**CONSTRUCTION COMPLETION MANAGEMENT AGREEMENT**

 **TERM SHEET[[1]](#footnote-1)**

THIS TERM SHEET DOES NOT CONSTITUTE A BINDING OFFER AND SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE. ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS TERM SHEET OR ON STATEMENTS MADE DURING NEGOTIATIONS PURSUANT TO THIS TERM SHEET SHALL BE AT THAT PARTY’S OWN RISK. UNTIL THE PARTIES HAVE COMPLETED THEIR DUE DILIGENCE AND A DEFINITIVE AGREEMENT IS NEGOTIATED, APPROVED, EXECUTED AND DELIVERED, NO PARTY SHALL HAVE ANY LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS TERM SHEET OR IN THE COURSE OF ANY NEGOTIATIONS.

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| Construction Manager: | [\_\_] (“**Construction Manager**”). |
| Owner: | PacifiCorp an Oregon corporation d/b/a Rocky Mountain Power (“**Owner**”). Construction Manager and Owner have entered into that certain Build Transfer Agreement (“**Build Transfer Agreement**”) whereby Owner shall purchase (and Construction Manager shall sell and transfer) the Facility (as defined below) prior to Closing Completion (as defined in the Build Transfer Agreement). |
| Relationship of Parties:  | Owner designates Construction Manager as its representative and agent to perform the duties per the performance standard, including to act as agent under all construction contracts and interconnection agreements to be set forth on an exhibit to the Agreement (the “**Project Development Contracts**”). |
| Limitations on Authority: | Construction Manager may not take certain actions without the prior written approval of Owner, including but not limited to: declaring an event of force majeure or event of default under any of the Project Development Contracts; materially amending, modifying, terminating or waiving any of the Project Development Contracts; initiating or settling any dispute.  |
| Scope: | Construction Manager and Owner would enter into a Construction Completion Management Agreement (the “**Agreement**”) for the provision of CCM Services (defined below) with respect to a renewable power plant (the “**Facility**”) to be located in [\_\_] (the “**Site**”) and to be constructed pursuant to an Engineering, Procurement and Construction Agreement (the “**EPC Agreement**”) between Construction Manager and [\_\_] (“**EPC Contractor**”), which will be assigned by Construction Manager to Owner at the closing under the Build Transfer Agreement. |
| CCM Services: | Construction Manager shall provide all necessary and appropriate construction management services and warranty support services for the entire Facility for the duration of the Term (the “**CCM Services**”), including as set forth on **Exhibit A** hereto. Construction Manager shall be responsible for and shall cause the Project to be completed in accordance with the milestones in the project schedule. Failure by the EPC Contractor to cause the Project to be completed in accordance with the milestones in the project schedule shall not relieve Construction Manager of its responsibility for or liability in respect of the same. |
| Construction Contractor Claims: | Construction Manager shall have the authority to assert and control, at Construction Manager’s sole expense, any claims that Owner may have against EPC Contractor, or any other contractor under the Project Development Agreements, *provided* that Construction Manager shall promptly notify Owner and shall not settle any claim without Owner’s consent. All liquidated damages payable under the Project Development Agreements shall be for the account of Owner, *provided* that if and to the extent Construction Manager has liability to Owner under the Build Transfer Agreement for liquidated damages similar to the liquidated damages collected by Owner or Construction Manager on behalf of Owner under the Project Development Agreements, then such collected liquidated damages shall offset and reduce Construction Manager’s liability to Owner for such similar liquidated damages under the Build Transfer Agreement. |
| Performance Security: | Construction Manager will cause [\_\_] (“**Construction Manager Parent**”), its parent, to provide or maintain any Owner parent guaranty or equivalent security required under any Project Development Contract (“**Performance Security**”) until the Final Completion Date. Construction Manager and Construction Manager Parent will not have any obligation to provide Performance Security from or after payment of all sums due to the EPC Contractor and other contractors under the Project Development Contracts as of the Final Completion Date.  |
| Payment Obligations; Sole Compensation: | Construction Manager shall be responsible for and make all payments under the Project Development Contracts that have not been paid as of the closing of the Build Transfer Agreement, including but not limited to all Construction Costs and any other ancillary costs associated with construction of the Facility. Owner will submit any invoices received under the Project Development Contracts to the Construction Manager for review, approval and payment.Owner will reimburse Construction Manager on a monthly basis for payments made under the Project Development Contracts for (i) any amounts owed as a result of any change order approved by Owner, or (ii) any amounts owed pursuant to indemnification obligations under any Project Development Contracts for losses due to Owner after the closing of the Build Transfer Agreement. Construction Manager will give Owner at least 10 business days’ prior notice of any reimbursable expense before such amount is due, and Owner will pay Contract Manager such amount within 10 business days of the receipt of such invoice. Construction Manager’s sole compensation is payment of the Purchase Price under the Build Transfer Agreement. |
| Standard ofPerformance: | All CCM Services shall be performed by Construction Manager in a good and workmanlike manner, free of any defect or deficiency, consistent with prudent industry practices with respect to first-tier, grid-interconnected, rate-based, utility-scale solar plants in the Western United States, applicable laws, applicable permits, governmental approvals, applicable project documents, the Warranties, the CCM Manual, the Safety Plan and Owner’s operating procedures (collectively, the “**Requirements**”). |
| Effectiveness: | The Agreement shall be executed and become effective on the closing of the Build Transfer Agreement.  |
| Term: | The term of the Agreement shall commence on closing of the Build Transfer Agreement and end on the later of (i) Final Completion under the EPC Agreement and (ii) the final resolution of any claims under the Project Development Contracts (the “**Term**”). |
| Independent Contractor: | Construction Manager is acting and shall be deemed for all purposes to be an independent contractor and nothing in the Agreement shall be construed as constituting any relationship with Owner other than that of owner and independent contractor. Owner and Construction Manager are not partners, agents or joint venturers with each other, and the Agreement is not intended to nor shall it be construed to create a partnership or joint venture between Owner and Construction Manager. Construction Manager shall complete the CCM Services according to its own means and methods of work, which shall be in the exclusive charge and control of Construction Manager and which shall not be subject to the control and supervision of Owner, except as to the results of the CCM Services.  |
| Personnel: | Construction Manager shall provide an appropriate number of suitably qualified, trained, competent and experienced management, operating and maintenance personnel necessary to perform the CCM Services, and such personnel shall perform such CCM Services in accordance with the applicable Requirements (defined below). Construction Manager shall pay all wages and benefits required by applicable law or contract with respect to personnel performing the CCM Services. Construction Manager shall be responsible for all matters relating to labor relations (including confirming labor union agreement with applicable project labor agreements), working conditions, training, employee benefits, safety programs and related matters pertaining to such personnel, including, if applicable, with any prevailing wage, project labor or other requirements.  |
| Reporting Requirements: | Construction Manager shall prepare and deliver a bi-weekly status report depicting: (a) construction progress, (b) a comparison of the planned versus the action schedule of construction activities, and (c) any other information reasonably requested to be included by Owner. Construction Manager will also promptly notify Owner of any accidents involving injury to anyone, or material damage to any of the assets or rights of Owner, any incident that may result in a material delay to achieving Substantial Completion or Final Completion (each as defined in the EPC Agreement), any environmental non-compliance, any breach of a Permit, any event of force majeure or event of default, or any other emergency.  |
| Cooperation: | Construction Manager shall cooperate with Owner in its performance of Owner’s obligations. Construction Manager will act in accordance with the Requirements.  |
| Site Access: | Owner shall provide Construction Manager with such access to the Facility as reasonably necessary to enable Construction Manager to perform its obligations, including ingress and egress rights to the Site. Construction Manager shall take commercially reasonable efforts to perform its obligations in such a manner that minimize the inconvenience to and interference with Owner’s use of the Site.  |
| Indemnification: | Construction Managers shall indemnify Owner and its affiliates, successors, assigns, officers, directors, employees and agents (“**Owner Parties**”), and hold them harmless from and against all reasonable out-of-pocket costs, expenses and actual liabilities arising out of or relating to any claim or any litigation or other proceeding that relate to (a) claims for injury or property damage, (b) worker’s compensation claims, (c) penalties due to failure to comply with applicable law, (d) taxes owed by Construction Manager, (e) Liens arising with respect to the Facility and (f) hazardous substances. |
| Liens:  | Construction Manager shall keep and maintain the Facility and the Site free and clear of all liens, encumbrances, claims, charges that if unpaid, might become a lien, and rights of retention (“**Liens**”) resulting from the action of Construction Manager or work done at the request of Construction Manager (including without limitation, work done by any subcontractor, supplier of goods or services, employee, material man or laborer). Construction Manager shall notify Owner of any Lien and as soon as reasonably practicable pay or discharge any Lien  |
| Termination Rights: | The Agreement shall provide for typical and customary termination rights, including termination for insolvency, bankruptcy, non-payment, prohibited assignment, etc. Following any termination of the Agreement for any reason, Construction Manager shall no longer have any authority with respect to the Project.  |
| Insurance:  | Construction Manager shall maintain in effect, insurance coverage of the following types and limits in addition to any other coverage required by law:[[2]](#footnote-2) 1. Workers’ Compensation Insurance. Workers’ Compensation in the minimum amount required by statute and Employers’ Liability with minimum limit of $1,000,000.
2. Commercial General Liability Insurance. Commercial General Liability on an “occurrence form” in the minimum amount of $2,000,000 per occurrence combined single limit and $3,000,000 in aggregate, including (a) broad form contractual liability coverage, (b) products/completed operations, (c) personal injury, (d) independent contractors and (e) sudden and accidental pollution liability (if not provided by separate pollution coverage). Coverage shall include a cross liability/severability of interests clause.
3. Automobile Liability Insurance.  Comprehensive Automobile Liability in the minimum amount of $1,000,000 each accident combined single limit, including owned, hired and non-owned vehicles.
4. Umbrella or Excess Liability Insurance. Umbrella/Excess Insurance on an “occurrence form” in the minimum amount of $20,000,000 each occurrence and annual aggregate which shall be in excess of the primary coverage referred to in clause (i) (employer’s liability only), clause (ii) and clause (iii) above.

Construction Manager (or its particular contractor or subcontractor) must provide Owner with 30-days prior written notice before any required insurance policy expires, is cancelled, or is altered.Deductible or retention amounts under the required policies must not exceed 5% of the per occurrence coverage limits, without the express written consent of Owner.Each contract of insurance must be with an insurer approved to do business in the State of Utah, is “A-” Rated or better by A.M. Best Company (see [www.ambest.com](http://www.ambest.com)) and must include the following provisions or endorsements:1. Additional Insured. Naming Owner, its directors, officers, and employees as additional insureds on the general liability, automobile liability, pollution liability and excess/umbrella insurance policies.
2. Primary Insurance. Stating that the insurance is primary insurance with respect to the interest of Owner and that any insurance maintained by Owner is excess and not contributory insurance.
3. Subrogation Waivers. Providing Owner with waivers of subrogation on all coverages.
4. Separation of Insured. Providing for “**Separation of Insured**” coverage in the general liability, automobile liability, pollution liability and excess/umbrella insurance policies.
5. Conversion from Claim Made to Occurrence. Providing that, if any policy is maintained on a “claims made” form and is converted to an “occurrence form”, the new policy will be endorsed to provide coverage back to a retroactive date acceptable to Owner.
6. Notice Requirement. Providing that Owner is entitled to 30-days’ prior written notice before such contract of insurance expires, is cancelled, or is altered.

Before Construction Manager or any of its subcontractors enters upon the Site, Construction Manager must provide Owner with certificates of insurance that name Owner as an additional insured and that evidence the coverage required by the Agreement, including additional insured endorsement numbers.  |
| Records; Audit: | Construction Manager shall maintain in accordance with good regulated utility accounting practices all records relating to the provision of the CCM Services and the Facility for a period not less than the Term of the Agreement plus five (5) years. To the extent specified in the CCM Manual, such records shall be maintained in electronic form on a file sharing site. In addition, Owner shall have the right to audit and inspect Construction Manager’s records upon reasonable advance notice.  |
| Business Practices: | Construction Manager, its employees, agents, representatives and subcontractors shall at all times maintain high ethical standards and avoid conflicts of interest in performing the CCM Services. In conjunction with its performance of CCM Services, Construction Manager and its employees, officers, agents and representatives shall comply with, and cause its subcontractors and their respective employees, officers, agents and representatives to comply with, all applicable laws prohibiting bribery, corruption, kick-backs or similar unethical practices including, without limitation, the United States Foreign Corrupt Practices Act and Owner’s “code of business conduct”, which code of business conduct would be included as an exhibit to the Agreement.  |
| Assignment: | Neither party may assign its rights and obligations under the Agreement without the non-assigning party’s prior written consent, which consent shall not be unreasonably withheld except that Owner may, without the consent of Construction Manager, assign this Agreement or assign or delegate its rights and obligations under this Agreement, in whole or in part, if such assignment or delegation is made consistent with the assignment provisions of the Build Transfer Agreement. |
| Confidentiality: | Each party shall keep confidential and not disclose any confidential information of the other party, subject to customary exceptions. Notwithstanding the foregoing, Construction Manager shall acknowledge that the UPSC and the Utah [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], have the power to examine Owner’s books, records, minutes, papers and property and may, from time to time, request or require Owner to disclose or report to the UPSC and/or BCP (or any representatives thereof), as the case may be, any confidential information so requested or required.  |
| Dispute Resolution; Governing Law: | This Term Sheet is, and the Agreement shall be, governed by the laws of the State of Utah, without regard to its conflict of laws provisions.The parties shall submit to the exclusive jurisdiction of the United States Federal District Court located in Salt Lake City, Utah, or, if such court does not have subject matter jurisdiction, the state courts of the State of Utah. Each party shall waive any objection to forum or venue, and any right to jury trial. The parties shall consent to joinder or consolidation with respect to any disputes involving common issues of law or fact with respect to the Facility, the EPC Agreement or any other agreement relating to the Facility.Any disputes between the parties not resolved via good faith negotiations may proceed to litigation unless the parties mutually agree to arbitration, which arbitration shall be in accordance with the Commercial Arbitration Rules of the American Arbitration Association. |

**Exhibit A**

**CCM Services**

Construction Manager shall provide the following services under the Agreement.

1. **Construction Management Services:** Construction Manager shall provide Construction Management Services including:
	* 1. Performing all duties and obligations of Owner under the Project Development Contracts, other that Owner’s obligation with respect to access to the Site
		2. Delivering any completion certificate under the Project Development Contracts to the respective counterparties in the name of and on behalf of Owner
		3. Exercising any step-in and cure rights of Owner (if any) to execute and perform the obligations of each counterparty to the Project Development Contracts in the event of a default by a counterparty
		4. Paying all invoices issued under the Project Development Contracts, monitoring all costs associated with construction, and informing the Company with respect thereto
		5. Supervising, coordinating, administering, managing and monitoring the construction of the Facility and construction work in accordance with the Project Development Contracts and the Project Schedule:
			1. The construction, start-up, commissioning, testing and performance of the Facility under the Project Development Contracts
			2. All quality assurance procedures necessary under the Project Development Contracts
			3. Coordination of work of the construction contractors
			4. All permitting, design, architecture and engineering and procurement for the Facility
		6. Supervising and administering the performance by counterparties to the Project Development Contracts of their obligations and covenants under the relevant Project Development Contracts
		7. Taking necessary steps to cause the Commercial Operation Date to occur prior to the Commercial Operation Deadline
		8. Promptly forwarding to Owner all correspondence related to the Facility
		9. Maintaining, administering and preserving and performing any obligations of Owner under and obtaining in the name of Owner all necessary Permits
		10. Assisting and cooperating with the Owner in its enforcement of the Project Development Contracts
		11. Monitoring, managing and enforcing safety programs
		12. Approving punch lists and monitoring and managing the performance of the construction contractors in connection with the finalization of items on the punch lists and each of the milestones for Financial Completion
		13. Conducting meetings with construction contractors as reasonably appropriate to monitor the progress of the Facility
		14. Overseeing the completion of any warranty work carried over from construction
		15. Providing information reasonably requested by Owner in connection with requirements of any financing party
		16. Maintain any credit support required under the Project Development Contracts through Final Completion, and
		17. Such other services as may be mutually agreed upon by the parties
2. **Warranty Support Services:**
	1. Construction Manager shall provide Warranty Support Services including:
		1. Managing the warranty investigation and claim process in consultation with Owner regarding Facility performance and other operation matters and recommend potential corrective action
		2. If Facility performance issues are covered under the Warranties, Construction Manager shall be responsible for pursuing compliance of all performance obligations owed to Owner under the Project Development Contracts
	2. Construction Manager’s obligations for pursing compliance with the Warranties are limited to:
		1. Timely notification to Warranty provider, and
		2. Providing reasonable information to such Warranty provider
	3. Construction Manager shall not be liable for:
		1. The performance or failure to perform of the Facility
		2. The performance or failure to perform by the provider of any Warranty
		3. Any act or omission of any provider of any Warranty
		4. Initiating or assisting with respect to any disputes or dispute resolution between Owner and provider of any Warranty
1. Further conforming changes will be required for a geothermal Project. [↑](#footnote-ref-1)
2. Insurance coverage, including limit amounts, is subject to further review and change by PacifiCorp. [↑](#footnote-ref-2)