

Memorandum of Understanding
THE CLIMATE TRUST AND KLAMATH GENERATION, LLC
CARBON DIOXIDE STANDARD IMPLEMENTATION
MONETARY PATH PAYMENT REQUIREMENT

1 THIS MEMORANDUM OF UNDERSTANDING (this “Agreement”) is entered into
 2 as of the ___ day of _____, 200_, by and between Klamath Generation, LLC (the
 3 “Project Owner”) in its capacity as owner of the Klamath Generation Facility and The
 4 Climate Trust (“The Trust”).

5 RECITALS

- 6 1. The Project Owner intends to design, finance, construct, own and operate a natural
 7 gas-fired combined-cycle combustion turbine electric generating facility with a base-load
 8 net electric power output of about _____ MW and a peaking net electric power output of
 9 about _____ MW near Klamath Falls, Oregon. The facility, together with its ancillary
 10 systems, shall be referred to herein as the “Project.”
- 11 2. The State of Oregon requires new energy facilities to meet a carbon dioxide emissions
 12 standard as described in OAR 345-024-0550 through -0710.
- 13 3. As a condition to the siting of the Project, the Project Owner is required to provide offset
 14 funds (“Offset Funds”) and selection and contracting funds (“Selection and Contracting
 15 Funds”) to The Trust. In accordance with Section _____ of the site certificate for the
 16 Klamath Generation Facility (the “Site Certificate”) that the Oregon Energy Facility
 17 Siting Council (the “Council”) approved on _____ 2005, the Project Owner shall
 18 establish a third-party letter of credit (the “Letter of Credit”) in The Trust’s name,
 19 acceptable to the Council, sufficient to meet the monetary path requirement. Under the
 20 terms and conditions of this Agreement, the monetary path payments shall be disbursed
 21 to The Trust as specified in the Site Certificate and then by The Trust as specified in
 22 OAR 345-024-0710.
- 23 4. The Trust is a qualified organization within the meaning of OAR 345-001-0010.

24 NOW, THEREFORE, in consideration of the premises and mutual promises herein
 25 contained, the parties hereto agree as follows:

26 **1. Initial Base-Load Monetary Path Payment and Initial Power Augmentation**
 27 **Monetary Path Payment.**

- 28 1.1 The Site Certificate requires that the amount of all Monetary Path Payments be
 29 paid in 2005 dollars that are adjusted for inflation to the date of disbursement to
 30 The Trust using the U.S. Gross Domestic Product Implicit Price Deflator, Chain-
 31 Weight, published in the then current “Oregon Economic and Revenue Forecast”
 32 (the “Index”).
- 33 1.2 The Project Owner has used the monetary path payment requirement calculations
 34 described in the Site Certificate to calculate the Initial Base-Load Monetary Path
 35 Payment amount and has submitted them to the Oregon Department of Energy
 36 (the “Department”) for verification. The Trust acknowledges that the calculation

1 of the Initial Base-Load Monetary Path Payment amount in 2005 dollars
2 presented in Appendix A is correct and consistent with the Site Certificate.

- 3 1.3 The Project Owner has used the monetary path payment requirement calculations
4 described in the Site Certificate to calculate the Initial Power Augmentation
5 Monetary Path Payment amount and has submitted them to the Department for
6 verification. The Trust acknowledges that the calculation of the Initial Power
7 Augmentation Monetary Path Payment amount in 2005 dollars presented in
8 Appendix A is correct and consistent with the Site Certificate.
- 9 1.4 The Project Owner shall pay to The Trust the Inflation-Adjusted Selection and
10 Contracting Funds in the amount of \$ [REDACTED] contemporaneously with
11 execution of this Agreement. The Trust acknowledges that the calculations of the
12 amount of Selection and Contracting Funds in 2005 dollars presented in Appendix
13 A are correct and consistent with the Site Certificate.
- 14 1.5 Based on the verified calculations of the Initial Base-Load Monetary Path
15 Payment and the Initial Power Augmentation Monetary Path Payment set forth in
16 Appendix A, the Project Owner shall pay to the Trust \$ [REDACTED] in Offset
17 Funds in 2005 dollars pursuant to Section 1.7 below. The Site Certificate requires
18 that the amount of Offset Funds portion of both the Initial Base-Load Monetary
19 Path Payment and the Initial Power Augmentation Monetary Path Payment be
20 adjusted for inflation to the date of disbursement to The Trust using the Index.
- 21 1.6 The Project Owner shall establish a Letter of Credit in the amount of \$ [REDACTED]
22 in favor of The Trust, in the form attached as Appendix B to this Agreement. The
23 effective date of the Letter of Credit shall be [REDACTED], 200[REDACTED]. The Trust shall
24 be entitled to draw the entire amount of the Offset Funds secured by the Letter of
25 Credit, subject to Condition 1.8. The Project Owner shall pay the costs of
26 establishing and maintaining the Letter of Credit and shall pay any transaction
27 fees assessed by the issuer of the Letter of Credit.
- 28 1.7 The Trust shall have the right to draw Offset Funds upon execution of a letter of
29 intent to acquire an offset project. At the sole discretion of The Trust, the amount
30 of Offset Funds drawn may correspond to the entire amount of Offset Funds
31 available. The Trust may request less than the entire amount of the Offset Funds,
32 but in no case shall the cumulative amount of all requests exceed the total
33 Monetary Path Payment Requirement, as adjusted for inflation.
- 34 1.8 Because of the need to establish a Letter of Credit with sufficient funds to cover
35 withdrawal up to the end of a future period calculated by application of the Index,
36 the amount of the Letter of Credit on any date may be greater than the entire
37 amount of Offset Funds required by the Monetary Path, as adjusted for inflation.
38 If there are funds available in Letter of Credit after The Trust has withdrawn the
39 entire amount of Offset Funds under the Monetary Path Payment Requirement,
40 the Project Owner may dissolve the Letter of Credit after verification by the
41 Department that the funds remaining in the Letter of Credit are excess of the
42 Project Owner's obligations pursuant to Section 1.

1 **2. Year One True-Up Base-Load Monetary Path Payment and Year One True-Up**
 2 **Power Augmentation Monetary Path Payment.**

- 3 2.1 The Project Owner shall, within 30 days after filing its Year One Tests reports
 4 with the Council, calculate the amount of Year One True-Up Base-Load
 5 Monetary Path Payment, if any, and the amount of Year One True-Up Power
 6 Augmentation Monetary Path Payment, if any, as required by the Site Certificate.
 7 The Project Owner shall submit these calculations to the Department for
 8 verification, as required by the Site Certificate.
- 9 2.2 Both the amount of Year One True-Up Base-Load Monetary Path Payment and
 10 amount of Year One True-Up Power Augmentation Monetary Path Payment, if
 11 any, shall be adjusted for 2005 dollars to the Disbursement Date using the Index.
- 12 2.3 If any Year One True-Up Base-Load Monetary Path Payment and/or Year One
 13 True-Up Power Augmentation Monetary Path Payment is due, the Project Owner
 14 shall pay the amount directly to The Trust within 30 days of its notification by the
 15 Department of the amount that the Project Owner owes
- 16 2.4 In no case shall the calculations of this Section 2 cause the funding for the Initial
 17 Base-Load Monetary Path Payment and the Initial Power Augmentation Monetary
 18 Path Payment made available to The Trust by the Letter of Credit to diminish.

19 **3. Periodic Five-Year Power Augmentation Monetary Path Payments.**

- 20 3.1 Each five years after beginning commercial operation, the Project Owner shall
 21 report the annual average hours of usage of power augmentation to the
 22 Department as required by the Site Certificate.
- 23 3.2 If the Department determines that there are excess emissions for the five-year
 24 report period, the Department will specify the amount of Selection and
 25 Contracting Funds and Offset Funds that the Project Owner shall make available
 26 to The Trust. Each Periodic Five-Year Power Augmentation Monetary Path
 27 Payment, if any, shall be adjusted for inflation for 2005 dollars to the
 28 Disbursement Date using the Index.
- 29 3.3 For any Periodic Five-Year Power Augmentation Monetary Path Payment, the
 30 amount of Selection and Contracting Funds shall equal 20 percent of the value of
 31 any Offset Funds up to the first \$250,000 (in 2005 dollars) and 4.286 percent of
 32 the value of any Offset Funds in excess of \$250,000 (in 2005 dollars).
- 33 3.4 The Project Owner shall disburse to The Trust the specified amount of any
 34 Periodic Five-Year Monetary Path Payment within 30 days of its notification by
 35 the Department of the amount that the Project Owner owes.

36 **4. Undertaking by The Trust.**

- 37 4.1 The Trust shall use the Initial Base-Load Monetary Path Payment and Initial
 38 Power Augmentation Monetary Path Payment, as well as any Year One True-Up
 39 Base-Load Monetary Path Payment, Year One True-Up Power Augmentation
 40 Monetary Path Payment, and/or Periodic Five-Year Power Augmentation
 41 Monetary Path Payments in accordance with OAR 345-024-0710.

1 4.2 With respect to the Offset Funds portions of any Initial Base-Load Monetary Path
2 Payment, Initial Power Augmentation Monetary Path Payment, Year One Base-
3 Load Monetary Path Payment, Year One Power Augmentation Monetary Path
4 Payment, and/or Periodic Five-Year Power Augmentation Monetary Path
5 Payments, The Trust shall spend at least 80 percent of the Offset Funds for
6 contracts to implement offsets, and may use up to 20 percent of the Offset Funds
7 for monitoring, evaluation, administration, and enforcement of contracts to
8 implement offsets. The Trust shall spend Offset Funds solely for contracts to
9 implement offsets or for monitoring, evaluation, administration, and enforcement
10 of contracts to implement offsets.

11 4.3 The Selection and Contracting Funds portions of any Initial Base-Load Monetary
12 Path Payment, Initial Power Augmentation Monetary Path Payment, Year One
13 Base-Load Monetary Path Payment, Year One Power Augmentation Monetary
14 Path Payment, and/or Periodic Five-Year Power Augmentation Monetary Path
15 Payments shall compensate The Trust for its costs of selecting offsets and
16 contracting for the implementation of offsets and administrative costs related to
17 operating The Trust as a qualified organization.

18 4.4 The Trust shall use its best efforts to remain a qualified organization, as defined in
19 OAR 345-001-0010, until The Trust has used all funds received from the Project
20 Owner.

21 4.5 The Trust shall notify the Project Owner of its intent to draw on the Letter of
22 Credit at least one week before making a draw.

23 **5. Limited Obligation of Project Owner.**

24 5.1 The Trust acknowledges, pursuant to OAR 345-024-0710(3), that the Project
25 Owner and the Project shall have no obligation with regard to offsets for the
26 Project other than to make available to The Trust the total amount of the monetary
27 path payments.

28 **6. Limited Participation by Project Owner in The Trust Decision Making.**

29 6.1 The Project Owner shall appoint one nonvoting member to the Board of Directors
30 of The Trust for a term lasting until The Trust has completed the contracting for
31 the offset funds provided by the Project Owner. The Project Owner shall have no
32 approval rights over The Trust's offset contracts, disbursement of Offset Funds,
33 or other operations of The Trust.

34 **7. Project Owner Agreement to Indemnify and Hold The Trust Harmless.**

35 7.1 The Project Owner agrees to defend, hold harmless and indemnify The Trust from
36 and against any and all claims, costs, liabilities, and expenses of any nature
37 whatsoever, including reasonable attorneys' fees, resulting from or arising out of
38 any failure by the Project Owner to make any payments required by this
39 Agreement, or to establish the Letter of Credit described in Section 1.6 in a timely
40 manner; PROVIDED, that the maximum amount of the Project Owner's liability
41 to The Trust for claims, costs, liabilities and expenses, including attorneys' fees,
42 arising out of the failure to make a payment or establish the Letter of Credit
43 required by this Agreement in a timely manner shall not exceed twice the

1 differential between the amount payable to The Trust on a particular date and the
2 amount actually paid or made available to The Trust on or before that date.
3 FURTHER PROVIDED, The Trust must make reasonable efforts to mitigate any
4 losses, liabilities or expenses for which it seeks indemnification from the Project
5 Owner.

6 **8. General Provisions.**

7 8.1 Disputes. Either the Project Owner or The Trust may submit to the Council for
8 the Council's resolution any dispute between the Project Owner and The Trust
9 concerning the terms of the bond or the letter of credit, this Agreement, or any
10 other issues related to the monetary path payment requirement. The Council's
11 decision shall be binding on all parties.

12 8.2 Governing Law: This Agreement shall be governed by and construed in
13 accordance with the laws of the State of Oregon. Any ambiguity that may arise
14 under this Agreement shall be given a fair and reasonable construction in
15 accordance with the intention of the parties and without regard to which party
16 caused or is deemed to have caused such ambiguity to exist.

17 8.3 Amendments and Waivers: This Agreement may not be modified, supplemented,
18 altered or amended, nor any provision hereof or rights hereunder be waived,
19 except by an instrument in writing designated as an amendment of or waiver
20 under this Agreement and signed by both parties. The waiver of any particular
21 breach or default hereunder shall not constitute a waiver of any other breach or
22 default. Failure or delay by any party to enforce any provision of this Agreement
23 shall not in any way be construed as a waiver of such provision, nor shall it
24 prevent such party from thereafter enforcing each and every provision of this
25 Agreement.

26 8.4 Entire Agreement: This Agreement constitutes the entire agreement between the
27 parties hereto as to the matters set forth herein, and all prior proposals,
28 commitments, understandings and agreements, whether oral or in writing, as to
29 such matters are superseded by this Agreement.

30 8.5 Assignment: The rights of the Project Owner under this Agreement may be
31 assumed by any entity that acquires an ownership interest in the Project. Upon
32 such assumption and upon written acknowledgment by the entity of its
33 responsibilities under this Agreement, such entity shall be deemed to be a party to
34 this Agreement. The Trust may not assign this Agreement without the prior
35 consent of the Project Owner and Council; provided that, if the proposed assignee
36 is a "qualified organization" as defined in OAR 345-001-0010(45), the Project
37 Owner shall not unreasonably withhold such consent.

38 8.6 Third-Party Beneficiaries: Nothing in this Agreement, whether express or
39 implied, is intended to confer any rights or remedies on any persons other than the
40 parties hereto and their respective authorized successors and permitted assigns.

1 IN WITNESS WHEREOF, the parties have caused this Memorandum of
2 Understanding to be executed by their respective duly authorized representatives, as of the
3 day and year first above written.

KLAMATH GENERATION, LLC

THE CLIMATE TRUST

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX A: CALCULATION OF INITIAL BASE-LOAD AND POWER AUGMENTATION
MONETARY PATH PAYMENT REQUIREMENT *[Not Included in Site Certificate]*

APPENDIX B: FORM OF LETTER OF CREDIT

APPENDIX B TO MEMORANDUM OF UNDERSTANDING
 [FORM OF CLIMATE TRUST LETTER OF CREDIT]

1 [Date]

2 BENEFCIARY:

3 The Climate Trust
 4 516 SE Morrison Street, Suite 300
 5 Portland, OR 97214
 6 Attn: Mike Burnett, Executive Director

7 IRREVOCABLE LETTER OF CREDIT NO. _____

8 At the request and for the account of _____, we hereby issue in your favor our
 9 Irrevocable Letter of Credit No. _____ (this "Letter of Credit") for U.S. \$ _____ (the "Stated
 10 Amount").

11 We are informed that this Letter of Credit is issued to you pursuant to the Site
 12 Certificate for the Klamath Generation Facility, dated _____.

13 Subject to the provisions herein, funds under this Letter of Credit are available against
 14 presentation of this Letter of Credit and your draft drawn at sight and marked "Drawn on
 15 _____ Letter of Credit No. _____," accompanied by a written certificate in the form
 16 of Annex A hereto with the blanks duly completed and purportedly signed by your Executive
 17 Director and dated as of even date with the draft.

18 Subject to the provisions herein, we hereby authorize you to draw hereunder in an
 19 amount not to exceed the Stated Amount from the date hereof through our close of business
 20 on the date on which the Stated Amount is reduced to zero by a drawing hereunder.

21 Partial drawings are permitted under this Letter of Credit. The amount available to be
 22 drawn under this Letter of Credit shall be automatically reduced by the amount of any
 23 drawings hereunder. Upon the payment of drawings that in the aggregate equal the Stated
 24 Amount, we shall be fully discharged of our obligation under this Letter at Credit and we shall
 25 not thereafter be obligated to make any further payments under this Letter of Credit.

26 Presentation of this Letter of Credit, such draft and such certificate shall be made at
 27 _____, by physical delivery of such documents to such office. _____ will accept physical
 28 delivery of such documents either by hand delivery, by mail, by overnight courier, or by any
 29 other commercially-accepted means of delivery. Our only obligation with regard to a drawing
 30 under this Letter of Credit shall be to examine such draft and certificate and to pay in
 31 accordance therewith if the same conforms to the terms and conditions of this Letter of Credit,
 32 and we shall not be obligated to make any inquiry in connection with the presentation of this
 33 Letter of Credit, the draft and the certificate.

34 If any request for payment hereunder is presented in compliance with the terms of this
 35 Letter of Credit to us at such address by _____ (local time) on any Business Day, payment will
 36 be made at or before _____ (local time) on the third Business Day thereafter, and if such
 37 request is so presented to us _____ (local time) on any Business Day, payment will be made
 38 at or before the fourth Business Day thereafter.

1 If a demand for payment made hereunder does not, in any instance, conform to the
2 terms and conditions of this Letter of Credit, we shall give you prompt notice that your
3 demand for payment was not effected in accordance with the terms and conditions of this
4 Letter of Credit, stating the reasons therefore and that we will, upon your instructions, hold
5 any documents at your disposal or return the same to you. Upon being notified that the
6 demand for payment was not effected in conformity with this Letter of Credit, you may
7 attempt to correct any such nonconforming demand to the extent you are able to do so;
8 *provided, however*, that any draft or document presented to correct such nonconforming
9 demand must be presented on or before the Termination Date.

10 Communications with respect to this Letter of Credit shall be in writing and shall be
11 addressed to us at [REDACTED], specifically referring therein to this Letter of Credit by number.

12 As used herein, a “Business Day” shall mean any day other than Saturday or Sunday
13 or a day on which banking institutions in the City of [REDACTED] are authorized or required
14 by law to close.

15 Presentation of any certificate hereunder shall be deemed to be authentic if signed by a
16 person purporting to be your Executive Director.

17 This Letter of Credit and the attached Annex A set forth in full our undertaking, and
18 such undertaking shall not in any way be modified, amended, amplified, or limited by
19 reference to any document, instrument or agreement referred to in this Letter of Credit, except
20 only the certificates referred to herein, and any such reference shall not be deemed to
21 incorporate herein by reference any document, instrument or agreement except for such
22 certificates.

23 [REDACTED] hereby engages solely with The Climate Trust that drafts drawn
24 hereunder and in compliance with the terms of this Letter of Credit will be duly honored upon
25 presentation to us by our prompt payment to you of the amount specified in the certificate
26 accompanying such draft.

27 This Letter of Credit and the attached Annex A shall be subject to the provisions (to
28 the extent that such provisions are not inconsistent with this Letter of Credit) of the Uniform
29 Customs and Practices for Documentary Credits, 1993 Revision, International Chamber of
30 Commerce Publication No. 500. To the extent that the provisions of this Letter of Credit are
31 not covered by such Uniform Customs and Practices, this Letter of Credit shall be governed
32 by and enforced and construed in accordance with the laws of the State of Oregon.

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ANNEX A

[LETTERHEAD OF THE CLIMATE TRUST]

DRAW CERTIFICATE

IRREVOCABLE LETTER OF CREDIT NO.

The undersigned, the Executive Director of The Climate Trust (the “Beneficiary”) hereby certifies to [redacted] (the “Issuing Bank”) with reference to the Irrevocable Letter of Credit No. [redacted] (the “Letter of Credit”) issued by the Issuing Bank in favor of the Beneficiary (any capitalized term used herein and not otherwise defined shall have the respective meaning set forth in the Letter of Credit) that:

- 1. The Beneficiary is making a drawing under the Letter of Credit pursuant to the Memorandum of Understanding dated [redacted], 200[redacted], between The Climate Trust and [redacted] (the “MOU”) in the amount of \$[redacted] (the “Drawing Amount”);
- 2. The Drawing Amount hereunder does not exceed the Stated Amount reduced by all previous drawings under the Letter of Credit; and
- 3. The Drawing Amount is not more than the amount that the Climate Trust is entitled to draw at this time under the terms of the MOU.

The Beneficiary hereby irrevocably authorizes and directs the Issuing Bank to pay the Drawing Amount in immediately available funds to The Climate Trust, Attention: Executive Director, by sending such payment by wire transfer to:

[redacted]

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this certificate as of the [redacted] day of [redacted], [redacted].

THE CLIMATE TRUST, as Beneficiary

By: _____
Name:
Executive Director