

IMPACT FEE AGREEMENT

This Agreement, effective September ____, 2019 is by and between PacifiCorp, (hereafter "PacifiCorp") and the Carbon County Board of County Commissioners, Carbon County, MT (hereafter "Carbon County").

RECITALS

- A. Whereas, Carbon County is a county organized under the laws of the State of Montana and represented by a duly-elected board of County Commissioners, who have authority to enter into this Agreement.
- B. Whereas, PacifiCorp is an Oregon corporation, with its principal place of business at 825 NE Multnomah, Suite 1800, Portland, Oregon 97232.
- C. Whereas, PacifiCorp is developing a wind generation facility and transmission facility in Carbon County, Montana.
- D. Whereas, when complete, the PacifiCorp project will be a wind generation facility with a nominal nameplate capacity of approximately 240 megawatts located on private property in Townships 7, 8, and 9 North, Range 24 and 25 East, in Carbon County, Montana which has been referred to under the various names of Mud Springs, Bowler Flats, Horse Thief, and Pryor Cave in the past and will be referred to as Pryor Mountain wind project going forward (the "Project").
- E. Whereas, Construction Commencement is defined as the date on which the Balance of Plant (BOP) Contractor for construction of the Project begins construction of the wind turbine generator (WTG) foundations. This date is estimated as October 15, 2019. The Parties recognize that some early construction activities may occur on the Project prior to this date but this work is not considered to be Construction Commencement.
- F. Whereas, Section 15-24-3004, Montana Code Annotated, provides that "an owner or operator of a wind generation facility used for a commercial purpose is subject to an initial local governmental and local school impact fee to be paid for each year of the first 3 years after construction of the wind generation facility begins. The annual impact fee may not exceed 0.5% of the total cost of constructing the wind generation facility."
- G. Whereas, Carbon County and PacifiCorp have a separate agreement addressing PacifiCorp's obligations to repair and maintain Carbon County roads utilized in connection with the Project. That Road Use Agreement is separate and distinct from this Agreement and neither one is related to the other.
- H. Whereas, PacifiCorp has also applied for "New or Expanding Industry Classification" pursuant to §§15-24-1401 and 1402, Montana Code Annotated, and that application is pending before Carbon County.

- I. Whereas, tax abatement under §§ 15-24-1401 and 1402, Montana Code Annotated, is separate and distinct from the impact fee requirements of Section 15-24-3004, Montana Code Annotated, and one is not dependent on the other, except as otherwise set forth herein.
- J. Whereas, the parties wish to set forth the terms and conditions applicable to the impact fee and payments.

Now, therefore, the parties enter into the following Impact Fee Agreement:

1. **EFFECT OF AGREEMENT**: This Impact Fee Agreement supersedes any previous impact fee agreement filed on behalf of PacifiCorp's predecessors in interest for the Project.
2. **IMPACT FEE ESTIMATE**: PacifiCorp shall pay an annual impact fee to Carbon County that is equivalent to 0.5% of the construction costs of the Project located within Carbon County, for a two year period, resulting in a total impact fee of 1.0% of the construction cost of the Project. PacifiCorp has estimated those construction costs at \$406 million.
3. **ROAD AND BRIDGE PREPARATION FEE**: In addition to the total Impact Fee of 1.0% of construction costs, PacifiCorp shall pay a one-time Road and Bridge Preparation Fee equivalent to 0.5% of the construction costs of the Project located within Carbon County. PacifiCorp has estimated those construction costs at \$406 million. The primary purpose of this Road and Bridge Preparation Fee is to provide funding for Carbon County to bring Pryor Mountain Road's Bridger Creek bridge up to State of Montana standards by June 1, 2020. The Bridger Creek bridge is located in Section 4, Township 7 South, Range 23 East and is approximately 500 feet east of the Pryor Mountain Road's intersection with US Highway 310 in Carbon County, Montana. The existing bridge will be replaced with a bridge that will be suitable for use by unloaded equipment delivery semi-trucks exiting the Project. Any remaining funds not needed to replace the Pryor Mountain Road bridge crossing Bridger Creek could be used by the county for road maintenance or improvements or to fund any other projects deemed appropriate by Carbon County.
4. **TOTAL CONSTRUCTION COSTS**: For purposes of the impact fee cost calculation, total construction costs for the Project shall include wind turbine equipment, generators, electrical collection and transmission equipment, project substation, MET towers, any and all associated improvements, and all construction related costs including but not limited to civil work, roads, foundations, wiring, SCADA, and engineering costs.
5. **SCHEDULE FOR FEE PAYMENTS**: The impact fee shall be paid in two installments, as follows:
 - a. PacifiCorp shall send written Notice to Carbon County when it intends to commence construction of any portion of the Project and shall make the first annual Impact Fee

payment of \$2,030,000 which represents 0.5% of estimated construction costs, to Carbon County at least five (5) days prior to Construction Commencement;

- b. The Road and Bridge Preparation Fee payment of \$2,030,000, which represents 0.5% of estimated construction costs, will be made to Carbon County at the same time as the first Impact Fee payment.
 - c. On the first anniversary date of the first payment, PacifiCorp shall make payment to Carbon County of the second annual payment of 0.5% of actual construction costs if the Project is fully constructed, or \$2,030,000 estimated construction costs if the Project is not yet complete.
6. **TRUE-UP ADJUSTMENT**: The second installment payment shall be adjusted as appropriate to reflect actual Total Project Construction Costs in relation to the estimated costs used for the first installment (referred to herein as the "True-Up Adjustment").
 7. **AFFIDAVIT AND EVIDENCE OF TOTAL CONSTRUCTION COSTS**: The Total Project Construction costs shall be verified by PacifiCorp by sworn affidavit with attached proof of construction costs and subject to verification through any Montana Public Service Commission Final Order or other order that results in an adjustment to Total Project Construction Costs.
 8. **ASSIGNMENT**: In the event PacifiCorp has assigned or conveyed ownership of the Project to another entity before any impact fee instalment is due, through the assignment PacifiCorp shall ensure that the new owner shall remain liable for such impact fee installment payments required under this Agreement. This Agreement shall be binding on successors, heirs and assigns.
 9. **TERM**: This Agreement shall terminate upon payment to Carbon County of all Impact Fees and Road and Bridge Preparation Fees due under this Agreement. In the event construction of the Project has not commenced within two (2) years of the date of this Agreement or is not complete within three (3) years of the date of this Agreement, this Agreement shall terminate and be null and void and PacifiCorp or its successors or assigns must negotiate a new Impact Fee Agreement with Carbon County prior to commencing construction of the Project. In the event construction has commenced and installment payments made to Carbon County, but PacifiCorp, its successors or assigns do not complete the Project, Carbon County shall retain all impact fee payments heretofore made.
 10. **DEFAULT**: A party will be in default under this Agreement if it fails to satisfy any material obligation imposed on it by this Agreement.
 - a. In the case of default, the non-defaulting party shall give the alleged defaulting Party written notice of such default, and a sixty (60) working day opportunity to cure such default, from the date of written notice.

11. **REMEDIES**: PacifiCorp acknowledges that violation of the terms of this Agreement shall also constitute a violation of the terms and conditions of a grant of tax abatement, if any, from Carbon County to PacifiCorp. In the event of default either party may pursue any remedy allowed at law or in equity, including as applicable a suit for specific performance. Carbon County may also pursue revocation of any grant of tax abatement (if any).

12. **MISCELLANEOUS**:

- a. Each party represents and warrants to the other that it is duly formed and validly existing under the laws of the state of its formation; it is duly qualified to do business in Montana and is in good standing under applicable law; and the individuals executing this Agreement are authorized and empowered to bind the Party on whose behalf they are signing this Agreement.
- b. The Parties agree that this Agreement may be executed in counterparts, each of which will be deemed an original and all of which, taken together, constitute the same instrument. Facsimile or emailed copies of original signatures are regarded as originals.
- c. This Agreement, together with any required submittals, shall constitute the entire agreement between the Parties with respect to its subject matter and shall supersede any prior negotiations or agreements.
- d. Nothing herein creates any joint venture, partnership or principal agent relationship between the parties.
- e. To the extent of its negligence, PacifiCorp shall defend, indemnify and hold harmless Carbon County, its employees and officials from any claims, causes of action, suits for damages to personal and real property and for personal injury that derives from PacifiCorp's activities within Carbon County but only -to the extent that such activities are related to the PacifiCorp development of the Project.
- f. The terms of this Agreement are governed by the laws of the State of Montana and venue for any dispute shall be in Carbon County.

Signatures

PACIFICORP
an **Oregon corporation**

By: _____

Name: Chad Teply

Title: Senior Vice President of Business Policy and Development

CARBON COUNTY, MONTANA

By: _____

Name: Scott Blain

Title: Presiding Officer