Attachment D

ENGINEERING AND CONSTRUCTION AGREEMENT

WASHINGTON INTERCONNECTION

This **ENGINEERING AND CONSTRUCTION AGREEMENT** (“E&C Agreement”), entered into this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by and between PacifiCorp Transmission Services (“Company”) and [\_\_\_\_\_\_\_] (“Interconnection Customer”) for work to be performed in relation to Interconnection Customer’s proposed \_\_\_\_\_\_\_\_\_\_\_ kW generation facility (“Generating Facility”) located in \_\_\_\_\_\_\_\_\_\_. Interconnection Customer and Company each may be referred to individually as a “Party” or collectively as the “Parties.”

**Recitals**

**WHEREAS**, Company provides Generation Interconnection Service on its Electrical 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 Company for the interconnection of [\_\_\_\_\_\_\_\_\_\_] megawatts of electrical generation facilities upon such lands pursuant to request [\_\_\_\_\_\_\_\_\_\_\_\_] (the “Project”);

 **WHEREAS**, upon the request by the Interconnection Customer, Company offers an E&C Agreement that authorizes Company 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 Company’s generator interconnection queue or the projected in-service date for the Project; and

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

**Agreement**

1. **Definitions**. Terms with initial capitalization shall have the meaning assigned in this Section 1 or in the recitals or body of this E&C Agreement. If terms with initial capitalization are not defined in this E&C Agreement, they shall have the meaning assigned in WAC 480-108-010.

“Interconnection Service” shall mean the service provided by Company associated with interconnecting Interconnection Customer’s Generating Facility to Company’s Electric System and enabling Company to receive electric energy and capacity from the Generating Facility.

“Project Costs” shall mean all reasonable costs, charges, and expenses incurred by Company in design and engineering work for the facilities necessary to provide Interconnection Service to the Generating Facility and procurement of any related materials, including all of Company’s reasonable internal costs, overheads, expenses, and cost of supplies, and any other amounts owed to Company under terms of this E&C Agreement, including without limitation, all reasonable costs incurred by Company in performing the Scope of Work.

“Scope of Work” shall mean the work described in Appendix A to the E&C Agreement.

1. **Effective Date, Term and Termination**. This Agreement shall be effective upon execution by both Parties, and shall remain in effect until 90 days after the earliest of the following to occur:

(a) Termination of the Agreement as provided in Section 10 of this Agreement (Authorization of Additional Amounts for Project Costs); or

(b) Termination of the Agreement as provided in Section 11 of this Agreement (Right to Stop Work).

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.

1. **Engineering and Construction Services to Be Provided**. Execution of this Agreement shall not obligate Company to perform any construction work, acquire easements, or to undertake any other obligations not expressly set forth in Company’s Scope of Work. 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 by PacifiCorp’s standard operating procedures for processing interconnection requests. Company shall commence the engineering services as further described herein (“Engineering Services”) and the construction services as further described herein (“Construction Services”).

Engineering Services shall mean the services set out in Exhibit A and shall also include such other services as Company 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 Company. Company shall timely review such professional engineering firms.

Construction Services shall mean the services set out in Exhibit A and shall also include such other services as Company 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 Construction Services shall be collectively referred to herein as the “Services.”

**4. Modification of Services**. The Parties acknowledge and accept that the estimates and scope of Services described in Exhibit A are not binding on the part of Company and that Exhibit A may require modification to reflect engineering requirements of the Interconnection Facilities or Network Upgrades based on detailed Engineering Services. Such modifications shall include those deemed reasonably necessary by the Company in preparation for the construction of the Interconnection Facilities. Interconnection Customer, and anyone claiming by, through or under Interconnection Customer, hereby waives its right to recover from and fully and irrevocably releases Company from any and all claims, responsibility and/or liability that Interconnection Customer may now have or hereafter acquire against Company 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, 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 Company 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 ofuse, 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 Company, 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 Company 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 Company for all costs and expenses reasonably incurred by Company 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 Company in connection with the performance of the Services, including all of Company’s reasonable internal costs, overheads, third-party expenses, and cost of supplies, and any other amounts owed to Company under the terms of this Agreement, including without limitation, all reasonable costs incurred by Company in performing the activities described in Exhibit A, Scope of Work. Interconnection Customer shall pay Company 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 Company to incur Project Costs in an initial amount of up to $[\_\_\_\_\_\_\_\_\_\_\_] (the “Authorized Amount”).

**9**. **Payment of Estimated Project Costs**. Interconnection Customer shall pay Company for all Project Costs incurred, subject to the terms of this E&C Agreement. Interconnection Customer hereby authorizes Company to incur Project Costs in an initial amount of $[\_\_\_\_\_\_\_\_\_]. Company 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.

**10. Authorization of Additional Amounts for Project Costs.** In the event that Company determines Project Costs may exceed the Authorized Amount, Company 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. Company’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 Company gives Interconnection Customer written notice and an additional fifteen (15) days to cure.

 **11. Prepayment.** Upon execution of this Agreement, Interconnection Customer shall tender to Company prepayment of Project Costs in the amount of $[\_\_\_\_\_\_\_\_\_] (the “Prepayment”). Company’s obligation to proceed with the Services shall be contingent upon receipt of the Prepayment.

 **12. Billing and Disputes**. Company 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 Company 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 the dispute shall be resolved in accordance with the below dispute resolution procedures.

 An interconnection customer may ask the commission to review an electrical company's study costs, interconnection facility costs, system upgrade costs, deposit requirements, assignment of costs to the interconnection customer or an electrical company's processing, termination, denial or rejection of an interconnection application by making an informal complaint under WAC 480-07-910, or by filing a formal complaint under WAC 480-07-370. In the event either Party has a dispute, or asserts a claim, that arises out of or in connection with this Agreement or its performance, such Party (the "Disputing Party") shall provide the other Party with written notice of the dispute or claim ("Notice of Dispute"). The Notice of Dispute shall describe in detail the nature of the dispute. Each Party agrees to conduct all negotiations in good faith and will be responsible for one-half of any costs paid, in escrow, to neutral third-parties arbiter. If the attempted dispute resolution fails, then either Party may exercise whatever rights and remedies if may have in equity or law consistent with the terms of this Agreement.

 **13. Right to Stop Work**. Interconnection Customer reserves the right, upon seven (7) days advance written notice to Company, to require Company at any time to stop all work by Company 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 be responsible for all Project Costs that Company has incurred prior to the stoppage of work, including, without limitation, any cancellation costs relating to third-party orders or contracts for equipment that is already ordered for the Interconnection Facilities or Network Upgrades, for which Company has incurred expenses and not been reimbursed by Interconnection Customer or when such costs cannot be mitigated. Interconnection Customer shall pay all cancellation costs in accordance with Section 12 below.

 **14.** **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.

**15. Remedies; Waiver; Warranty.** Either Party may exercise any or all of its rights and remedies under this Agreement and under any applicable laws, rules and regulations. Company’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 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 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 shall be deemed a waiver of any other provision of this Agreement or a waiver of such provision with respect to any subsequent breach, unless expressly provided in writing. Company warrants that the work it performs hereunder shall be consistent with Good Utility Practice. COMPANY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, AND ALL SIMILAR WARRANTIES.

 **16. 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.

 **17. 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.

 **18. 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 Company:

Rick Vail

Vice President, Transmission Services

PacifiCorp

825 NE Multnomah St, Suite 550

Portland, Oregon 97232

Telephone Number: (503) 813-6938

**19. 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 Washington without reference to rules governing conflicts of laws.

**20. 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.

**21. 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.

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

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

**24. 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.

**25. 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 [CUSTOMER AND QUEUE #]

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

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Exhibit A to E&C Agreement**

**Scope of Work**

**Part 1.** Subject to the expenditure authorizations granted hereunder and all the other terms and conditions of this E&C Agreement, Company shall perform such detailed engineering and design services as Company deems necessary in preparation for construction of the Interconnection Facilities and System Upgrades to the Company's Electric System identified generally in the results of the System Impact and Interconnection Facilities Study provided to Interconnection Customer on ,20\_. Generally, the scope of these design activities will include designing: (Insert Scope)

**Part 2.** Subject to the expenditure authorizations granted hereunder and all the other terms and conditions of this E&C Agreement, Company may enter into third-party E&C Agreements for the provision of such materials as Company deems necessary in preparation for construction of the Interconnection Facilities and System Upgrades to the Company's Electric System identified generally in the results of the System Impact and Interconnection Facilities Study provided to Interconnection Customer on \_\_\_\_\_\_\_, 20\_\_. Generally, the scope of the procurement activities will include procuring long lead time equipment associated with the scope under the Part 1 design activities.