller provided no less than 30 days prior to the last day of the Delivery Term. Seller covenants that in the event PacifiCorp provides such notice of its exercise of this purchase option, that Seller shall sell, transfer, assign and convey to PacifiCorp all of the Facility, Solar Photovoltaic Panels and Solar Photovoltaic Panel Equipment and all rights of Seller therein or relating thereto, free and clear of all liens, claims, encumbrances, or rights of others arising through Seller on the last day of the Delivery Term, including good and valid title to the Facility and Seller's rights in the premises. In connection with such sale, transfer, assignment and conveyance, Seller shall (a) assign or otherwise make available, to the extent permitted by applicable law and not already assigned or otherwise transferred to PacifiCorp, Seller's interest in all Permits, authorizations, rights and agreements now or hereafter necessary for construction, operation, and maintenance of the Facility and licenses, permits approvals and consents of any Governmental Authorities or other persons that are then in effect and that are utilized for the operation or maintenance of the Facility; (b) cooperate with all reasonable requests of PacifiCorp for purposes of obtaining or making, or enabling PacifiCorp to obtain or make, any and all licenses, permits, approvals and consents of any Governmental Authorities or other persons that are or will be required to be obtained by PacifiCorp in connection with the use, occupancy, operation or maintenance of the Facility or the premises in compliance with applicable law; (c) provide PacifiCorp copies of all documents, instruments, plans, maps, specifications, manuals, drawings and other documentary materials relating to the installation, maintenance, operation, construction, design, modification and repair of the Facility, as shall be in Seller's possession and shall be reasonably appropriate or necessary for the continued operation of the Facility. Seller shall not take any action during the Delivery Term that would inhibit Seller's ability to comply with this provision.

#### **Section 8 (Confidentiality)**

To the maximum extent permitted by law, Seller shall treat as confidential all non-public, proprietary information ("Information") pertaining to discussions or negotiations leading up to and including this Agreement, as well as future discussions and negotiations associated with this Agreement, and shall not divulge the Information without prior written approval from PacifiCorp, except as required by law or regulation or to conform with applicable reporting or disclosure standards or requirements. Neither Party shall

reference the other Party in any promotional or media activities without prior written consent from the other Party.

**Section 9 (Waiver of Jury Trial)**

Each Party hereby irrevocably waives any and all rights to trial by jury with respect to any legal proceeding arising out of or relating to this Agreement. Each Party further waives the right to consolidate any action relating hereto with any other action with respect to which the right to jury trial has not or cannot be waived.

If the above reflects your understanding of the agreement reached between the representatives of our organizations, please sign, date and return one fully executed copy of this Agreement.

Sincerely,

PacifiCorp

By \_\_\_\_\_  
Its \_\_\_\_\_

Accepted:

Signature: \_\_\_\_\_

Name (please print):

Title:

Date: