

Appendix H

# APA Form Agreement

2023 All-Source RFP



APPENDIX H

**ASSET PURCHASE AGREEMENT**

by and between

**PORTLAND GENERAL ELECTRIC COMPANY**

and

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Dated \_\_\_\_\_

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## Schedules

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## ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** (together with all exhibits and schedules appended hereto, this “**Agreement**”), dated as of [DATE] (the “**Effective Date**”), is made by and between [COUNTERPARTY], [STATE] [ENTITY TYPE] (“**Seller**”), and Portland General Electric Company, an Oregon corporation (“PGE”). PGE and Seller each may be referred to herein as a “**Party**”, and collectively as the “**Parties**”.

### RECITALS

WHEREAS, Seller owns [and operates] the Project and owns all right, title and interest in and to the Project Assets.

WHEREAS, in accordance with the terms and conditions set forth in this Agreement, Seller desires to sell and transfer to PGE, and PGE desires to purchase from Seller, the Project and the Project Assets.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE 1 DEFINITIONS AND CONSTRUCTION

1.1 **Specific Definitions**. As used in this Agreement, the following terms shall have the meanings ascribed to them below:

“**AAA**” shall mean the American Arbitration Association.

“**AAA Procedures**” shall have the meaning given to it in Section 11.4.2.

“**Account**” shall have the meaning given to it in Section 2.3.2.

“**Affiliate**” of a specified Person shall mean any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Person specified. For purposes of the immediately preceding sentence, “control” shall mean the ability to control or affect, directly or indirectly, through ownership interests, contract or otherwise, the day-to-day management and control of the Person or a fifty percent (50%) or greater beneficial ownership interest in the partnership interests, membership interests or voting stock of the Person. For purposes of this Agreement, any Person owning an interest in Seller shall be considered an “Affiliate” of Seller.

“**Affiliate Contracts**” shall have the meaning given to it in Section 5.10.1.

“Agreement” shall have the meaning given to it in the Preamble.

“Allocation” shall have the meaning given to it in Section 10.1.

“Applicable Law” shall mean any act, statute, law, regulation, Permit, ordinance, rule, judgment, order, decree, directive, guideline or policy (to the extent mandatory) or any similar form of decision or determination by, or any interpretation or administration of, any of the foregoing by any Governmental Authority having jurisdiction over (a) any Party, (b) the Project Assets or (c) the Project.

“Assumed Liabilities” shall mean those Liabilities and obligations of Seller set forth on Schedule 2.1, which shall be assumed by PGE.

“Business Day” shall mean a day on which national banks are not required or authorized by law or executive order to close in Portland, Oregon.

“Claim” shall have the meaning given to it in Section 9.5.

“Claim Notice” shall have the meaning given to it in Section 9.5.

“Closing” shall have the meaning given to it in Section 4.1.

“Closing Date” shall have the meaning given to it in Section 4.1.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Contracts” shall have the meaning given to it in Section 5.10.1.

“Debt” of any Person at any date means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, (d) all monetary liabilities of such Person under contracts, (e) all obligations of such Person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property), (f) all obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other instrument, (g) all obligations of others secured by a Lien on any asset of such Person, whether or not such obligation is assumed by such Person, and (h) all obligations of others guaranteed directly or indirectly by such Person or as to which such Person has an obligation substantially the economic equivalent of a guaranty.

“Dispute” shall have the meaning given to it in Section 11.4.1.

“DOE” means the United States Department of Energy.



“Effective Date” shall have the meaning given to it in the Preamble.

“Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets and allowances of any kind, howsoever entitled, attributable to an electric generating facility or the electric energy, capacity or other generator-based products produced therefrom, including (a) any avoided emissions of pollutants to the air, soil or water, such as sulfur oxides, nitrogen oxides and carbon monoxide, and any rights related thereto, (b) any avoided emissions of methane, carbon dioxide and other “greenhouse gases” that have been determined by the United Nations Intergovernmental Panel on Climate Change or any other governmental, quasi-governmental or non-governmental agency or body to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere, and (c) any reporting rights relating to the reduction of “greenhouse gases” under Section 1605(b) of the National Energy Policy Act of 1992 or under any other federal, state, local or foreign law, rule or regulation related to the reduction of air pollutants or “greenhouse gases” or the trading of emissions or emissions credits, including so-called “green tags” or “green certificates.”

“Environmental Laws” shall mean all laws that regulate or relate to (a) the protection or clean-up of the environment, (b) the handling of Hazardous Substances, (c) the preservation or protection of waterways, groundwater, drinking water, air, wildlife, plants or other natural resources, and (d) the health and safety of persons or property as it pertains to the environment, including, without limitation, protection of the health and safety of employees. Environmental Laws shall include, without limitation, (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., (b) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., (c) the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., (d) the Clean Air Act, 42 U.S.C. § 7401 et seq., (e) the Hazardous Materials Transportation Authorization Act of 1994, 49 U.S.C. § 5101 et seq., (f) the Toxic Substances Control Act, 15 U.S.C. §§ 2601 through 2629, (g) the Oil Pollution Act, 33 U.S.C. § 2701 et seq., (h) the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq., (i) the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j, (j) the Federal Insecticide, Fungicide, & Rodenticide Act, 7 U.S.C. § 136 et seq., (k) the Endangered Species Act, 16 U.S.C. § 1531 et seq., (l) the Clean Water Act, 33 U.S.C. § 1251 et seq., (m) National Environmental Policy Act, 42 U.S.C. § 55 et seq., (n) the Migratory Bird Treaty Act, 16 U.S.C. § 703 et seq., (o) the Bald and Golden Eagle Protection Act, (p) Archaeological Resources Protection Act, 16 U.S.C. § 470aa et seq., (q) National Historic Preservation Act, 54 U.S.C. § 300101 et seq., and (s) state equivalents to items (a) through (q); provided, however, that the term “Environmental Law” shall not include any Law relating to worker health or safety matters to the extent not related to human exposure to hazardous or toxic materials, wastes, or substances.

“Federal Funds Effective Rate” shall mean, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal fund brokers, as published on

the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not published for any day that is a Business Day, the weighted average (rounded upwards if necessary, to the next 1/100 of 1%) of the rates on overnight federal funds transactions with the members of the Federal Reserve System arranged by federal fund brokers, as published on the next succeeding Business Day by the Federal Reserve of New York.

“FERC” means the Federal Energy Regulatory Commission or its successor Governmental Authority.

“Final Order” shall mean, with respect to a Seller Required Regulatory Approval or PGE Required Regulatory Approval, as the case may be, that such Seller Required Regulatory Approval or PGE Required Regulatory Approval has not been reversed, stayed, set aside, annulled or suspended, with respect to which any waiting period prescribed by Applicable Laws before the transactions contemplated hereby may be consummated has expired (but without the requirement for expiration of any applicable rehearing period), and as to which all conditions to the consummation of such transactions prescribed by Applicable Laws have been satisfied.

“Forced Labor” means the use of physical force, coercion, threats, intimidation, social, legal or financial pressure or other means to force a person to work against his or her own will or freedom.

“GAAP” means generally accepted accounting principles in the United States of America.

“Governmental Authority” means any and all foreign, national, federal, state, county, city, municipal, local or regional authorities, departments, bodies, commissions, corporations, branches, directorates, agencies, ministries, courts, tribunals, judicial authorities, legislative bodies, administrative bodies, regulatory bodies, autonomous or quasi-autonomous entities or taxing authorities or any department, municipality or other political subdivision thereof.

“Hazardous Material” shall mean (a) any petroleum or petroleum products, flammable explosives, radioactive materials, asbestos in any form that is or could become friable, lead containing paints or coatings, urea formaldehyde foam insulation and transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls, (b) any chemicals or other materials or substances which are defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants” or words of similar import under any Environmental Law, and (c) any other chemical or other material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority under any Environmental Law.

“Indemnified Claim” shall have the meaning given to it in Section 10.3.

“Indemnified Party” shall have the meaning given to it in Section 9.5.

“Indemnifying Party” shall have the meaning given to it in Section 9.5.

“Instruments of Conveyance” shall have the meaning given to it in Section 2.2.

“Knowledge” when used in a particular representation in this Agreement with respect to Seller, means the actual knowledge of the individuals listed on Schedule 1.1-K, after reasonable inquiry of their direct reports.

“Liabilities” shall mean, with respect to any Person, any and all Debts, liabilities, payables, obligations, commitments, losses, damages, expenses, claims, deficiencies, guarantees or endorsements, of any kind whatsoever, in each case requiring a payment (including a potential payment of damages for non-performance), including those of a contingent or deferred nature.

“Lien” shall mean mortgages, deeds of trust, liens, pledges, charges, security interests, assessments, reservations, hypothecations, restrictive covenants, easements or encumbrances.

“Losses” shall have the meaning given to it in Section 9.3.1.

“Material Adverse Effect” shall mean any event, occurrence, change or effect that, individually or in the aggregate, (a) with respect to Seller, that has or could reasonably be expected to have a material adverse effect on the ability of Seller to consummate the transactions contemplated by this Agreement and to satisfy its obligations contemplated by this Agreement, and (b) with respect to the Project or the Project Assets, could reasonably be expected to have a material adverse effect on the Project or the Project Assets, including the development, interconnection, ownership, operation or maintenance of the Project, (the “Business”) or on the fair market value of the Project Assets; *provided, however*, that a “Material Adverse Effect” shall not include any adverse change, effect or circumstance directly or indirectly resulting from or arising out of (i) actions taken or omissions made by a Party at the request or with the consent of the other Party, or the failure to take any action prohibited by this Agreement, (ii) changes in the renewable power development industry or in renewable energy markets generally or (iii) changes in economic conditions or financial markets in any country or region or globally, including changes in interest or exchange rates and changes in currency and credit markets; *provided, further*, that the exceptions stated in clauses (ii) and (iii) above shall not apply to the extent the changes, effects or occurrences described therein disproportionately affect the Project, or the Project Assets compared to other similarly situated businesses or assets in [*the state of Oregon*]; and *provided, further*, that a matter as described in a Schedule hereto will not in and of itself constitute an Material Adverse Effect (but it may be possible that a change, effect or occurrence resulting from or arising out of such a matter could constitute a Material Adverse Effect).

“Material ESG Incident” means any event or condition, for which Seller has Knowledge, relating to environmental, social, or governance factors that could reasonably be expected to have a material adverse impact on the Project Assets or PGE, including, but not limited to: (i) any incident or accident that could reasonably be expected to have a material adverse impact on health, safety, or the environment, (ii) any accident resulting in death or serious or multiple injury (including amputations), (iii) any material community or worker related grievance or protest, including instances of Forced Labor, (iv) any failure to materially comply with applicable Laws, including any such material failure to comply that is required to be disclosed to a Governmental Authority, (v) the receipt of any formal complaints of discrimination or harassment in the past year that were repeated, substantiated, involved a member of management, or were otherwise significant, (vi) any incidents of fraud, corporate misconduct, bribery, corruption, or ethics violations, including violations of any applicable anti-corruption laws, (vii) any material data breaches or privacy incidents, including any such breaches or incidents that resulted in the disclosure of PGE’s Confidential Information, and (viii) any instances of contractors or suppliers of Seller alleging or being involved in any of the foregoing.

“NERC” means the North American Electric Reliability Corporation or its successor Governmental Authority, and includes any applicable regional entity (such as Reliability First Corporation) having authority over Seller or the Project.

“OPUC” shall mean the Public Utility Commission of Oregon.

“Ordinary Course of Business” means the ordinary course of business consistent in material respects with past practices and Prudent Utility Standards.

“Party” or “Parties” shall have the meaning given to it in the Preamble.

“Permits” shall mean permits, licenses, approvals, consents, orders, registrations, privileges, franchises, memberships, certificates, entitlements variances, waivers, certificates of occupancy and other authorizations issued by any Governmental Authorities, and any siting, zoning and land use approvals required under Applicable Laws in connection with the development, construction, operation, use and/or maintenance of the Project, and all amendments, modifications, supplements, general conditions and addenda thereto.

“Permitted Liens” shall mean all of the following: (a) liens for property Taxes and installments of assessments and charges of Governmental Authorities not yet due and payable as of the Closing Date; (b) liens created by the act or omission of PGE; (c) any other encumbrances created or permitted with the prior written consent of PGE; and (d) any encumbrances that will not have an adverse effect on the construction, ownership, operation or performance of the Project and/or Project Assets.

“Person” shall mean any natural person, corporation, limited liability company, partnership, firm, association, Governmental Authority or any other entity whether acting in an individual, fiduciary or other capacity.

“PGE” shall have the meaning given to it in the Preamble.

“PGE Conditions Precedent” shall have the meaning given to it in Section 3.2.

“PGE Confidential Information” shall have the meaning given to it in Section 7.1.

“PGE Indemnified Party” shall have the meaning given to it in Section 9.3.1.

“PGE Required Regulatory Approvals” shall mean those items listed on Part II of Schedule 6.5.

“Placed in Service” means placed in service for purposes of (a) Sections 48(b)(2) and (3) of the Code (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) and (b) Section 168 of the Code.

“Project” shall mean that certain [[\_\_\_\_\_] MW [solar] [wind] [hydroelectric] [OTHER TECHNOLOGY]<sup>1</sup> energy generating project [under development] [located in \_\_\_\_\_]].

“Project Assets” shall mean the assets, other than Retained Contracts, set forth on Schedule 5.7, which shall include all assets and rights of any kind, related to the ownership, operation or maintenance of the Project and owned by Seller, whether tangible or intangible, real or personal, including land and properties (or interests therein including rights of way, leaseholds and easements), buildings, equipment, machinery and associated equipment, improvements, fixtures, agreements, contracts, renewable resource data, reports and studies (including those related to interconnection, environmental, cultural, resource and market matters), the ownership of Environmental Attributes created on or after the Closing Date, Permits, software and intellectual property, inventory, books and records, proprietary rights, return and other rights under or pursuant to all warranties, representations and guarantees, cash, accounts receivable, deposits and prepaid expenses.

“Prudent Utility Standards” shall mean those practices, methods, equipment, specifications and standards of care, skill, safety and diligence and acts as the same may change from time to time, but applied in light of the facts known at the time, as are generally applied or utilized under comparable circumstances by experienced and prudent professionals in respect of the interconnection, transmission, ownership, operation or maintenance of renewable resource

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<sup>1</sup> NTD: Bidder to include appropriate technology descriptor.

generating facilities of comparable type and complexity to the Project and which would have been expected to accomplish the desired result in a manner consistent with Applicable Law, safety, environmental protection, economy and expedition. Prudent Utility Standards are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather, refer to a range of actions reasonable under the circumstances.

“Purchase Price” shall have the meaning given to it in Section 2.3.

“PWA Guidance” means IRS Notice 2022-61 (November 29, 2022) and any further guidance issued by the Secretary of the U.S. Department of the Treasury (including any guidance issued by the Internal Revenue Service) pursuant to Sections 45(b)(7), 45(b)(8), 48(a)(10), and 48(a)(11) of the Code, or any provision of the Code that is cross-referenced therein.

“Qualified Apprentice” means an individual who is employed by a contractor or subcontractor and who is participating in a Registered Apprenticeship Program.

“Real Property Agreements” shall mean the agreements set forth on Schedule 5.8 evidencing the Real Property Interests.

“Real Property Interests” shall mean, collectively, [\_\_\_\_\_].

“Registered Apprenticeship Program” has the meaning given to such term in Section 3131(e)(3)(B) of the Code and any PWA Guidance.

“Renewable Resource Data” means any and all renewable resource data measured by Seller at the Site and collected by the meteorological towers on the Site through the Closing Date and which are included as part of the Project Assets.

“Representatives” shall mean, with respect to a Person, such Person’s directors, partners, officers, managers, employees, members, agents and representatives, including attorneys, accountants, consultants, potential lenders, lenders, potential investors, investors and financial advisors.

“Retained Contracts” shall have the meaning given to it in Section 5.10.5.

“Retained Liabilities” shall mean all Liabilities of Seller or its Affiliates of every kind or nature whatsoever other than Assumed Liabilities.

“RFP” shall mean that certain request for proposals for renewable energy resources issued by PGE in \_\_\_\_\_ 2023 and conducted in accordance with the OPUC Competitive Bidding Guidelines set forth in [OPUC Order \_\_\_\_\_ (Docket UM-\_\_\_\_\_)], dated \_\_\_\_\_.

“Seller” shall have the meaning given to it in the Preamble.

“Seller Conditions Precedent” shall have the meaning given to it in Section 3.3.

“Seller Confidential Information” shall have the meaning given to it in Section 7.2.1.

“Seller Contracts” shall have the meaning given to it in Section 5.10.1.

“Seller’s Exclusivity Obligations” shall have the meaning given to it in Section 8.2.

“Seller Indemnified Party” shall have the meaning given to it in Section 9.4.1.

“Seller Required Regulatory Approvals” shall mean those items listed on Part II of Schedule 5.6.

“Site” shall mean [\_\_\_\_\_].

“Tax” or “Taxes” shall mean any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative, minimum, estimated or similar tax, levy or assessment and any related interest or penalty.

“Tax Return” shall mean any return, report, statement, claim for refund, information return or other document (including any amendments thereto and any related or supporting information) filed or required to be filed with any Governmental Authority in connection with the determination, assessment, collection or administration of Taxes or the administration of any Applicable Law relating to Taxes.

“Third-Party Claim” shall have the meaning given to it in Section 9.6.

“Title Company” means [\_\_\_\_\_].

“Title Policy” means [\_\_\_\_\_].

“Treasury” shall mean the United States Department of Treasury, including any successor agency.

“Treasury Regulations” shall mean the Treasury regulations promulgated under the Code, including any successor regulations.

“WECC” shall mean Western Electricity Coordinating Council.

1.2 **Construction.** Headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement.

1.2.1 A reference to an Exhibit, Schedule, Article, Section or other provision shall be, unless otherwise specified, to exhibits, schedules, articles, sections or other provisions of this Agreement, which exhibits and schedules are incorporated herein by reference.

1.2.2 Any reference in this Agreement to another agreement or document shall be construed as a reference to that other agreement or document as the same may have been, or may from time to time be, varied, amended, supplemented, substituted, novated, assigned or otherwise transferred.

1.2.3 Any reference in this Agreement to “this Agreement,” “herein,” “hereof” or “hereunder” shall be deemed to be a reference to this Agreement as a whole and not limited to the particular Article, Section, Exhibit, Schedule or provision in which the relevant reference appears and to this Agreement as varied, amended, supplemented, substituted, novated, assigned or otherwise transferred from time to time.

1.2.4 References to any Party shall, where applicable, include any successors, transferees and permitted assigns of the Party.

1.2.5 References to the term “includes” or “including” shall mean “includes, without limitation” or “including, without limitation.”

1.2.6 Words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders.

1.2.7 If the time for performing an obligation under this Agreement occurs or expires on a day that is not a Business Day, the time for performance of such obligation shall be extended until the next succeeding Business Day.

1.2.8 References to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires.

1.2.9 References to any amount of money shall mean a reference to the amount in United States Dollars.

## **ARTICLE 2**

### **PURCHASE AND SALE OF ASSETS; PURCHASE PRICE AND PAYMENT**



2.1 **Purchase and Sale.** Subject to and upon the terms and conditions of this Agreement, including (a) the satisfaction or written waiver by PGE of the PGE Conditions Precedent, and (b) the satisfaction or written waiver by Seller of the Seller Conditions Precedent, on the Closing Date, Seller shall sell, assign, transfer, convey and deliver to PGE, and PGE shall purchase, acquire and accept from Seller, all of the Project Assets, free and clear of any and all Liens other than Permitted Liens. Upon the consummation of the purchase by PGE of the Project Assets, PGE agrees to assume and become responsible for, and shall pay, discharge or perform when due, all of the Assumed Liabilities as of and after the Closing Date. PGE and its Affiliates shall not assume or incur any Liability in respect of, and Seller shall remain bound by and be liable for, and shall pay, discharge or perform when due, the Retained Liabilities.

2.2 **Instruments of Conveyance.** The sale, conveyance, assignment, transfer and delivery of the Project Assets will be effected by the execution and delivery by Seller and PGE of (a) the Bill of Sale, substantially in the form of Exhibit A, (b) the Assignment and Assumption Agreement substantially in the form set forth in Exhibit B, [(c) assignments of the Real Property Interests in recordable form, substantially in the form set forth in Exhibit C,] and (d) such other agreements or documents requested by PGE, with the items described in clauses (a) through (d) of this Section 2.2 collectively referred to herein as the “**Instruments of Conveyance.**”

2.3 **Payments.** As consideration for the sale, transfer, assignment, conveyance and delivery by Seller to PGE of the Project Assets, PGE will pay to Seller the “**Purchase Price**” in an amount equal to [\_\_\_\_\_] as further described and on the terms and conditions contained in this Agreement.

2.3.1 **Payment Terms.** At Closing, PGE shall pay Seller one hundred percent (100%) of the Purchase Price.

2.3.2 **Wiring Instructions.** PGE shall pay the Purchase Price, to the extent due pursuant to the terms of this Agreement, to Seller by depositing the applicable amount for Seller’s account into the account listed below (the “**Account**”) by the date due (as provided in this Article 2) in accordance with the following transfer instructions, or such other instructions as Seller may provide to PGE in writing.

2.4 **Late Payments.** Unless otherwise specified herein, the amount of any payment due by either PGE or Seller pursuant to the terms of this Agreement that is not paid when due hereunder shall bear interest at an annual rate equal to the lower of the Federal Funds Effective Rate plus two percent (2%) or the maximum rate allowed by Applicable Law, from the date such payment was required to have been made through and including the date such payment is actually received by the Party to whom such payment is due.

2.5 **Further Assurances; Cooperation.** At any time, and from time to time after the Closing Date, at either Party's reasonable request, the other Party shall promptly execute, acknowledge and deliver all such further acts, assurances and instruments of sale, transfer, conveyance, assignment and confirmation, as are reasonably required, and take all such other action as the requesting Party may reasonably request, in connection with the performance of such Party's obligations under this Agreement. From and after the Effective Date until the Closing Date, each Party shall reasonably cooperate with the other Party in connection with the performance of such Party's obligations under this Agreement.

### **ARTICLE 3 CONDITIONS PRECEDENT**

3.1 **Conditions Generally.** For purposes of this Agreement, there shall be conditions which must be satisfied or waived prior to the Closing. PGE's obligation to cause the Closing to occur is subject to the satisfaction, or waiver in writing by PGE, of each of the PGE Conditions Precedent, and Seller's obligation to cause the Closing to occur is subject to the satisfaction or waiver in writing by Seller, of each of the Seller Conditions Precedent, in each case within the applicable time periods herein. Seller and PGE expressly acknowledge and agree that each of the (a) PGE Conditions Precedent are for the sole benefit of and may only be waived by PGE in writing, and (b) Seller Conditions Precedent are for the sole benefit of and may only be waived by Seller in writing.

3.2 **PGE Conditions Precedent to the Closing.** PGE shall not be obligated to effect the Closing hereunder if the following conditions precedent (the "**PGE Conditions Precedent**") are not satisfied (or waived in writing by PGE) on or prior to the Closing Date:

3.2.1 [Project Specific Conditions. \_\_\_\_\_]<sup>2</sup>.

3.2.2 **Third-Party Consents.** All authorizations, approvals and consents of all Persons, including Governmental Authorities, that are required in connection with the execution, delivery, and performance of this Agreement by each of PGE and Seller shall have been received.

3.2.3 **Certificates.** PGE shall have received a certificate, dated as of the Closing Date, in form and substance reasonably satisfactory to PGE, of a duly authorized officer of Seller certifying that attached thereto are the following: (a) the incumbency of Seller's officers executing this Agreement and any other agreement delivered on the Closing Date and any certificate delivered in connection with the Closing; (b) true, accurate and complete copies of the certificates

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<sup>2</sup> NTD: PGE reserves the right to require additional conditions precedent to be met prior to the Closing, based on the nature and state of development of Bidder's project. Such conditions may include, but are not limited to, board approval, regulatory approval, delivery of a title insurance policy, survey, Permits and environmental reports.

issued by the Secretary of State of the State of [ ] within ten (10) days of the Closing Date certifying that Seller is duly [organized] [incorporated] [formed] and validly existing under the laws of the State of [ ] and is current in payment of Taxes in such state; (c) true, accurate and complete resolutions of Seller duly authorizing the execution, delivery and performance of this Agreement and all other related agreements and transactions contemplated hereby and thereby, and that such resolutions are in full force and effect as of the Closing Date; (d) the certificate of formation of Seller, as certified by the Secretary of State of the State of [ ]; and (e) the [operating agreement] [by-laws] of Seller (as amended through the Closing Date).

3.2.4 Representations and Warranties. Each of the representations and warranties of Seller in this Agreement shall be true and correct on and as of the Closing Date as though such representations and warranties were made on and as of the Closing Date (except to the extent such representations and warranties are made as of a particular date, in which case such representations and warranties shall be true and correct as of such date).

3.2.5 UCC Search Report. PGE shall have received Uniform Commercial Code search reports from the relevant jurisdictions covering the Seller with respect to the Project Assets, the results of which shall be satisfactory to PGE in its sole discretion.

3.2.6 Performance. Seller shall have performed, in all material respects, each and all of the covenants and obligations required to be performed by it prior to the Closing Date, on or prior to the Closing Date.

3.2.7 Litigation. No action or proceeding by or before any court or other Governmental Authority shall have been instituted or threatened by any Governmental Authority or Person whatsoever that (a) could result in the impairment, restraint, prohibition or invalidation of the Closing, (b) could reasonably be expected to have a Material Adverse Effect on Seller, the Project or the Project Assets, (c) challenges any Permit in a way that could reasonably be expected to invalidate, impair or restrain, in a material way, such Permit, in PGE's reasonable discretion, or (d) could reasonably be expected to have a material adverse effect on PGE's ability to consummate the Closing.

3.2.8 No Material Adverse Effect. As of the Closing Date, no Material Adverse Effect shall have occurred with respect to Seller, the Project or the Project Assets.

3.2.9 Regulatory Approvals. The Seller Required Regulatory Approvals in Schedule 5.6 and the PGE Required Regulatory Approvals in Schedule 6.5 shall have been made or obtained and shall have become Final Orders. The Seller Required Regulatory Approvals shall have been made or obtained at Seller's cost.

3.2.10 FIRPTA Certificate. Seller shall have executed and delivered an affidavit, dated as of the Closing Date, stating, under penalty of perjury, Seller's United States taxpayer identification number and that Seller is not a foreign person, pursuant to Section 1445(b)(2) of the Code and Treasury Regulation 1.1445-2(b)(2)(iii)(B) (or any similar provision under other applicable Tax law).

3.2.11 Assignment of Project Contracts and Real Property Interests. PGE shall have received an assignment of each Contract (as set forth on Schedule 5.10) and each Real Property Interest (as set forth on Schedule 5.8), executed by all parties thereto, all in form and substance reasonably acceptable to PGE, and an estoppel letter from each counterparty to each Contract executed and delivered no earlier than ten (10) days prior to the Closing Date substantially similar to the form set forth in Exhibit D. Any assignment of a Real Property Interest must be in recordable form and shall be recorded at Closing.

3.2.12 Completion of Due Diligence. PGE shall have completed its due diligence review of the Project and the Project Assets to its satisfaction.

3.2.13 Orders and Laws. There shall be no effective injunction, writ or restraining order or any order of any nature issued by a Governmental Authority of competent jurisdiction that prevents the consummation of the transactions contemplated by this Agreement.

3.2.14 Title Insurance. PGE shall have received a copy of the Title Policy from the Title Company in form and substance acceptable to PGE.<sup>3</sup>

3.3 **Seller Conditions Precedent to the Closing**. Seller shall not be obligated to effect the Closing hereunder if the following conditions precedent (the "**Seller Conditions Precedent**") are not satisfied (or waived in writing by Seller) on or prior to the Closing Date:

3.3.1 Certificates. Seller shall have received a certificate, dated as of the Closing Date, in form and substance reasonably satisfactory to Seller, of a duly authorized officer of PGE certifying that attached thereto are the following: (a) the incumbency of PGE's officers executing this Agreement and any other agreement delivered on the Closing Date and any certificate delivered in connection with the Closing; (b) true, accurate and complete copies of the certificates issued by the Secretary of State of the State of Oregon within ten (10) days of the Closing Date certifying that PGE is duly organized and validly existing under the laws of the State of Oregon and is current in payment of Taxes in such state; (c) true, accurate and complete resolutions of PGE duly authorizing the execution, delivery and performance of this Agreement and all other related agreements and transactions contemplated hereby and thereby, and that such resolutions

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<sup>3</sup> NTD: Bidders must possess at least one proof of title to the Site, such as an executed lease agreement, an executed easement, or an execution option agreement applicable to a minimum of 80% of the project site.

are in full force and effect as of the Closing Date; and (d) the certificate of formation of PGE, as certified by the Secretary of State of the State of Oregon.

3.3.2 Representations and Warranties. Each of the representations and warranties of PGE in this Agreement shall be true and correct on and as of the Closing Date as though such representations and warranties were made on and as of the Closing Date (except to the extent such representations and warranties are made as of a particular date, in which case such representations and warranties shall be true and correct as of such date).

3.3.3 Performance. PGE shall have performed, in all material respects, each and all of the covenants and obligations required to be performed by it prior to the Closing Date, on or prior to the Closing Date.

3.3.4 Litigation. No action or proceeding by or before any court or other Governmental Authority shall have been instituted that seeks to impair, restrain, prohibit or invalidate the Closing (other than an action or proceeding commenced by Seller or an Affiliate of Seller).

3.3.5 Regulatory Approvals. The Seller Required Regulatory Approvals and the PGE Required Regulatory Approvals shall have been made or obtained and shall have become Final Orders. The PGE Required Regulatory Approvals shall have been made or obtained at PGE's cost.

### 3.4 Term; Termination.

3.4.1 Term. This Agreement shall become effective on the Effective Date and, unless terminated earlier as provided in this Agreement, shall remain in full force and effect until the obligations of each of the Parties under the Agreement shall have been satisfied in full or waived in writing by the other Party, as applicable.

3.4.2 Termination. This Agreement may be terminated prior to the Closing as follows:

- (a) By the mutual written consent of the Parties;
- (b) by PGE upon written notice to Seller of such termination, in the event the Closing has not occurred on or before [\_\_\_\_\_]; provided, that the failure to consummate the transactions contemplated by this Agreement did not result from the failure by

PGE to fulfill in any material respect any undertaking or commitment provided for herein that is required to be fulfilled by it prior to the Closing; or<sup>4</sup>

(c) By PGE in the event any of the Project Assets is taken by condemnation, or any of the Project Assets is damaged or destroyed by fire, storm, explosion or other casualty loss.

(d) by either Party, upon written notice to the other Party of such termination due to a breach of or default under this Agreement which breach or default continues for thirty (30) days after the non-breaching Party has delivered written notice of the default or breach to the breaching Party.

### 3.5 **Effect of Termination; Remedies.**

3.5.1 In the event that this Agreement is validly terminated in accordance with Section 3.4.2, this Agreement shall forthwith have no further force and effect and, except as set forth in this Agreement to the contrary, there shall be no further liability or obligation on the part of PGE or Seller under this Agreement. No such termination shall serve (a) to release any Party from any liability with respect to any breach of its duties and obligations hereunder prior to such termination, or (b) to void or terminate the limitations on liability expressly set forth in this Agreement.

3.5.2 Notwithstanding the foregoing, Article 7 (Confidential Information) shall survive the termination of this Agreement for a period of two (2) years from the date on which such termination occurs.

## ARTICLE 4 CLOSING

4.1 **Place of Closing.** Upon the terms and conditions set forth in this Agreement, the sale of the Project Assets (the “**Closing**”) shall take place no later than the second Business Day after satisfaction or waiver of the conditions set forth in Article 3, unless this Agreement has been terminated prior to such date in accordance with the provisions of Section 3.4.2 (the actual time and date of the Closing being referred to herein as the “**Closing Date**”). The Closing shall take place at PGE’s offices or at such other location as the Parties may agree, on the Closing Date.

4.2 **Closing Deliveries.** On the Closing Date, the following shall occur:

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<sup>4</sup> NTD: PGE termination rights may be expanded depending upon the nature of the project and the asset. For instance, where pre-closing deliverables include completion of certain diligence reporting to PGE’s satisfaction, PGE will require a termination right to the extent the findings in such reports are is not acceptable.

4.2.1 Payment of Purchase Price. PGE shall deliver to Seller the Purchase Price in accordance with Section 2.3.1.

4.2.2 Delivery of Certificates by Seller. On the Closing Date, Seller shall deliver to PGE a certificate, dated as of the Closing Date, in form and substance satisfactory to PGE, stating that (a) the conditions set forth in Section 3.3 have been satisfied or waived in writing by Seller, and (b) that all representations and warranties of Seller set forth in Article 5 are true and correct as of the Closing Date (except to the extent such representations and warranties are made as of a particular date in which case such representations and warranties shall be true and correct as of such date).

4.2.3 Delivery of Certificates by PGE. On the Closing Date, PGE shall deliver to Seller one or more certificates of PGE, in form and substance satisfactory to Seller, stating that (a) the conditions set forth in Section 3.2 have been satisfied or waived in writing by PGE, and (b) that all representations and warranties of PGE set forth in Article 6 are true and correct as of the Closing Date (except to the extent such representations and warranties are made as of a particular date in which case such representations and warranties shall be true and correct as of such date).

4.2.4 Other Items. All other items required to be delivered or received as a Seller Condition Precedent or as a PGE Condition Precedent shall have been delivered to, or received by, Seller or PGE, as applicable, unless waived. Without limiting the generality of the foregoing, unless already delivered or unless waived by the relevant Party, the following documents, instruments and certificates shall be delivered at Closing: (a) by each Party to the other Party, executed counterparts of the Instruments of Conveyance; (b) by PGE to Seller, all documents, instruments and certificates required to be delivered by PGE to Seller pursuant to this Agreement; (c) by Seller to PGE, all documents, instruments and certificates required to be delivered by Seller to PGE pursuant to this Agreement; and (d) by Seller to PGE, all books, records and operating logs relating to the Project and the Project Assets, in the possession of, or subject to the control of, Seller.

## **ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to PGE that, as of the Effective Date [and as of the Closing Date], the following are true and correct:

5.1 **Organization and Authority.** Seller is a [\_\_\_\_\_] duly [organized] [formed], validly existing and is qualified to do business under the laws of the State of [\_\_\_\_\_] and has all requisite power and authority to own the Project Assets, to execute and deliver this Agreement, to consummate the transactions contemplated hereby and to carry on its business as now being conducted. Seller is duly qualified to do business and is in good standing



in all other jurisdictions in which its ownership of property or the character of its business requires such qualification.

5.2 **Binding Agreement.** All necessary action on the part of Seller has been taken to authorize the execution and delivery of this Agreement, the performance of its obligations under this Agreement and the consummation of the transactions contemplated hereby. This Agreement has been, and the other documents and instruments required to be delivered by Seller in accordance with the provisions hereof at the Closing have been, or will be, duly and validly executed and delivered by Seller, and upon execution and delivery thereof by Seller, will constitute the valid and binding agreement and obligations of Seller, enforceable in accordance with their respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws of general application relating to or affecting creditors' rights generally and to general principles of equity (regardless of whether such enforceability is considered in any proceeding in equity or at law), including the availability of injunctive relief.

5.3 **No Adverse Order or Injunctions.** Seller is not a party to, nor is Seller subject to or bound by, nor does there exist any agreement, or any judgment, order, writ, prohibition, injunction or decree of any Governmental Authority with respect to Seller, which would prevent the execution, delivery or performance of this Agreement by Seller, or the transfer, conveyance and sale of all of the Project Assets to PGE pursuant to the terms hereof.

5.4 **Litigation.** There is no action, suit, investigation or proceeding pending in which Seller has been named or served as a party or threatened against Seller before any Governmental Authority.

5.5 **No Conflicts.** None of the execution, delivery nor performance by Seller of this Agreement nor the consummation of the transactions contemplated by this Agreement, nor the compliance by Seller with any of the provisions of this Agreement, will result in: (a) a violation of or a conflict with any provision of the formation documents of Seller or any law, judgment, order, writ, decree, determination, award or injunction applicable to Seller; (b) a breach or violation of, a conflict with or a default under, or the creation of a right of any Person to accelerate, terminate or cancel any Contract; (c) a violation by Seller of any Applicable Laws; or (d) a violation, or conflict with, or result in a breach of any provision of, or constitute a default (or any event which, with or without due notice or lapse of time, or both, would constitute a default) under, or result in the termination, cancellation, suspension, modification or acceleration of, or result in or give to any Person any additional rights or entitlement to increased, additional, accelerated or guaranteed payments under, or result in the impairment, loss or forfeiture of any material benefit, rights or privilege under, or the creation of any Lien or other encumbrance upon any of the assets of Seller under any contract, note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which Seller is a party.



5.6 **Third-Party Consents.** Part I of Schedule 5.6 sets forth a true, correct and complete list of all consents and approvals of all Persons, including Governmental Authorities, (other than any Permits) that are required in connection with the execution, delivery and performance of this Agreement by Seller or the consummation by Seller of the transactions contemplated by this Agreement. Part II of Schedule 5.6 sets forth a true, correct and complete list of all Seller Required Regulatory Approvals that are required in connection with the execution, delivery and performance of this Agreement by Seller or the consummation by Seller of the transactions contemplated by this Agreement.

5.7 **Project Assets.**

5.7.1 Seller holds of record and owns beneficially one hundred percent (100%) of the ownership interests of the Project Assets. Seller does not currently own any asset necessary for PGE to be able after the Closing to develop, construct, own, operate or maintain the Project in accordance with Prudent Utility Standards, except such assets that are (or by the Closing, will be) included in the Project Assets. Schedule 5.7 sets forth a true, accurate and complete list of the Project Assets owned by Seller, which constitute all of the assets and rights of any kind necessary for PGE to develop, construct, own, operate and maintain the Project.

5.7.2 The Project and the tangible personal property included in the Project Assets are in normal operational condition for a similar project and similar assets of a similar age, free of defects about which Seller has Knowledge and that could have a material adverse impact on such operation, and are in good working order, except for ordinary wear and tear and routine maintenance (in each case, consistent with Prudent Utility Standards). Seller has not operated the Project in a manner that violates the conditions of any warranty in any material respect. As of the Closing, the Project Assets are sufficient to enable PGE to own, operate, interconnect and maintain the Project immediately following the Closing in all material respects in the same manner as the Project was in the ordinary course of business previously [owned, operated and maintained by Seller.

5.7.3 Seller has good, valid and marketable title to all the Project Assets, which are free and clear of any and all Liens, other than Permitted Liens.

5.7.4 There are no existing or continuing claims against Seller, the Project or the Project Assets by any prior developers of the Project (or partners of or investors in Seller (with respect to the Project Assets)).

5.8 **Real Estate.**

5.8.1 Schedule 5.8 sets forth a true, accurate and complete list of the Real Property Interests Seller holds with respect to the Project and that will be assigned to PGE at Closing.

5.8.2 Seller represents and warrants to PGE that the Real Property Agreements: (a) comprise all of the property interests and other rights necessary in connection with the ownership, operation and maintenance of the Project in accordance with Applicable Law and Permits; (b) with respect to the Real Property Agreements, Seller has delivered to PGE correct and complete copies of each of them; (c) provide legal and practical ingress and egress rights for any reasonable purpose in connection with the development, construction, ownership, operation and maintenance of the Project; (d) each of the Real Property Agreements constitute the legal, valid and binding obligations of Seller, and the counterparties thereto, and are in full force and effect except, in each case, as enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights and subject to general equitable principles; (e) each of the Real Property Agreements will continue to be legal, valid, binding and in full force and effect on identical terms immediately following the consummation of the transactions contemplated hereby (including any assignments and assumptions referred to herein) except, in each case, as enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights and subject to general equitable principles; (f) no party to any Real Property Agreements is in breach or default and, no event has occurred which, with notice or lapse of time or without a cure being completed, would constitute a breach or default or permit termination or modification thereof or acceleration thereunder; (g) no party to any Real Property Agreement has repudiated any provision thereof; (h) there are no disputes, oral agreements or representations or forbearance programs in effect as to any Real Property Agreements; (i) no Real Property Agreement has been assigned, transferred, conveyed, mortgaged, deeded in trust or encumbered by Seller; and (j) except as set forth in the Real Property Agreements, there are no rents, royalties, fees or other amounts payable or receivable by Seller or any Person in connection with any Real Property Interests.

5.9 **Tax Matters.** Seller represents and warrants with respect to itself:

5.9.1 All Tax Returns required to have been filed with respect to the Project and the Project Assets have been duly and timely filed and each such Tax Return was true, correct and complete in all material respects. All Taxes required to be paid (whether or not shown on any Tax Return) with respect to the Project and the Project Assets have been duly and timely paid. Seller has adequately provided for, in its books of account and related records, liability for all unpaid Taxes with respect to the Project and the Project Assets.

5.9.2 Solely with respect to the Project or any of the Project Assets: (a) there is no action, audit, dispute or claim now pending against, or any proposed or threatened action, audit, dispute or claim against, or with respect to, Seller in respect of any Taxes; (b) no Tax Return of Seller has been subject to examination or audit; (c) Seller has not received from any Governmental Authority any written (i) notice indicating an intent to open an audit or other review, (ii) request for information related to Tax matters, or (iii) notice of deficiency or proposed adjustment for any

amount of Tax proposed, asserted or assessed by any taxing authority; and (d) no written claim has been made by a Governmental Authority in any jurisdiction where Seller does not file Tax Returns that Seller is or may be subject to taxation by such jurisdiction.

5.9.3 Neither the Project nor any of the Project Assets constitutes tax-exempt bond financed property or tax-exempt use property within the meaning of Section 168 of the Code. None of Seller or any of its Affiliates has applied for, claimed or received a Cash Grant, production tax credit pursuant to Code Section 45, or an investment tax credit pursuant to Code Section 48 with respect to any of the Project Assets. At least eight percent (80%) of the Project Assets constitutes “new Section 38 property,” as defined in Treasury Regulation Section 1.48-2. Neither the Project nor any Project Assets have been Placed in Service. Either: (a) the Project is a “qualified facility” that produces electricity using “qualified energy resources” within the meaning of Sections 45(d)(1) and 45(a)(2)(A)(i) or the Code, respectively; (b) the Project Assets are “energy property” within the meaning of Section 48(a)(3) of the Code; or (c) the Project Assets are “qualified property” or a “qualified investment credit facility” within the meaning of Section 48(a)(5) of the Code. In respect of any financial projections setting forth the amount of depreciation deductions available under Section 168 of the Code, or any tax credits available pursuant to either Section 45 or Section 48 of the Code, in each case in respect of the Project or any Project Assets, (i) the facts and information used to create such financial projections are true, complete and correct and (ii) such financial projections are based on reasonable assumptions and, to the Knowledge of Seller, fairly represent the expected performance of the Project and the Project Assets.

5.9.4 Seller is not a “foreign person” as defined in Section 1445(f)(3) of the Code, and Seller will provide to PGE the certification described in Section 1445(b)(2) of the Code and Treasury Regulations Section 1.1445-2(b).

5.9.5 There are no Liens (other than Permitted Liens) for unpaid or delinquent Taxes, assessments or other charges or deposits upon the Project or the Project Assets.

5.9.6 All laborers and mechanics employed in the Construction of the Project have been paid wages at rates not less than the prevailing rates for work of a similar character in the locality in which such project is located, in each case, as most recently determined by the U.S. Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40 of the United States Code.

5.9.7 Seller and any contractors or subcontractors providing services or goods directly or indirectly to Seller have complied with the requirements of Code Section 48(a)(10) and (11) in respect of the Construction of the Project. For the avoidance of doubt, Seller and any contractors or subcontractors will be deemed to have satisfied the requirements of this Section 3.22.13 and (a) Code Section 48(a)(10) if such Person provides documentation demonstrating to

PGE's reasonable satisfaction the payment of the amount due under Code Section 45(b)(7)(B), as described in Section 9.2, or (b) Code Section 48(a)(11) if such Person provides written documentation demonstrating to PGE's reasonable satisfaction (1) (i) that such Person requested Qualified Apprentices from a Registered Apprenticeship Program, and (ii) either (I) such request was denied for reasons other than the failure of such Person to comply with the established standards and requirements of such Registered Apprenticeship Program, or (II) such Registered Apprenticeship Program failed to respond to such request within five (5) Business Days or (2) the payment of the amount due under Code Section 45(b)(8)(D)(i) or (iii), as described in Section 10.5.

## 5.10 Contracts.

5.10.1 Part I of Schedule 5.10 sets forth a true, accurate and complete list of all written agreements and contracts entered into by Seller on or prior to the Effective Date for the benefit of the Project or otherwise related to the Project (the "Seller Contracts"). Part II of Schedule 5.10 sets forth a true, accurate and complete list of all written agreements and contracts entered into by Seller on or prior to the Effective Date for the benefit of the Project or otherwise related to the Project, which will be retained by Seller. Part III of Schedule 5.10 sets forth a true, accurate and complete list of all written agreements and contracts entered into by an Affiliate of Seller on or prior to the Effective Date for the benefit of the Project or otherwise related to the Project, which will be assigned to PGE on the Closing Date (the "Affiliate Contracts" and together with the Seller Contracts, the "Contracts"). Part IV of Schedule 5.10 sets forth a true, accurate and complete list of all written agreements and contracts entered into by an Affiliate of Seller on or prior to the Effective Date for the benefit of the Project or otherwise related to the Project, which will be retained by Seller.

5.10.2 Each Contract has been duly authorized, executed and delivered by Seller, is in full force and effect, and constitutes the legal, valid, binding and enforceable agreement as to Seller, the respective counterparties thereto, and will not be rendered invalid or unenforceable as a result of the transactions contemplated by this Agreement, except, in each case, as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights and subject to general equitable principles.

5.10.3 Neither Seller (or its Affiliate with respect to the Affiliate Contracts), nor the counterparty thereto, is in material breach of or in default under any Contract, no event has occurred which with the passage of time or giving of notice or both would constitute such a default, result in a loss of material rights or permit termination or acceleration under, or result in the creation of any Lien (other than a Permitted Lien) under any Contract.

5.10.4 Neither Seller nor any of Seller's Affiliates, as the case may be, has sold or transferred, or agreed to sell or transfer, or granted any options or rights to purchase energy or

Environmental Attributes related to the electric power to be generated by the Project for any period after the Closing.

5.10.5 Each of the Contracts listed on Parts II and IV of Schedule 5.10 (the “**Retained Contracts**”) will not be assigned to PGE as part of the Project Assets. None of the Retained Contracts will provide any material ongoing benefit to the Project on or after the Closing Date, nor will their retention with Seller cause any material adverse effect with respect to the Project or its operation.

5.11 **Legal Compliance.** Seller is in compliance with all Applicable Laws (other than Environmental Laws, which are the subject of Section 5.12) with respect to the Project and the Project Assets.

5.12 **Environmental Laws.**

5.12.1 Seller has conducted its activities with respect to the development of the Project and the Project Assets in compliance with all Environmental Laws, and no action, suit, proceeding, hearing, investigation or written charge, complaint, claim, demand or notice has been filed or commenced or threatened against Seller (with respect to the Project Assets), the Project or the Site alleging any failure to comply with or any violation of any applicable Environmental Law.

5.12.2 All environmental investigations, studies, audits, tests, reviews or other analyses conducted on behalf of, or that are in the possession of, Seller in relation to the Site, the Project Assets and the Real Property Interests have been delivered to PGE prior to the Effective Date of this Agreement and there are no other such items.

5.13 **Permits.** Schedule 5.13 sets forth a true, correct and complete list of all Permits that Seller is required to obtain, and has obtained, in order to develop, construct, operate, and maintain the Project. All Permits set forth on Schedule 5.13 are properly in the name of Seller and are in full force and effect. Seller has provided PGE with a true and correct copy of each such Permit. Seller is in material compliance with all Permits set forth on Schedule 5.13 and Seller has not received any written notification from any Governmental Authority alleging that it is in violation of any such Permits. No material action, or written deficiency notice, demand or notice of any challenge is pending or, to Seller's Knowledge, threatened, which challenges the legality, validity or enforceability of any such Permit, or that attempts to modify in any adverse manner the requirements pertaining to any obtained Permit or application for a Permit.

5.14 **Renewable Resource Data.** Schedule 5.14 of this Agreement sets forth a true, correct and complete list of the Renewable Resource Data, which data does not contain any material errors. Seller has the right to use and to validly transfer to PGE the Renewable Resource Data.

5.15 **Solvency.** Seller is solvent and has sufficient assets and capital to carry on its business as it is now conducted and to perform its obligations hereunder. No petition or notice has been presented, no order has been presented, no order has been made and no resolution has been passed for the bankruptcy, liquidation, winding-up or dissolution of Seller. No receiver, trustee, custodian or similar fiduciary has been appointed over the whole or any part of the Project Assets or the income of Seller, nor does Seller have any plan or intention of, or has received any notice that any other Person has any plan or intention of, filing, making or obtaining any such petition, notice, order or resolution or of seeking the appointment of a receiver, trustee, custodian or similar fiduciary. Seller is solvent and has sufficient assets and capital to carry on its businesses as they are now conducted and to perform its obligations hereunder.

5.16 **Brokers.** Seller does not have any contract, arrangement or understanding with any broker or other intermediary with respect to the transactions contemplated by this Agreement.

5.17 **Investment Company.** Seller is not an “investment company” or a company controlled by an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

5.18 **Intellectual Property.** Seller has the right to use and to transfer to PGE all patents, trademarks, copyrights or other intellectual property rights used in connection with the Project Assets, and which constitute all intellectual property necessary for the operation, maintenance or use of the Project. Seller has not infringed nor has been claimed to have infringed the patent, trademark, copyright or other intellectual property rights of any Person. No Person is infringing the patent, trademark or other intellectual property rights of Seller.

5.19 **Material Misstatements or Omissions.** None of the representations or warranties (a) given by Seller in this Agreement (including the Schedules hereto) or any certificate delivered by Seller at Closing, (b) included in any document, exhibit, written communication, certificate or schedule heretofore prepared by Seller, an Affiliate of Seller or a Representative (commissioned by Seller or an Affiliate of Seller) and furnished by or on behalf of Seller in connection with the transactions contemplated by this Agreement (including any and all materials delivered to and written communication made to any Governmental Authority), or (c) included in any document, exhibit, written communication, certificate or schedule heretofore furnished by or on behalf of Seller in connection with the transactions contemplated by this Agreement, that was not prepared by Seller, an Affiliate of Seller or a Representative (commissioned by Seller or an Affiliate of Seller) (including any and all materials delivered to and written communication made to any Governmental Authority), when taken as a whole, contains any untrue statement of a material fact, or omits to state any material fact necessary to make the statements or facts contained in such representations or warranties, in light of the circumstances in which they were made, not materially misleading.



5.20 **Employees and Labor Matters.**

5.20.1 Seller does not have any employees with respect to the Project.

5.20.2 Seller does not sponsor, maintain, contribute to, or have any obligation to contribute to, and has never sponsored, maintained, contributed to, or had any obligation to contribute to, any employee benefit plan.

5.21 **FERC/NERC/DOE/WECC/[ ] Matters.**

5.21.1 Seller has made available to PGE copies of all material written reports of assessments, investigations, compliance audits, remedial actions, or other investigative or response activities conducted at or with respect to the Project regarding any FERC, NERC, DOE, WECC and/or [ ] requirements, including cyber security and testing requirements, that are in the possession of Seller.

5.21.2 Seller and the Project have operated in compliance in all material respects with all applicable FERC, NERC, DOE, WECC and/or [ ] related requirements, including cyber security and testing requirements.

5.21.3 (i) Seller has not been served with written notice of any actual or threatened notice of violation of any FERC, NERC, DOE, WECC and/or [ ] related requirements, or other action, proceeding, investigation, or inquiry pursuant to any FERC, NERC, DOE, MISO and/or PJM-related requirements, and (ii) no Claim regarding any FERC, NERC, DOE, WECC and/or [ ] related requirements is pending or, to Seller's Knowledge, threatened, against Seller, in each case including cyber security and testing requirements.

5.22 **Financial Statements.**

5.22.1 Seller has previously delivered to PGE true, correct and complete copies of the audited Financial Statements of Seller as of [insert date] (the "**Seller's Audited Financial Statements**"). The Seller's Audited Financial Statements have been prepared in accordance with [GAAP] consistently applied throughout the periods involved (except as may be stated therein or in the notes thereto). The Seller Audited Financial Statements present fairly, in all material respects, the financial position, statements of operations and comprehensive income, members' equity and cash flows of Seller's as of the date thereof and for the applicable period covered thereby.

5.23 **Absence of Certain Changes.**

Since [insert date] and through the date hereof, (a) Seller has operated the Business and the Project Assets in the ordinary course of business and in a manner that is materially consistent with Prudent Utility Standards, (b) there has not been any Material Adverse Effect with respect to the

Business or the Project Assets, and (c) there has not been any event or condition that would reasonably be expected to prevent or delay Seller from consummating the transactions contemplated by this Agreement.

#### 5.24 **Supply-Chain Ethics.**

5.24.1 Seller neither currently engages in nor has previously engaged in the use of any Forced Labor, nor, to its Knowledge, do any of its suppliers or contractors currently engage in nor have they previously engaged in the use of any Forced Labor. Seller has implemented, and has made commercially reasonable efforts to ensure its contractors and suppliers implement, policies, procedures and monitoring programs to monitor, collect and mitigate the use or potential use of any Forced Labor or Material ESG Incidents.

5.24.2 As of [insert date], there is no unresolved Material ESG Incident relating to the Project Assets involving Seller that could materially and adversely impact the Project, the Business or the Owner.

5.24.3 Neither Seller, nor any of its Affiliates and to Seller's knowledge no manager, executive, officer, agent, or other Representative of any of the aforementioned Persons has made, directly or indirectly, any bribe or kickback, illegal political contribution, payment from company funds that was incorrectly recorded on the books and records of any of the aforementioned Persons, or any unlawful payment from company funds to any Governmental Authority or any officials of any Governmental Authority in their individual capacities, in either case for the purpose of affecting their action or the actions of the jurisdiction that they represent to obtain favorable treatment in securing any business, Contracts, or Permits, or to obtain special concessions of any kind whatsoever, or illegal payment from company funds to obtain or retain any business.

5.24.4 Neither Seller, nor, to Seller's knowledge, any of its Affiliates nor any of their respective directors, officers, agents, employees, or, to Seller's knowledge, any other Persons acting on their behalf has, in connection with the operation of their respective businesses, (a) used any corporate or other funds for unlawful contributions, payments, gifts, or entertainment, or made any unlawful expenditures relating to political activity to officials, candidates or members of any Governmental Authority or political party or organization, or established or maintained any unlawful or unrecorded funds in violation of Section 104 of the U.S. Foreign Corrupt Practices Act of 1977, as amended, the United Kingdom Bribery Act of 2010, or any other similar applicable Law, (b) paid, accepted, or received any unlawful contributions, payments, expenditures, or gifts, or (c) violated in any material respect or operated in material non-compliance with any export restrictions, anti-boycott regulations, embargo regulations, or other applicable Law.



5.25 **Project-Specific Representations.** ]<sup>5</sup>

**ARTICLE 6**  
**REPRESENTATIONS AND WARRANTIES OF PGE**

PGE represents and warrants to Seller that, as of the Effective Date and as of the Closing Date, the following are true and correct:

6.1 **Organization and Authority.** PGE is a corporation duly organized, validly existing and is qualified to do business under the laws of the State of Oregon, and has all requisite corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. PGE is duly qualified to do business and is in good standing in all other jurisdictions in which its ownership of property or the character of its business requires such qualification, except where the failure to be so qualified would not reasonably be expected to have a material adverse effect with respect to PGE.

6.2 **Binding Agreement.** All necessary company action on the part of PGE has been taken to authorize the execution and delivery of this Agreement, the performance of its obligations under this Agreement and the consummation of the transactions contemplated hereby. This Agreement has been, and the other documents and instruments required to be delivered by PGE in accordance with the provisions hereof have been, or will be, duly and validly executed and delivered by PGE, and upon execution and delivery thereof by PGE, will constitute the valid and binding agreement and obligations of PGE, enforceable in accordance with their respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws of general application relating to or affecting creditors' rights generally and to general principles of equity (regardless of whether such enforceability is considered in any proceeding in equity or at law), including the availability of injunctive relief.

6.3 **No Adverse Order or Injunctions.** PGE is not a party to, and to PGE's knowledge, is not subject to or bound by, any agreement, or any judgment, order or injunction of any Governmental Authority, which would prevent or have a material adverse effect on the execution, delivery or performance of this Agreement by PGE, or the purchase of the Project Assets by PGE pursuant to the terms hereof.

6.4 **No Conflicts.** Neither the execution, delivery nor performance by PGE of this Agreement will result in (a) a violation of or a conflict with any provision of the articles of incorporation, bylaws or other corporate documents of PGE, or (b) a violation by PGE of any

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<sup>5</sup> NTD: PGE reserves the right to require the inclusion of additional representations and warranties based on the nature and state of development of Bidder's project. Such representations may include, but are not limited to, representations regarding permitting, regulatory status, insurance, inventory, affiliate transactions and studies and reports.

Applicable Laws, except any such conflict, breach or violation, acceleration, termination or cancellation that would not have or be expected to have a material adverse effect on PGE.

6.5 **Third-Party Consents.** Part I of Schedule 6.5 sets forth a true, accurate and complete list of all consents and approvals of all Persons, including Governmental Authorities, that are required in connection with the execution, delivery and performance of this Agreement or the consummation by PGE of the transactions contemplated by this Agreement. Part II of Schedule 6.5 sets forth a true, correct and complete list of all PGE Required Regulatory Approvals that are required in connection with the execution, delivery and performance of this Agreement by Seller or the consummation by Seller of the transactions contemplated by this Agreement.

6.6 **Brokers.** Neither PGE nor its Affiliates has any contract, arrangement or understanding with any broker or other intermediary with respect to the transactions contemplated by this Agreement.

## ARTICLE 7 CONFIDENTIAL INFORMATION

### 7.1 **PGE Confidential Information.**

7.1.1 Seller acknowledges that PGE Confidential Information (as defined below) is valuable and proprietary and Seller agrees not to, directly or indirectly, use, publish, disseminate, describe or otherwise disclose any PGE Confidential Information without the prior written consent of PGE. For purposes of this Agreement, “**PGE Confidential Information**” shall mean (i) any and all information provided by PGE to Seller and identified by PGE as confidential and (ii) any and all information provided by PGE to Seller with respect to the Project or the transactions contemplated hereby. Information shall not be deemed to be PGE Confidential Information if: (a) it has become generally known or available within the industry or the public through no act or omission of Seller; (b) Seller can demonstrate that, prior to disclosure in connection with the transactions contemplated hereby, such information was already in the possession of Seller; (c) it was rightfully received by Seller from a third party who became aware of it through no act or omission of Seller and who is not under an obligation of confidentiality to PGE; or (d) Seller can demonstrate it was independently developed by employees or consultants of Seller. Notwithstanding the foregoing, from and after the Closing, PGE Confidential Information shall include any information that is a Project Asset, whether or not of the type referred to in clauses (b), (c) or (d) above.

7.1.2 Seller shall maintain any PGE Confidential Information which has been or will be disclosed directly or indirectly to Seller by or on behalf of PGE or its Affiliates in confidence and shall not disclose or cause to be disclosed by them or any third person without PGE’s prior express written consent; provided, however, that Seller may disclose the PGE

Confidential Information to its Representatives and to Persons who provide legal, accounting or other services to Seller in connection with Seller's evaluation or implementation of the transactions contemplated by this Agreement, provided that such persons have first been informed of the duties required hereby.

7.1.3 Notwithstanding the preceding Section 7.1.1 and Section 7.1.2, PGE Confidential Information may be disclosed if required by any Governmental Authority or court or otherwise by Applicable Law; provided, however, that: (a) such PGE Confidential Information is submitted under any and all applicable provisions for confidential treatment and (b) PGE is given written notice of the requirement for disclosure promptly after such disclosure is requested, so that it may take whatever action it deems appropriate, including intervention in any proceeding and seeking a protective order or an injunction, to prohibit such disclosure.

7.1.4 Seller agrees that it will not make any use of any PGE Confidential Information received pursuant to this Agreement except in connection with the transactions contemplated by this Agreement, unless specifically authorized to do so in writing by PGE, and this Agreement shall not be construed as a license or authorization to Seller to utilize the PGE Confidential Information except for such purpose.

7.1.5 Seller acknowledges that a breach of the covenants contained in this Section 7.1 will cause irreparable damage to PGE, the exact amount of which will be difficult to ascertain, and that the remedies at law for any such breach will be inadequate. Accordingly, Seller agrees that if Seller breaches any of the covenants contained in this Section 7.1, in addition to any other remedy that may be available at law or in equity, PGE shall be entitled to injunctive relief, without posting bond or other security and Seller shall have no right or power to raise the defense of adequate remedy at law.

## 7.2 **Seller Confidential Information.**

7.2.1 PGE acknowledges that Seller Confidential Information (as defined below) is valuable and proprietary to Seller and PGE agrees not to, directly or indirectly, use, publish, disseminate, describe or otherwise disclose any Seller Confidential Information in respect of the Project without the prior written consent of either Seller. For purposes of this Agreement, "**Seller Confidential Information**" shall mean (i) any and all information provided by Seller to PGE and identified by Seller as confidential and (ii) any and all information provided by Seller to PGE with respect to the Project or the transactions contemplated hereby. Information shall not be deemed to be Seller Confidential Information if: (a) the Closing has occurred and such information is also an a Project Asset and/or Post-Closing Asset under this Agreement; (b) it has become generally known or available within the industry or the public though no act or omission of PGE; (c) PGE

can demonstrate that, prior to disclosure in connection with the transactions contemplated hereby, such information was already in the possession of PGE; (d) it was rightfully received by PGE from a third party who became aware of it through no act or omission of PGE and who is not under an obligation of confidentiality to Seller; or (e) PGE can demonstrate it was independently developed by employees or consultants of PGE.

7.2.2 PGE shall maintain any Seller Confidential Information which has been or will be disclosed directly or indirectly to PGE by or on behalf of Seller in confidence by it and shall not disclose or cause to be disclosed by PGE or any third person without Seller's prior express written consent; provided, however, that PGE may disclose Seller Confidential Information to its Representatives and to Persons who provide financial analysis, banking, legal, accounting or other services to PGE provided that such Persons have first been informed of the duties required hereby.

7.2.3 Notwithstanding the preceding Section 7.2.1 and Section 7.2.2, Seller Confidential Information may be disclosed (a) if required by any Governmental Authority or court or otherwise by Applicable Law and (b) to the OPUC and/or the independent evaluator retained by PGE and approved by the OPUC in connection with the RFP; provided, however, that (i) such Seller Confidential Information is submitted under any and all applicable provisions for confidential treatment and (ii) if PGE is permitted to do so, Seller is given written notice of the requirement for disclosure promptly after such disclosure is requested, so that it may take whatever action it deems appropriate, including intervention in any proceeding and seeking a protective order or an injunction, to prohibit such disclosure.

7.2.4 PGE agrees that it will not make any use of any Seller Confidential Information received pursuant to this Agreement except in connection with the transactions contemplated by this Agreement, unless specifically authorized to do so in writing by Seller, and this Agreement shall not be construed as a license or authorization to PGE to utilize Seller Confidential Information except for such purpose.

7.2.5 PGE acknowledges that a breach of the covenants contained in this Section 7.2 will cause irreparable damage to Seller and Seller's Affiliates, the exact amount of which will be difficult to ascertain, and that the remedies at law for any such breach will be inadequate. Accordingly, PGE agrees that if PGE breaches any of the covenants contained in this Section 7.2, in addition to any other remedy that may be available at law or in equity, Seller and its Affiliates shall be entitled to injunctive relief, without posting bond or other security, and PGE shall have no right or power to raise the defense of adequate remedy at law.

7.3 Prior Agreements. To the extent that (i) the Parties are party to any confidentiality or non-disclosure agreement related to the subject matter of this Agreement, any such agreement between the Parties is replaced by the confidentiality provisions of this Section 7 and (ii) the Parties are otherwise bound by or subject to the terms of an agreement regarding confidentiality or non-

disclosure, as between the Parties, such other agreement will no longer apply to this Agreement, and the obligations of the Parties regarding confidentiality will instead be replaced by the obligations under this Section 7.

7.4 Ownership of Confidential Information. All right and title to, and interest in, a Party's Confidential Information shall remain with such Party. All Confidential Information obtained, developed or created by or for Seller exclusively for the Project, including copies thereof, is the exclusive property of PGE whether delivered to PGE or not. No right or license is granted to Seller or any third party respecting the use of Confidential Information by virtue of this Agreement, except to the extent required for Seller's performance of its obligations hereunder. Seller shall deliver the Confidential Information, including all copies thereof, to PGE upon request.

## ARTICLE 8 COVENANTS OF PGE AND SELLER

8.1 **Conduct Pending the Closing.** Between the Effective Date and the earlier to occur of the termination of this Agreement and the Closing Date, Seller shall:<sup>6</sup>

8.1.1 maintain relationships with landowners and suppliers in accordance with the Ordinary Course of Business;

8.1.2 maintain the Permits and comply with Applicable Law affecting the Project or the Project Assets;

8.1.3 perform and comply in all material respects with the Contracts, the Real Property Agreements and the Permits and Seller shall not, without PGE's consent, (a) amend or modify, or consent to the amendment or modification of, any of the Contracts, the Real Property Agreements and the Permits which amendments, modifications or consents would remain in effect for any period after Closing, or (b) enter into any new or additional contracts, real property agreements or permits relating to the Project that would remain in effect for any period after the Closing;

8.1.4 continue development of the Project as provided on Schedule 8.1.6;

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<sup>6</sup> NTD: Further Seller covenants may include, without limitation, (i) obligations to obtain certain regulatory approvals, including making required filings and providing best efforts and cooperation with PGE for the same, (ii) delivery of monthly operating reports and (iii) delivery of financial statements, as applicable.

8.1.5 not, without PGE’s prior written consent, (a) sell, transfer or otherwise dispose of, or agree to sell, transfer or otherwise dispose of, any of the Project Assets, or (b) lease, mortgage or pledge any of the Project Assets;

8.1.6 and which such lease, mortgage or pledge would remain in effect for any period after the Closing;

8.1.7 not place or cause to be Placed in Service the Project or any of the Project Assets, in each case for purposes of Section 45 or Section 48 of the Code;

8.1.8 not claim or permit any Person to claim any tax credit pursuant to Section 45 or Section 48 of the Code with respect to the Project or any Project Asset;

8.1.9 not cause or permit the Project or any Project Assets to become tax-exempt bond financed property or tax-exempt use property within the meaning of Section 168 of the Code;

8.1.10 not make any election or take any action that would limit, prevent or preclude the Project or any of the Project Assets from being classified in the hands of PGE as: (a) “qualified energy resources” and “qualified facilities” within the meaning of Sections 45(a)(2)(A)(i) and 45(d)(1) of the Code; (b) “energy property” in the hands of PGE within the meaning of Section 48(a)(3) of the Code; or (c) “qualified property” or a “qualified investment credit facility” within the meaning of Section 48(a)(5) of the Code;

8.1.11 maintain all books and records of Seller relating to the Project Assets in the Ordinary Course of Business.

8.2 **Exclusivity**. From and after the Effective Date, Seller agrees that it shall not (and shall not permit or cause any of its Affiliates to) solicit, initiate, encourage, entertain, make or accept offers with respect to the sale of the Project or the Project Assets (the “**Seller’s Exclusivity Obligations**”).

8.3 **Site and Project Access**. From and after the Effective Date, Seller shall allow, permit or obtain the right of PGE to reasonable access to the Site and the Project (all in accordance with the limitations imposed by the Real Property Agreements and other Project safety rules and regulations and security limitations imposed by Seller or the relevant landowners), upon reasonable prior notice, in order to perform its due diligence review, including physical inspection and analysis of the Project Assets.

8.4 **Due Diligence**. From and after the Effective Date, Seller shall allow, permit or obtain the right of PGE (a) to access to management, development and operational personnel of Seller and (b) to review and make copies of the books and records of Seller. Any and all such

access to Seller’s management, development and operational personnel shall take place during normal business hours.

8.5 **Notice of Developments**. Seller shall, from time to time prior to the Closing, promptly (a) supplement or amend the Schedules referred to in Article 5, with respect to any matter that arises after the Effective Date, which if existing as of the Effective Date, would have been required to be set forth or described in such Schedules in order to make any representation or warranty set forth in Article 5 true and correct, and (b) notify PGE of any conditions, circumstances or events that could reasonably be expected to have a Material Adverse Effect.

## **ARTICLE 9 INDEMNIFICATION**

### **9.1 Indemnification by Seller**

9.1.1 Seller shall indemnify and defend PGE and its Affiliates and their respective stockholders, members, managers, officers, directors, employees, agents, successors and assigns (each, a “**PGE Indemnified Party**”) against, and shall hold them harmless from, any and all losses, damages, claims (including third-party claims), charges, interest, penalties, Taxes, costs and expenses (including legal, consultant, accounting and other professional fees, costs of sampling, testing, investigation, removal, treatment and remediation of contamination and fees and costs incurred in enforcing rights under this Section 9.3) (collectively, “**Losses**”) resulting from, arising out of, or incurred by any PGE Indemnified Party in connection with, or otherwise with respect to:

(a) the failure of any representation and warranty or other statement by Seller contained in this Agreement or any certificate or other document furnished to PGE, to be true and correct in all respects as of the Effective Date [or the Closing Date, as applicable];

(b) any breach of any covenant or agreement of Seller contained in this Agreement or any certificate or other document furnished to PGE at the Closing;

(c) any Retained Liabilities or Retained Contracts;

(d) any fraud, intentional misrepresentation, willful misconduct by or gross negligence of Seller in connection with this Agreement or the transactions contemplated by this Agreement;

(e) any claims, actions or suits made by third parties (before, on or after the Closing Date) against any PGE Indemnified Party arising from or as a result of the acts or omissions of Seller or any of its Affiliates in connection with the development, ownership or operation of the Project or the Project Assets; and



(f) any liability for Taxes (including Tax Liens) imposed on or incurred by PGE relating to any taxable period ending on or before the time of the Closing or the portion of any other taxable period beginning before and occurring on or before the time of the Closing relating to the Project or the Project Assets.

## 9.2 **Indemnification by PGE.**

9.2.1 PGE shall indemnify and defend Seller and its Affiliates and their respective stockholders, members, managers, officers, directors, employees, agents, successors and assigns (each, a “Seller Indemnified Party”) against, and shall hold them harmless from, any and all Losses resulting from, arising out of, or incurred by any Seller Indemnified Party in connection with, or otherwise with respect to:

(a) the failure of any representation and warranty or other statement by PGE contained in this Agreement or any certificate or other document furnished to Seller at Closing, to be true and correct in all respects as of the Effective Date [and as of the Closing Date, as applicable];

(b) any material breach of any covenant or agreement of PGE contained in this Agreement, or any certificate or other document furnished to Seller at the Closing;

(c) any fraud, intentional misrepresentation, willful misconduct by or gross negligence of PGE in connection with this Agreement or the transactions contemplated by this Agreement;

(d) any liability for Taxes (including Tax Liens) imposed on or incurred by Seller relating to any taxable period ending on or after the time of the Closing or the portion of any other taxable period beginning before and occurring on or after the time of the Closing relating to the Project and the Project Assets; and

(e) Assumed Liabilities.

9.3 **Claims for Indemnification.** A Party seeking indemnification (the “**Indemnified Party**”) under this Article 9 shall give written notice (a “**Claim Notice**”) to the other Party (the “**Indemnifying Party**”) as soon as practicable after the Indemnified Party becomes aware of any fact, condition or event which may give rise to Losses for which indemnification may be sought under this Article 9 (a “**Claim**”). Except as set forth in Section 9.2, the failure of the Indemnified Party to timely give a Claim Notice to the Indemnifying Party hereunder shall not affect the Indemnified Party’s rights to indemnification hereunder, except and only to the extent that the Indemnifying Party is materially prejudiced by such delay.



9.4 **Defense.** In the case of a Claim involving the assertion of a claim by a third party (whether pursuant to a lawsuit or other legal action or otherwise, a “**Third-Party Claim**”), the Indemnifying Party may, upon written notice to the Indemnified Party, take control of the defense and investigation of such Third-Party Claim if the Indemnifying Party acknowledges to the Indemnified Party in writing the obligation of the Indemnifying Party to indemnify the Indemnified Party with respect to all elements of such Third-Party Claim. If the Indemnifying Party assumes the defense of any such Third-Party Claim, the Indemnifying Party shall select counsel reasonably acceptable to the Indemnified Party (and separate from counsel to the Indemnifying Party if there is any conflict or divergence of interest between the Indemnifying Party and the Indemnified Party) to conduct the defense of such claims or legal proceedings and, at the sole cost and expense of the Indemnifying Party, shall take all steps necessary in the defense or settlement thereof. The Indemnifying Party shall not consent to a settlement of or the entry of any judgment arising from any such Third-Party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed). The Indemnified Party shall be entitled to participate in (but not control) the defense of any such Third-Party Claim, with its own counsel and at its own expense; *provided, however*, that the Indemnified Party shall be entitled to settle any Third-Party Claim involving criminal penalties, civil fines or harm without the consent, but at the expense, of the Indemnifying Party if the Indemnifying Party shall unreasonably fail to do so after being requested to do so by the Indemnified Party. If the Indemnifying Party does not notify the Indemnified Party that it will assume the defense of such Third-Party Claim within thirty (30) days after the Indemnifying Party receives notice of such claim from the Indemnified Party: (a) the Indemnified Party may defend against such Third-Party Claim in such manner as it may deem reasonably appropriate, *provided* that the Indemnified Party shall not consent to a settlement of or the entry of any judgment arising from such Third-Party Claim without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed); and (b) the Indemnifying Party shall be entitled to participate in (but not control) the defense of such action, with its counsel and at its own expense. Regardless of which Party shall assume the defense of the Third-Party Claim, the Parties agree to cooperate fully with one another in connection therewith. Such cooperation shall include the providing of records and information which are relevant to such Third-Party Claim and making employees and officers available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder and to act as a witness or respond to legal process, in each case to the extent that the Party being requested to provide records and information or to make employees and officers available can do so without waiving any evidentiary privileges to which it is entitled.

## **ARTICLE 10 TAX MATTERS**

10.1 **Allocation of Purchase Price.** The allocation of the Purchase Price (the “**Allocation**”) shall be agreed between the Parties each acting reasonably as soon as practicable,

but in no event later than sixty (60) days after the Closing Date. The Allocation agreed to by the parties shall be consistent with Section 1060 of the Code and the Treasury Regulations promulgated thereunder, and any analogous provisions of state, local or foreign law. If any adjustment is subsequently made to the Purchase Price or other relevant items, the Parties shall reasonably cooperate with each other to promptly amend the Allocation to reflect such adjustment. The Allocation (as so adjusted) shall be binding on the Parties and each of their respective Affiliates for all purposes. The Parties and each of their respective Affiliates shall report, act and file Tax Returns (including Internal Revenue Service Form 8594) in all respects and for all purposes consistent with the Allocation, to the extent permitted by Applicable Law. Neither the Parties nor their respective Affiliates shall take any position on any Tax Return, before any Governmental Authority or in any judicial proceeding, that is inconsistent with the Allocation, unless taking such a position is required by Applicable Law.

10.2 **Sales, Transfer and Documentary Taxes.** Seller shall be responsible for all federal, state and local sales, documentary and other transfer taxes, if any, due as a result of the purchase, sale or transfer of the Project Assets in accordance herewith, whether imposed by law on Seller or PGE.

10.3 **Tax Contests.** PGE shall control, in its sole discretion, any Tax audit, litigation, or other proceeding with respect to any income Taxes of PGE with respect to the Project (“**Tax Contests**”), except solely to the extent that such audit, litigation, or proceeding involves a claim made or proposed by the IRS that, if successful, would result in a Loss for which Seller may be required to indemnify PGE pursuant to this Agreement, including a contest related to the prevailing wage and apprenticeship requirements (an “**Indemnified Claim**”). In that case, Seller shall, at its own expense, control the defense and settlement of the applicable proceeding solely to the extent of matters directly and solely impacting such Indemnified Claim, including the content of all related communications with Tax authorities; provided, however, that Seller shall keep PGE reasonably apprised of the developments of such Tax Contest and may not settle or compromise any asserted liability that would adversely affect PGE’s ability to claim the Tax Credit without the prior written consent of Buyer. In the event that Seller elects to not control the defense and settlement thereof, PGE shall have no obligation to do so.

10.4 **Treatment of Indemnity Payments.** The Parties shall treat all payments made by Seller to or for the benefit of PGE and all payments by PGE to or for the benefit of Seller under any indemnity provision of this Agreement, as adjustments to the Purchase Price, unless otherwise required by Applicable Law (taking into account all relevant facts and circumstances underlying such payment), in which case any such payment will be increased by any Tax cost actually incurred by the recipient or reduced by any Tax benefit actually realized by the recipient, as applicable.

10.5 **Prevailing Wage & Apprenticeship Documentation.** At Closing, Seller shall deliver to PGE the documentation set forth on Exhibit [ ] sufficient to demonstrate compliance

with Section 48(a)(10) and (11) of the Code in respect of all Construction of the Project completed through Closing. Notwithstanding anything herein to the contrary, in the event of any determination by the IRS that Seller or any contractor or subcontractor directly or indirectly providing services or goods to Seller in respect of the Construction of the Project failed to comply with: (a) Code Section 48(a)(10), Seller shall promptly and, in any event, no later than 90 days after a final determination by the IRS, pay to the IRS or applicable laborers or mechanics all amounts demanded by IRS in regard to such failure, which shall in no case be less than the amounts set forth in Section 45(b)(7)(B)(i), plus any penalties and interest that apply, unless a lesser amount is determined by the IRS to be sufficient; or (b) Code Section 48(a)(11), Seller shall promptly pay to the IRS or applicable apprentices in compliance with the PWA Guidelines all amounts demanded by IRS in regard to such failure, which shall in no case be less than the amounts set forth in Section 45(b)(8)(D)(i)(II), plus any penalties and interest that apply, unless a lesser amount is determined by the IRS to be sufficient. To the extent any payment described in the foregoing sentence is required, Seller shall promptly provide to PGE documentation clearly evidencing each such payment and the date made, which documentation shall be acceptable to PGE in its reasonable discretion. In any case in which IRS does not permit PGE to transmit payment on the behalf of the Person entitled to claim the U.S. federal income tax credit described in Section 48, Seller shall promptly remit to PGE the full amount due to IRS or any other Person to whom wages are due.

## **ARTICLE 11 MISCELLANEOUS**

11.1 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns, except that PGE, on the one hand, and Seller, on the other hand, may not assign their respective obligations hereunder without the prior written consent of the other Party, which consent may not be unreasonably delayed, conditioned, or withheld. Any assignment or other transfer in violation of this provision is null and void.

11.2 **Entire Agreement; Amendments; Attachments.** This Agreement, and all exhibits and schedules hereto, represents the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes all prior oral and written negotiations, commitments and understandings between the Parties. PGE and Seller may amend or modify this Agreement, in such manner as may be agreed upon, by a written instrument executed by PGE and Seller. If the provisions of any exhibit or schedule are inconsistent with the provisions of this Agreement, the provisions of this Agreement shall prevail. The exhibits and schedules attached hereto are hereby incorporated as integral parts of this Agreement.

11.3 **Severability.** Any provision of this Agreement which is invalid, illegal or unenforceable shall be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof or rendering that or any other

provision of this Agreement invalid, illegal or unenforceable. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

#### 11.4 **Dispute Resolution Process; Consent to Jurisdiction.**

11.4.1 Escalation. The Parties agree to cooperate with each other and agree to communicate regularly with each other at all times so as to avoid or minimize disputes. In the event of any controversy, claim or dispute between the Parties arising out of or related to this Agreement (“**Dispute**”), within three (3) Business Days following the date of delivery of a written request by either Party, (a) each Party shall appoint as its representative a senior officer, and (b) such senior officers shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively.

11.4.2 Mandatory Mediation. Any Dispute that is not resolved pursuant to Section 11.4.1 may be submitted for mediation before a single mediator in accordance with the provisions contained herein and in accordance with the Commercial Mediation Procedures of the AAA in effect at the time of the mediation (“**AAA Procedures**”); provided, however, that in the event of any conflict between the procedures herein and the AAA Procedures, the procedures herein shall control. The mediator will be named by mutual agreement of the Parties or by obtaining a list of five (5) qualified Persons from the Parties and alternately striking names. All mediation shall be administered by the AAA. All mediation shall take place in the City of Portland, Oregon, unless otherwise agreed to by the Parties. Each Party shall be required to exchange documents to be used in the mediation not less than five (5) Business Days prior to the mediation. The Parties shall use all commercially reasonable efforts to conclude the mediation as soon as practicable. All aspects of the mediation shall be treated as Confidential Information. Neither the Parties nor any mediator may disclose the content or results of the mediation, except as necessary to comply with legal, audit or regulatory requirements. Before making any such disclosure, a Party shall give written notice to the other Party and shall afford such Party a reasonable opportunity to protect its interests. Each Party shall be responsible for its own expenses and one-half of any mediation expenses incurred to resolve the dispute. The mediator will provide the Parties with a fee and expense schedule in advance of mediation. Mediation will terminate by (a) written agreement signed by both Parties, (b) determination by the mediator that the Parties are at an unresolvable impasse, or (c) two unexcused absences by either Party from the mediation sessions. The mediator will never participate in any claim or controversy covered by this Article 11 as a witness, collateral contract or attorney and may not be called as a witness to testify in any proceeding involving the subject matter of mediation. O.R.S. §§ 36.100 to 36.238 will apply to the entire process of mediation.

11.4.3 If the Parties are still unable to resolve their differences after good faith consideration of a resolution through mediation pursuant to Section 11.4.2, then each of the Parties hereby irrevocably consents and agrees that any legal action or proceedings with respect to this Agreement may be brought in any of the courts of the State of Oregon located in the City of Portland or the courts of the United States of America for the District of Oregon having subject matter jurisdiction. By execution and delivery of this Agreement and such other documents executed in connection herewith, each Party hereby (a) accepts the exclusive jurisdiction of the aforesaid courts, (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents, (c) irrevocably waives, to the fullest extent permitted by law, any objection it may now or hereafter have to the laying of venue of any action or proceeding with respect to such documents brought in any such court, and further irrevocably waives, to the fullest extent permitted by law, any claim that any such action or proceeding brought in any such court has been brought in any inconvenient forum, and (d) agrees that services of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Party at its address set forth in Article 12, or at such other address of which the Parties have been notified. The dispute resolution process contemplated by this Agreement shall not prevent a Party from seeking temporary or preliminary equitable relief to prevent irreparable damage to that Party or to preserve the status quo pending resolution of a Dispute, and this Section 11.4.3 shall apply with respect to any application for such relief.

11.4.4 EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

11.4.5 If either Party institutes any legal suit, action or proceeding against the other Party arising out of or relating to this Agreement, including, but not limited to, contract, equity, tort, fraud and statutory claims, the prevailing Party in the suit, action or proceeding will be entitled to receive, in addition to all other remedies to which the prevailing Party may be entitled, the costs and expenses incurred by the prevailing Party in conducting the suit, action or proceeding, including reasonable attorneys' fees and expenses, court costs and other legal expenses such as expert witness fees, and all fees, taxes, costs and expenses incident to appellate, bankruptcy and post-judgment proceedings.

11.4.6 The provisions set forth in this Section 11.4 shall survive the termination or expiration of this Agreement.

11.5 **Consequential Damages.** EXCEPT WITH RESPECT TO LOSSES DIRECTLY OR INDIRECTLY CAUSED BY A THIRD-PARTY CLAIM OR A PARTY'S WILLFUL MISCONDUCT OR FRAUD, IN NO EVENT SHALL SELLER OR PGE OR ANY OF THEIR

RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, PARTNERS, SHAREHOLDERS, EMPLOYEES, AGENTS OR AFFILIATES BE LIABLE FOR ANY SPECIAL, INDIRECT, NON-COMPENSATORY, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, LOST OR PROSPECTIVE PROFITS, LOSS OF BUSINESS OPPORTUNITY OR BUSINESS INTERRUPTIONS UNDER OR IN RESPECT TO THIS AGREEMENT OR FOR ANY FAILURE OF PERFORMANCE RELATED HERETO, IRRESPECTIVE OF WHETHER SUCH DAMAGES ARE REASONABLY FORESEEABLE OR WHETHER SUCH CLAIMS ARISE IN CONTRACT, TORT (INCLUDING NEGLIGENCE, WHETHER SOLE, JOINT OR CONCURRENT OR STRICT LIABILITY) OR OTHERWISE.

11.6 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon applicable to contracts made and to be performed in the State of Oregon and without reference to the conflicts of laws rules thereof.

11.7 **Section Headings.** The Section headings are for the convenience of the Parties and in no way alter, modify, amend, limit or restrict the contractual obligations of the Parties.

11.8 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be one and the same document. The delivery of an executed counterpart to this Agreement by electronic means is effective for all purposes as the delivery of a manually-executed counterpart. This Agreement may be stored by the Parties electronically and the reproduction in tangible form of an electronically stored version of this Agreement will be deemed to be an “original” for all purposes.

11.9 **No Third-Party Beneficiaries.** This Agreement is entered into for the sole benefit of the Parties, and except as specifically provided herein, no other Person shall be a direct or indirect beneficiary of, or shall have any direct or indirect cause of action or claim in connection with, this Agreement.

11.10 **Waiver.** At any time prior to the Closing Date, any Party may (a) extend the time for the performance of any of the obligations or other acts of the other Parties hereto, (b) waive any inaccuracies in the representations and warranties of the other Parties contained herein or in any document delivered pursuant hereto and (c) waive compliance by any other Party with any of the agreements or conditions contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the Party or Parties to be bound thereby. The failure of any Party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

11.11 **Costs.** Each Party shall pay all of its own costs and expenses, including the fees and costs of its attorneys, consultants, contractors and representatives and internal overhead costs, incurred in connection with the negotiation, authorization, execution and delivery of this



Agreement and the agreements, Permits and other documents prepared or to be entered into in connection with the transactions contemplated herein. In the event of legal action to enforce or interpret any provision of this Agreement or the agreements, instruments or certificates delivered pursuant hereto, the prevailing Party shall be entitled to recover from the other Party its reasonable attorneys' fees and other costs of suit so incurred from the losing Party, at trial, on any appeal, and on any petition for review or other proceeding, in addition to all other sums provided by law.

11.12 **Relationship of Parties.**

11.12.1 The duties, obligations and Liabilities of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and PGE or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Seller and PGE shall not have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

11.12.2 The relationship between PGE and Seller shall be that of contracting party to independent contractor. Accordingly, subject to the specific terms of this Agreement, PGE shall have no general right to prescribe the means by which Seller shall meet its obligations under this Agreement.

11.13 **Public Announcements.** Prior to the Closing, the timing, manner, and content of all public announcements or other general public communications by either Party in relation to this Agreement and the purchase or sale of the Project Assets shall be fully discussed in advance between, and approved in writing by, Seller and PGE. After the Closing, Seller shall not make any public announcement in relation to this Agreement or the purchase and sale of the Project Assets without PGE's prior written approval, not to be unreasonably withheld, conditioned or delayed. Notwithstanding the preceding sentence, after Closing, Seller may disclose (and may make a public announcement), with notice to PGE, (i) the name, location and size of the Project and (ii) that Seller sold and PGE purchased the Project and that Seller is constructing the Project and, following Substantial Completion, has constructed the Project. Notwithstanding this Section 11.13, either Party may make any public disclosure it believes in good faith and upon advice of counsel is required by applicable Law or regulation or stock exchange rule, without the consent of (but, if not prohibited by law, with notice to) the other Party.

**ARTICLE 12**  
**NOTICES**

Any communications between the Parties hereto or regular notices provided herein to be given shall be given to the following addresses:





IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties hereto as of and on the date first above written.

SELLER:

PORTLAND GENERAL ELECTRIC  
COMPANY

[\_\_\_\_\_]

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

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

Name:

Name:

Title:

Title:

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

Name:

Title: