

ENGINEERING AND PROCUREMENT AGREEMENT

THIS ENGINEERING AND PROCUREMENT AGREEMENT (“Agreement”) is made and entered into this ___ day of _____, 2009, by and between the PacifiCorp Transmission Services, (“Transmission Provider”) and [_____] ([_____] (“Interconnection Customer”). Interconnection Customer and Transmission Provider each may be referred to individually as a “Party” or collectively as the “Parties.”

Recitals

WHEREAS, Transmission Provider has an Open Access Transmission Tariff (“OATT”) on file with the Federal Energy Regulatory Commission (“FERC”) and provides Generator Interconnection Service on its transmission system;

WHEREAS, Interconnection Customer is in the process of developing a site that includes lands in [_____] and for which Interconnection Customer has made application to Transmission Provider for the interconnection of [_____] megawatts of electrical generation facilities upon such lands pursuant to request [_____] (the “Project”);

WHEREAS, Interconnection Customer has requested generation interconnection service for the Project from Transmission Provider pursuant to the OATT;

WHEREAS, Transmission Provider has provided to Interconnection Customer the results of a system impact study (“System Impact Study”) which identified the facilities necessary for the interconnection of the proposed Generating Facility with Transmission Provider’s system;

WHEREAS, the Parties are in the process of completing a facilities study (“Facilities Study”), which will further develop and outline the facilities necessary for the interconnection of the proposed Generating Facility with Transmission Provider’s system along with an updated estimated cost and time required to construct the proposed interconnection facilities;

WHEREAS, to advance the implementation of the interconnection, Interconnection Customer requests that Transmission Provider begin certain activities relative to the interconnection of the Project prior to the execution of the Large Generator Interconnection Agreement (“LGIA”);

WHEREAS, upon the request by the Interconnection Customer, Transmission Provider may offer an engineering and procurement agreement that authorizes Transmission Provider to begin work described herein necessary for the establishment of the interconnection;

WHEREAS, the Parties recognize that this Agreement does not have the effect of altering Interconnection Customer’s position in Transmission Provider’s generator interconnection queue or the projected in-service date for the Project; and

WHEREAS, the Parties wish to set forth their agreement with respect to such engineering and procurement services related to the construction of the Transmission Provider’s Interconnection Facilities and Network Upgrades and payment therefore;

NOW THEREFORE, in consideration of and subject to the mutual covenants contained herein, it is agreed

Agreement

1. Definitions. Unless specifically defined herein, capitalized terms shall have the meaning as defined in the OATT.

2. Effective Date, Term and Termination. This Agreement shall be effective upon execution by both Parties, and shall remain in effect until the earliest to occur of the following:

- (a) Issuance of a stop-work order by Interconnection Customer pursuant to Section 11 of this Agreement;
- (b) 90 days after Execution by the Parties of the LGIA; or
- (c) Termination of the Agreement as provided in Section 11 of this Agreement.

Notwithstanding the foregoing, the provisions of this Agreement necessary to ensure payment of amounts due hereunder by one Party to the other Party shall continue in effect until each Party has satisfied its payment obligations to the other, if any.

3. Engineering and Procurement Services to Be Provided. Execution of this Agreement shall not obligate Transmission Provider to perform any construction work, acquire easements, provide Interconnection Service, or to undertake any other obligations not expressly set forth in this Agreement. In accordance with the terms of this Agreement and provided that Interconnection Customer (a) is not in default under the terms of this Agreement, or (b) has not failed to comply with any prerequisites specified in the OATT, Transmission Provider shall commence the engineering services as further described herein ("Engineering Services") and the procurement services as further described herein ("Procurement Services").

Engineering Services shall mean the services set out in Exhibit A and shall also include such other services as Transmission Provider believes are reasonably necessary to engineer and design the Interconnection Facilities and Network Upgrades. Engineering Services shall also include the services of any consultant or professional engineering firms that may be retained by Interconnection Customer, except that Interconnection Customer may retain only those consultants or professional engineering firms approved by the Transmission Provider. Transmission Provider shall timely review such professional engineering firms.

Procurement Services shall mean the services set out in Exhibit A and shall also include such other services as Transmission Provider believes are reasonably necessary to specify, obtain bids, place purchase orders and otherwise to procure materials, equipment and contractors in connection therewith for the completion of the Interconnection Facilities and Network Upgrades. The Engineering Services and Procurement Services shall be collectively referred to herein as the "Services."

4. Modification of Services. At Interconnection Customer's request, the Services set out in Exhibit A have been defined prior to completion of the Facilities Study. As a consequence, the Parties acknowledge and accept that the estimates and scope of Services described in Exhibit A are not binding on the part of Transmission Provider and that Exhibit A may require modification to reflect engineering requirements of the Interconnection Facilities or

Network Upgrades based on the results of the Facilities Study. Such modifications shall include those deemed reasonably necessary by the Transmission Provider in preparation for the construction of the Interconnection Facilities or Network Upgrades. Interconnection Customer, and anyone claiming by, through or under Interconnection Customer, hereby waives its right to recover from and fully and irrevocably releases Transmission Provider from any and all claims, responsibility and/or liability that Interconnection Customer may now have or hereafter acquire against Transmission Provider for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to such modifications.

5. Performance Standards. Each Party shall perform all its obligations under this Agreement in accordance with Applicable Laws and Regulations, Applicable Reliability Standards, and Good Utility Practice (as such terms are defined in the OATT), and to the extent a Party is required or prevented or limited in taking any action by such regulations and standards, such Party shall not be deemed to be in breach of this Agreement for compliance therewith. Notwithstanding anything in this Agreement to the contrary, in no event shall Transmission Provider be responsible under the terms of this Agreement for any delay in completion of the requested Services.

6. Access Rights. Upon reasonable notice and supervision by a Party, and subject to any required or necessary regulatory approvals, a Party ("Granting Party") shall furnish at no cost to the other Party ("Access Party") any rights of use, licenses, rights of way and easements with respect to lands owned or controlled by the Granting Party, its agents (if allowed under the applicable agency agreement), or any Affiliate, that are necessary to enable the Access Party to obtain ingress and egress to perform all its obligations under this Agreement.

7. Lands of Other Property Owners. If any part of the Interconnection Facilities or Network Upgrades are to be installed on property owned by or under the control of persons other than Interconnection Customer or Transmission Provider, Interconnection Customer shall at its own expense use efforts to procure from such persons any property rights in fee, perpetual lease, or other property rights in a form acceptable to the Transmission Provider that are necessary to construct, operate, maintain, test, inspect, replace or remove the Interconnection Facilities or Network Upgrades and upon such property.

8. Project Costs. Interconnection Customer shall be responsible to reimburse and pay Transmission Provider for all costs and expenses reasonably incurred by Transmission Provider in connection with providing the Services pursuant to this Agreement ("Project Costs"). Project Costs shall include all reasonable and documented costs, charges, and expenses incurred by Transmission Provider in connection with the performance of the Services, including all of Transmission Provider's reasonable internal costs, overheads, third-party expenses, and cost of supplies, and any other amounts owed to Transmission Provider under the terms of this Agreement, including without limitation, all reasonable costs incurred by Transmission Provider in performing the activities described in Exhibit A, Scope of Work. Interconnection Customer shall pay Transmission Provider for all Project Costs incurred, subject to the terms of this Agreement, including any additional costs incurred under Section 4 of this Agreement, Modification of Services. Interconnection Customer hereby authorizes Transmission Provider to incur Project Costs in an initial amount of up to [_____] (\$).

9. Payment of Estimated Project Costs. Upon execution of this Agreement, Interconnection Customer shall tender to Transmission Provider prepayment of Project Costs in

the amount of [_____] (\$) (the “Prepayment”). Transmission Provider’s obligation to proceed with the Services shall be contingent upon receipt of the Prepayment. Transmission Provider shall notify Interconnection Customer when it determines the Project Costs will exceed the Prepayment and shall specify the estimated amount by which such Project Costs will exceed the Prepayment. Upon receipt of such notice, and following approval thereof by Interconnection Customer, Interconnection Customer shall tender to Transmission Provider prepayment of the estimated amount of additional Project Costs, which amount shall not exceed [_____] (\$).

10. Authorization of Additional Amounts for Project Costs. In the event that Transmission Provider determines Project Costs may exceed Authorized Amount, Transmission Provider shall notify Interconnection Customer and request that Interconnection provide written approval authorizing such additional amounts for Project Costs within thirty (30) days of such notice. Transmission Provider’s obligation to proceed with the Services associated with such additional amounts shall be contingent upon receipt of such approval, along with a prepayment in such additional amount. Interconnection Customer shall be responsible for such Project Costs, as increased pursuant to such written authorization. If Interconnection Customer does not authorize such additional amounts within such thirty (30) day period, this Agreement shall terminate after Transmission Provider gives Interconnection Customer written notice and an additional fifteen (15) days to cure.

11. Right to Stop Work. Interconnection Customer reserves the right, upon seven (7) days advance written notice to Transmission Provider, to require Transmission Provider at any time to stop all work by Transmission Provider pursuant to this Agreement, provided that such stop-work order is the result of suspension or termination of construction of the Generating Facility. Issuance of any such stop-work order shall terminate this Agreement. Upon issuance of any such stop-work order, Interconnection Customer’s Application for Generation Interconnection Service for the Generating Facility shall be deemed withdrawn. Upon issuance of any such stop-work order, Interconnection Customer shall pay in accordance with section 12 below, the Project Costs Transmission Provider (a) has incurred prior to the stoppage of work, including, without limitation, the costs incurred in connection with the cancellation of third-party contracts and any cancellation costs for equipment that is already ordered for the Interconnection Facilities or Network Upgrades in accordance with the terms and conditions of Section 44 of Transmission Provider’s Large Generator Interconnection Procedures.

12. Billing. Transmission Provider shall provide Interconnection Customer with an invoice listing services performed and amounts due hereunder, showing credit for any prepayment of Project Costs made by Interconnection Customer. Interconnection Customer shall pay amounts due within thirty (30) days of the invoice date. Any refund due from Transmission Provider shall be paid to Interconnection Customer within thirty (30) days of the invoice date. If Interconnection Customer disputes any portion of the amount due, Interconnection Customer shall pay the total bill and shall designate the disputed portion, and resolve the dispute in accordance with Article 27 of the OATT.

13. Indemnification. Subject to the limitations contained in Section 14 below, the Parties shall at all times indemnify, defend, and hold the other Party harmless, from any and all damages, losses, claims, including claims and actions relating to injury to or death of any person

or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inactions of its obligations under this Agreement, except in the case of gross negligence or intentional wrongdoing by the indemnified party.

14. Remedies; Waiver; Warranty. Either Party may exercise any or all of its rights and remedies under this Agreement, the OATT and under any applicable laws, rules and regulations. Transmission Provider's liability for any action arising out of its activities relating to this Agreement shall be limited to the refund of amounts received hereunder. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE FOR ANY OF THE OTHER PARTY'S ECONOMIC LOSSES, COSTS OR DAMAGES, INCLUDING BUT NOT LIMITED TO SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES. No provision of this Agreement or the OATT shall be deemed to have been waived unless such waiver is in writing signed by the waiving Party. No failure by any Party to insist upon the strict performance of any provision of this Agreement, the OATT or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach of such provision or of any other provision. No waiver of any provision of this Agreement or the OATT shall be deemed a waiver of any other provision of this Agreement, the OATT or a waiver of such provision with respect to any subsequent breach, unless expressly provided in writing. Transmission Provider warrants that the work it performs hereunder shall be consistent with Good Utility Practice. TRANSMISSION PROVIDER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, AND ALL SIMILAR WARRANTIES.

15. Force Majeure. Neither Party shall be subject to any liability or damages for failure to perform their respective obligations hereunder to the extent that such failure is due to causes beyond the control of the Party claiming force majeure protection, including but not limited to the following: (a) the operation and effect of any rules, regulations and orders promulgated by any commission, municipality, or governmental agency of the United States, or subdivision thereof; (b) restraining order, injunction or similar decree of any court; (c) war; (d) flood; (e) earthquake; (f) act of God; (g) sabotage; or (h) strikes or boycotts. The Party claiming force majeure protection under this provision shall make every reasonable attempt to remedy the cause thereof as diligently and expeditiously as possible.

16. Assignment. Neither Party shall assign its rights or delegate its duties under this Agreement to any other entity without the written consent of the other Party, such consent not to be unreasonably withheld. If assigned with consent, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Party making the assignment.

17. Notice. Any notice required to be given hereunder shall be deemed to have been given when it is sent, with postage prepaid, by registered or certified mail, return receipt requested, or upon delivery if delivered by prepaid commercial courier service, to either of the Parties hereto at their respective addresses as follows:

To Interconnection Customer:

[_____]

To Transmission Provider:

Kenneth T. Houston
Director, Transmission Services
PacifiCorp
825 NE Multnomah St, Suite 1600
Portland, Oregon 97232
Telephone Number: (503) 813-6712

18. Governing Law. Except to the extent preempted by federal law, this Agreement shall in all respects be interpreted, and enforced in accordance with the laws of the State of Oregon without reference to rules governing conflicts of laws.

19. Relationship of Parties; No Third-Party Beneficiaries. Nothing contained in this Agreement shall be construed to create an agency relationship, association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to either of the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability or inference of liability to any third party.

20. Severability. If any provision of this Agreement is held invalid or unenforceable for any reason by a court or governmental agency of competent jurisdiction, then the objectionable portions of the provision shall be stricken, and all other provisions of this Agreement shall remain unaffected and in force. The Parties shall be relieved of their obligations only to the extent necessary to eliminate the objectionable portions unless a court or governmental agency of competent jurisdiction holds that the invalidated provision is not separable from the remainder of this Agreement.

21. Exhibit Incorporated. The Exhibit A to this Agreement, attached hereto, is incorporated and made part of this Agreement.

22. Recitals, Headings. The recitals, headings, and subtitles in this Agreement are for the convenience of the Parties and are not to be used for its construction or interpretation.

23. Complete Agreement; Amendment. This Agreement sets forth the entire Agreement between the Parties on the subject matter of this Agreement, and supersedes all prior Agreements of the Parties with respect to its subject matter. No amendment of any provision of this Agreement shall be effective unless set forth in a written document signed by authorized representatives of both Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate originals, each of which shall constitute and be an original effective Agreement between the Parties.

PACIFICORP TRANSMISSION SERVICES [_____]

By: _____

By: _____

Title: _____

Title: _____

Its: _____

Its: _____

Exhibit A

Note: this is not intended to be comprehensive LGIA scope, nor is it intended to limit activities under this E&P Agreement.

Transmission Provider

Interconnection Customer