

SITE CERTIFICATE

FOR THE

KLAMATH GENERATION PEAKERS

ISSUED BY

OREGON ENERGY FACILITY SITING COUNCIL
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ATTACHMENT A

MEMORANDUM OF UNDERSTANDING: MONETARY PATH PAYMENT REQUIREMENT

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**SITE CERTIFICATE
FOR THE
KLAMATH GENERATION PEAKERS**

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A. INTRODUCTION

12 This site certificate for the Klamath Generation Peakers (“KGP or Project”) is issued and
13 executed in the manner provided by ORS Chapter 469, by and between the State of Oregon
14 (“State”), acting by and through its Energy Facility Siting Council (“EFSC” or the “Council”),
15 and Klamath Energy LLC (“KE” or “Certificate Holder”).

16
17 The findings of fact, reasoning and conclusions of law underlying the terms and conditions of
18 this site certificate are set forth in the Council’s Final Order in the Matter of the Application for a
19 Site Certificate for the Klamath Generation Peakers, which the Council granted on September
20 27, 2005.

21
22 In interpreting this site certificate, any ambiguity shall be clarified by reference to, and in the
23 following priority: this Site Certificate, the Final Order, the record of the proceedings which led
24 to the Final Order, and the Application for a Site Certificate for the Klamath Generation Peakers.
25 As used in this Site Certificate, the “application for site certificate” or the “ASC” includes the
26 Application for a Site Certificate for the Klamath Generation Peakers, which the Oregon
27 Department of Energy (“Department” or “ODOE”) filed on December 10, 2004 and KE’s
28 August 7, 2004 and August 24, 2004 responses to the ODOE “Request for Additional
29 Information” dated July 8, 2004.

30
31 The terms used in this Site Certificate shall have the same meaning set forth in ORS 469.300 and
32 Oregon Administrative Rules (OAR) 345-001-0010, except where otherwise stated or where the
33 context clearly indicates otherwise.

34
35 The KGP is unique in that it was originally constructed in 2002 as a temporary generating
36 facility under an exemption from EFSC jurisdiction allowed by Oregon Revised Statute (“ORS”)
37 469.320(2)(g). Originally, it was called the Klamath Expansion Peakers (“KEP”).

38
39 The exemption of ORS 469.320(2)(g) was in effect for two years after the start of commercial
40 operation. To continue operation after the two year exemption period, the facility operator was
41 required to apply for an Energy Facility Site Certificate. The statute stated that if the owner of a
temporary energy facility submits an application for a site certificate before the expiration of two
years from first commercial operation, then the Council “shall extend the period constituting the
exemption and shall allow the temporary energy generating facility to continue operation until
the Council concludes its review of the site certificate application.” ORS 469.320(7)(d).

1 The KEP began commercial operation on May 17, 2002, and operated since that date as a single
2 fuel (natural gas) peaking power generation facility. The ASC was submitted by Klamath Energy
3 LLC, a wholly-owned subsidiary of PPM Energy, Inc. (“PPM”), on May 10, 2004.
4 The only new construction proposed by KE under its ASC is the addition of a distillate fuel
5 system comprising a storage tank and associated piping and modifications to the turbine
6 combustion system to accommodate dual fuel operation. Throughout this Site Certificate, any
7 reference to new construction applies to KE’s construction of the distillate fuel system and
8 associated modifications and not to the existing facility.
9

10 **B. SITE CERTIFICATION**

- 11 1. To the extent authorized by State law and subject to the conditions set forth herein, the
12 State approves and authorizes the Certificate Holder to construct, operate and retire a
13 natural gas or distillate fired, simple cycle combustion turbine peaking facility, together
14 with certain related or supporting facilities, at the site described in Section C of this Site
15 Certificate, near Klamath Falls, Oregon. ORS 469.401(1).
16
- 17 2. This site certificate shall be effective (1) until it is terminated pursuant to OAR
18 345-027-0110 or the rules in effect on the date that termination is sought, or (2) until the
19 Site Certificate is revoked pursuant to ORS 469.440 and OAR 345-029-0100 or the
20 statutes and rules in effect on the date that revocation is ordered. ORS 469.401(1).
21
- 22 3. This Site Certificate does not address, and is not binding with respect to, matters that
23 were not addressed in the Council's Final Order. These matters include, but are not
24 limited to: building code compliance, wage, hour and other labor regulations, local
25 government fees and charges, and other design or operational issues that do not relate to
26 siting the Project; and permits issued under statutes and rules for which the decision on
27 compliance has been delegated by the Federal government to a state agency other than
28 the Council. ORS 469.401(4) and 469.503(3).
29
- 30 4. Both the State and the Certificate Holder shall abide by local ordinances and state law
31 and the rules of the Council in effect on the date this Site Certificate is executed. In
32 addition, upon a clear showing of a significant threat to the public health, safety or the
33 environment that requires application of later-adopted laws or rules, the Council may
34 require compliance with such later-adopted laws or rules. ORS 469.401(2).
35
- 36 5. For a permit, license or other approval addressed in and governed by this Site Certificate,
37 the Certificate Holder shall comply with applicable state and federal laws adopted in the
38 future to the extent that such compliance is required under the respective state agency
39 statutes and rules. ORS 469.401(2).
40
- 41 6. Subject to the conditions herein, this Site Certificate binds the State and all counties,
42 cities and political subdivisions in this state as to the approval of the site and the
43 construction, operation and retirement of the Project as to matters that are addressed in
44 and governed by this Site Certificate. ORS 469.401(3).

- 1
2 7. Each affected state agency, county, city and political subdivision in Oregon with
3 authority to issue a permit, license or other approval addressed in or governed by this Site
4 Certificate shall, upon submission of the proper application and payment of the proper
5 fees, but without hearings or other proceedings, issue such permit, license or other
6 approval subject only to conditions set forth in this Site Certificate. ORS 469.401(3).
7
8 8. After issuance of this Site Certificate, each state agency or local government agency that
9 issues a permit, license or other approval for the Project shall continue to exercise
10 enforcement authority over such permit, license or other approval. ORS 469.401(3).
11
12 9. After issuance of this Site Certificate, the Council shall have continuing authority over
13 the site and may inspect, or direct the Department to inspect, or request another state
14 agency or local government to inspect, the site at any time in order to assure that the
15 Project is being operated consistently with the terms and conditions of this Site
16 Certificate. ORS 469.430.
17

18 **C. FACILITY AND SITE DESCRIPTION**

19
20 **C.1. FACILITY**

21 **C.1.a. Major Structures and Equipment**

22 The KGP is a dual fuel-fired, simple-cycle combustion turbine power generation facility. It is
23 based on aero-derivative gas turbine-generator design and uses four combustion turbines (“CTs”)
24 that are capable of firing either natural gas or No. 2 distillate to generate electricity.
25

26 The facility consists of three major pieces of equipment: two CT-generator sets and one
27 transformer. Each of the CT-generator sets consists of two Pratt & Whitney Model FT-8
28 combustion turbines linked to a single generator. Each of these two CT-generator units is called a
29 Twin Pac. The two Twin Pacs generate electricity at 13.8 kilovolts (“kV”).
30

31 Additional facilities include water injection pumps, selective catalytic reduction and an oxidation
32 catalyst for emissions control, a service and maintenance building, and other miscellaneous
33 equipment. To improve the output and efficiency of each CT during the summer months, an
34 evaporative cooler reduces the temperature of the outside air drawn into the air compressor. Each
35 CT is surrounded with an acoustically insulated enclosure to reduce noise levels and to provide
36 containment for automatic fire suppression equipment.
37

38 KE is hereby authorized to convert from a single fuel (natural gas) to dual fuel (natural gas and
39 distillate) firing capability. This modification would provide the facility with increased flexibility
40 to meet electricity demand. The modifications associated with the dual fuel conversion include a
41 one-time change-out of each of the CT’s combustors, along with installation of a 250,000-gallon
42 distillate storage tank, containment area, transfer pumps, and piping. The dual fuel capability
43 modifications would not be initiated until after issuance of a site certificate for the facility.
44

1 **Output.** At annual average conditions, the facility has an average electric generating capacity of
2 about 94.7 megawatts (“MW”) when firing natural gas and would have an average electric
3 generating capacity of about 93.1 MW when firing distillate.
4

5 **Fuel Use.** The facility may be designed to operate on either natural gas or distillate. When
6 operated with natural gas as its fuel, the facility would use fuel at the rate of about 997 MMBtu
7 per hour, Higher Heating Value (“HHV”). When operated with distillate as its fuel, the facility
8 would use fuel at the rate of about 960 MMBtu per hour, HHV.
9

10 **Water Use.** The only water used by the facility is de-mineralized water obtained from the City
11 of Klamath Falls by means of a pipeline interconnecting the KGP with the Klamath
12 Cogeneration Project (“KCP”). This de-mineralized water is used for nitrogen oxides (NOx)
13 emissions control by water injection, CT inlet air-cooling, and intermittent rinsing. The amount
14 of water required for operation of the facility with natural gas is about 110 gallons per minute.
15 The amount of water required for operation with distillate is about 123 gallons per minute.
16

17 **C.1.b. Related or Supporting Facilities**

18 The energy facility will include the following related or supporting facilities:
19

20 **Natural Gas Pipeline.** The existing natural gas pipeline interconnection is with the existing
21 Pacific Gas & Electric Gas Transmission (“PG&E GT”) Bonanza to Medford Lateral (the
22 “Medford Lateral”) that passes along the facility’s northern boundary.
23

24 **Electric Transmission Line.** The KGP’s existing 13.8 to 500-kV transformer connects the
25 facility’s output with the regional power grid at the existing KCP switchyard where the facility
26 interconnects with PacifiCorp’s 500-kV Captain Jack to Meridian transmission line. There are no
27 off-site electric transmission facilities.
28

29 **Water Supply Pipeline.** De-mineralized water for use by the KGP is delivered by means of an
30 existing pipeline running from the KCP southern boundary through KGP’s utility easement to
31 the KGP site boundary.
32

33 **C.1.c. Finding Regarding Beginning and Completion of Construction**

34 The site certificate must contain conditions for the time for completion of construction. ORS
35 469.401(2). Council rules require that:
36

37 “The certificate holder shall begin and complete construction of the facility by the dates
38 specified in the site certificate.” OAR 345-027-0020(4)
39

40 The KGP facility is unique in that it was constructed under a temporary exemption in 2002, and
41 has operated since May 17, 2002. The application for site certificate describes a proposed
42 modification to add the capability of operating on distillate fuel. However, the facility can
43 operate on natural gas alone, and the certificate holder need not add distillate fuel capability to
44 comply with any applicable regulation or standard. Therefore, the Council finds that the

1 certificate holder completed construction and commenced commercial operation on May 17,
2 2004, and has therefore satisfied the mandatory condition of OAR 345-027-0020(4).

3
4 **C.2. LOCATION OF THE FACILITY**

5
6 **C.2.a. The Energy Facility Site**

7 The energy facility is located on a 5-acre parcel of land located about 4.5 miles southwest of the
8 City of Klamath Falls, Oregon, in Section 18, Township 39 South, Range 9 East, Klamath
9 County, Oregon.

10
11 **C.2.b. Related or Supporting Facility Sites**

12 **Natural Gas Pipeline.** The natural gas pipeline is located on the energy facility site in Section
13 18, Township 39 South, Range 9 East, Klamath County, Oregon.

14
15 **Electric Transmission Line.** The electric transmission line interconnection is located on the
16 energy facility site in Section 18, Township 39 South, Range 9 East, Klamath County, Oregon.

17
18 **Water Supply Pipeline.** The water supply pipeline is located in the utility easement between the
19 KCP and the KGP in Section 18, Township 39 South, Range 9 East, Klamath County, Oregon.

20
21 **D. CONDITIONS ADOPTED UNDER COUNCIL SITING STANDARDS**

22
23 **D.1. ORGANIZATIONAL EXPERTISE**

- 24
25 (1) Before beginning construction of the distillate fuel modification, the certificate holder
26 shall identify to the Energy Facility Siting Council (“Council”) whom it has chosen to act
27 in the role of engineering, procurement and construction (“EPC”) contractor.
28
29 (2) The certificate holder shall report promptly to ODOE any change in its corporate
30 relationship with PPM Energy, Inc. The certificate holder shall report promptly to ODOE
31 any change in its access to the resources, expertise and personnel of PPM Energy, Inc.
32
33 (3) If the certificate holder chooses a third-party contractor to operate the facility, the
34 certificate holder shall submit to the Council the identity of the contractor so the Council
35 may review the qualifications and capability of the contractor to meet the standards of
36 OAR 345-0022-0010. If the Council finds that a new contractor meets these standards,
37 the Council shall not require an amendment to the site certificate for the certificate holder
38 to hire the contractor.
39
40 (4) Any matter of non-compliance under the site certificate shall be the responsibility of the
41 certificate holder. Any notice of violation issued under the site certificate shall be issued
42 to the certificate holder. Any civil penalties assessed under the site certificate shall be
43 levied on the certificate holder.
44

1 (5) The certificate holder shall contractually require the EPC contractor and all independent
2 contractors and subcontractors involved in the construction and operation of the facility
3 to comply with all applicable laws and regulations and with the terms and conditions of
4 the site certificate. Such contractual provision shall not operate to relieve the certificate
5 holder of responsibility under the site certificate.
6

7 (6) The certificate holder shall obtain, or shall ensure that its contractors obtain, necessary
8 state and local permits or approvals required for the construction, operation and
9 retirement of the facility.
10

11 **D.2. RETIREMENT AND FINANCIAL ASSURANCE**
12

13 (1) The certificate holder shall retire the facility if the certificate holder permanently ceases
14 construction or operation of the facility. The certificate holder shall retire the facility
15 according to a final retirement plan approved by the Council, as described in OAR 345-
16 027-0110, and prepared pursuant to Condition D.2(2).
17

18 (2) Two years before closure of the energy facility, the certificate holder shall submit to the
19 Council a proposed final retirement plan for the facility and site, pursuant to OAR 345-
20 027-0110, including:
21

22 (a) A plan for retirement that provides for completion of retirement without
23 significant delay and that protects the public health, safety, and the environment;
24

25 (b) A description of actions the certificate holder proposes to take to restore the site to
26 a useful, non-hazardous condition, including information on how impacts to fish,
27 wildlife and the environment would be minimized during the retirement process;
28 and
29

30 (c) A current detailed cost estimate, a comparison of that estimate to funds the
31 certificate holder has set aside for retirement, and a plan for ensuring the
32 availability of adequate funds for completion of retirement.
33

34 (3) The certificate holder shall prevent the development of any conditions on the site that
35 would preclude restoration of the site to a useful, non-hazardous condition to the extent
36 that prevention of such site conditions is within the control of the certificate holder.
37

38 (4) Within 60 days of issuance of this site certificate, the certificate holder shall submit to the
39 State of Oregon, through the Council, a bond or letter of credit in the amount of \$527,310
40 (in 2005 dollars) naming the State of Oregon, acting by and through the Council, as
41 beneficiary or payee.
42

43 (a) The form of the bond or letter of credit and identity of the issuer shall be subject
44 to approval by the Council.

- 1
- 2 (b) The certificate holder shall maintain the bond or letter of credit in effect at all
- 3 times until the energy facility and its related or supporting facilities have been
- 4 retired, as appropriate.
- 5
- 6 (c) The calculation of 2005 dollars shall be made using the US Gross Domestic
- 7 Product Implicit Price Deflator, Chain-Weight, as published in the Oregon
- 8 Department of Administrative Services' "Oregon Economic and Revenue
- 9 Forecast," or by any successor agency ("the Index"). The amount of the letter of
- 10 credit account shall increase annually by the percentage increase in the Index. If,
- 11 at any time, the Index is no longer published, the Council shall select a
- 12 comparable calculation of 2005 dollars.
- 13
- 14 (d) The certificate holder shall not revoke or reduce the bond or letter of credit before
- 15 retirement of the facility without approval by the Council.
- 16
- 17 (5) Before beginning construction of the distillate fuel system, the certificate holder shall
- 18 prepare and submit to ODOE a materials management and monitoring plan that addresses
- 19 the handling of hazardous substances, the measures it will implement to prevent site
- 20 contamination, and how it will document implementation of the plan during construction
- 21 of the distillate fuel system. The materials management and monitoring plan shall be
- 22 subject to approval by ODOE. For the purpose of this condition and Conditions D.2(6),
- 23 D.2(8), D.2(9), and D.2(10), the terms "release" and "hazardous substances" shall have
- 24 the meanings set forth at ORS 465.200.
- 25
- 26 (6) Within 60 days after issuance of this site certificate, the certificate holder shall prepare
- 27 and submit to ODOE a materials management and monitoring plan that addresses the
- 28 handling of hazardous substances, the measures it will implement to prevent site
- 29 contamination, and how it will document implementation of the plan during operation of
- 30 the facility. The materials management and monitoring plan shall be subject to approval
- 31 by ODOE.
- 32
- 33 (7) Not later than 10 years after the issuance of this site certificate, and each 10 years
- 34 thereafter during the life of the energy facility, the certificate holder shall complete an
- 35 independent Phase I Environmental Site Assessment of the energy facility site, using an
- 36 accepted industry standard such as ASTM E-1527. Within 30 days after its completion,
- 37 the certificate holder shall deliver the Phase I Environmental Site Assessment report to
- 38 ODOE.
- 39
- 40 (8) In the event that any Phase I Environmental Site Assessment identifies improper handling
- 41 or storage of hazardous substances or improper record keeping procedures, the certificate
- 42 holder shall correct such deficiencies within six months after completion of the
- 43 corresponding Phase I Environmental Site Assessment. The certificate holder shall

1 promptly report its corrective actions to ODOE. The Council shall determine whether the
2 corrective actions are sufficient.

3
4 (9) The certificate holder shall report any release of hazardous substances, pursuant to DEQ
5 regulations, to ODOE within one working day after the discovery of such release. This
6 obligation shall be in addition to any other reporting requirements applicable to such a
7 release.

8
9 (10) If the certificate holder has not remedied a release consistent with applicable DEQ
10 standards, or if the certificate holder fails to correct deficiencies identified in the course
11 of a Phase I Environmental Site Assessment within six months after the date of the
12 release or the date of completion of the Phase I Environmental Site Assessment, the
13 certificate holder shall, within such six-month period, submit to the Council for its
14 approval an independently-prepared estimate of the additional cost of remediation or
15 correction.

16
17 (a) Upon approval of an estimate by the Council, the certificate holder shall increase
18 the amount of its letter of credit by the amount of the estimate.

19
20 (b) In no event, however, shall the certificate holder be relieved of its obligation to
21 exercise all due diligence in remedying a release of hazardous substances or
22 correcting deficiencies identified in the course of a Phase I Environmental Site
23 Assessment.

24
25 (11) All funds received by the certificate holder from the salvage of equipment and buildings
26 or from the sale of scrap materials from the facility shall be committed to the restoration
27 of the facility site to the extent necessary to fund the approved site restoration and
28 remediation.

29
30 (12) The certificate holder shall pay the actual cost to restore the site to a useful, non-
31 hazardous condition at the time of retirement, notwithstanding the Council's approval in
32 the site certificate of an estimated amount required to restore the site.

33
34 (13) If the Council finds that the certificate holder has permanently ceased construction or
35 operation of the facility without retiring the facility according to a final retirement plan
36 approved by the Council, as described in OAR 345-027-0110 and prepared pursuant to
37 Condition D.2(2), the Council shall notify the certificate holder and request that the
38 certificate holder submit a proposed final retirement plan to ODOE within a reasonable
39 time not to exceed 90 days.

40
41 (a) If the certificate holder does not submit a proposed final retirement plan by the
42 specified date or if the Council rejects the retirement plan that the certificate
43 holder submits, the Council may direct ODOE to prepare a proposed final
44 retirement plan for the Council's approval.

- 1
2 (b) Upon the Council's approval of the final retirement plan prepared pursuant to
3 Condition D.2(13)(a), the Council may draw on the letter of credit described in
4 Condition D.2(4) and shall use the funds to cause restoration of the site to a
5 useful, non-hazardous condition according to the final retirement plan, in addition
6 to any penalties the Council may impose under OAR Chapter 345, Division 29.
7 The Council may draw on the bond or letter of credit to pay for ODOE's costs
8 incurred in preparing the final retirement plan described in Condition D.2(13)(a).
9
- 10 (c) If the amount of the bond or letter of credit is insufficient to pay the actual cost of
11 retirement, the certificate holder shall pay any additional cost necessary to restore
12 the site to a useful, non-hazardous condition.
13
- 14 (d) After completion of site restoration, the Council shall issue an order to terminate
15 the site certificate if the Council finds that the facility has been retired according
16 to the approved final retirement plan.
17

18 **D.3. LAND USE**

19 [No conditions; all land use approvals were received directly from the local jurisdiction]
20

21 **D.4. STRUCTURAL STANDARD**
22

- 23 (1) Prior to design and construction of the distillate fuel storage tank and its foundation, the
24 certificate holder shall conduct a soils analysis of the specific area in which the tank is to
25 be located. This analysis shall be performed by a qualified geotechnical firm and may
26 include sample test drillings in the tank area to identify varying soil conditions and
27 classification encompassed by the foundation footprint.
28
- 29 (2) If the distillate fuel modification is installed, the certificate holder shall ensure that
30 stability of existing slopes is maintained by directing surface water runoff away from
31 slopes or by providing vegetation to those slopes.
32
- 33 (3) If the distillate fuel modification is installed, the certificate holder shall develop setback
34 distances from existing slopes to comply with applicable codes. References to the 1998
35 Oregon Structural Specialty Code in facility design shall be updated to reflect the 2004
36 Oregon Structural Specialty Code.
37
- 38 (4) If the distillate fuel modification is installed, the certificate holder shall offset foundations
39 adequately to ensure that erosion of existing slopes does not adversely affect foundation
40 support.
41

42 **D.5. SOIL PROTECTION**
43

- 1 (1) If the distillate fuel modification is installed, the certificate holder shall mitigate potential
2 erosion impacts to soils by restoring temporarily disturbed areas to pre-disturbed
3 conditions.
4
- 5 (2) If the distillate fuel modification is installed, the certificate holder shall consider the
6 limitations of Capona Silt Loam in design and construction of the distillate fuel system.
7
- 8 (3) If the distillate fuel modification is installed, the certificate holder shall use soil
9 amendments or mechanical improvements as necessary to improve stability.
10
- 11 (4) If the certificate holder implements the distillate fuel modification, then it shall install and
12 operate the distillate fuel system in accordance with National Fire Protection Association
13 (“NFPA”) 850.
14
- 15 (5) The certificate holder shall equip fuel control systems with automatic shutoff valves to
16 stop all fuel flow under shutdown conditions.
17
- 18 (6) For non-fuel hazardous substances, the certificate holder shall equip pumping systems
19 and storage tank controls with: (a) dry disconnects at transfer hose and piping
20 connections; (b) automatic pump shutoffs on high level; (c) redundant tank level
21 indicators and high level alarms; (d) inventory tracking; and (e) written unloading and
22 transfer operation instructions.
23
- 24 (7) In all chemical storage areas, the certificate holder shall provide a secondary containment
25 storage volume equal to 110 percent of the maximum chemical volume in primary
26 containment.
27
- 28 (8) The certificate holder shall ensure that ammonia storage complies with NFPA and local
29 fire department requirements and is designed in accordance with ANSI K61.1.
30

31 **D.6. PROTECTED AREAS**

32 [No Conditions]
33

34 **D.7. FISH AND WILDLIFE HABITAT**

35 [No Conditions]
36

37 **D.8. THREATENED AND ENDANGERED SPECIES**

38 [No Conditions]
39

40 **D.9. SCENIC AND AESTHETIC VALUES**

41 [No Conditions]
42

1 **D.10. HISTORIC, CULTURAL AND ARCHAEOLOGICAL RESOURCES**

- 2
- 3 (1) During construction of the distillate modification, in the event any archaeological or
4 cultural resources are discovered, the certificate holder shall cease all ground-disturbing
5 activities in the immediate area until a qualified archaeologist can evaluate the
6 significance of the find. If the archaeologist determines that the resources are significant,
7 the certificate holder shall make recommendations to the Council for mitigation in
8 consultation with the State Historic Preservation Office (“SHPO”), ODOE, the Klamath
9 Tribe, the Klamath County Planning Department, and other appropriate parties.
10 Mitigation measures shall include avoidance or data recovery. The certificate holder shall
11 not restart work in the affected area until it has demonstrated to ODOE that it has
12 complied with the archaeological permit requirements administered by SHPO or the
13 SHPO concurs that a discovered resource is not significant and no permit is required.
14
- 15 (2) The certificate holder shall locate facility structures to avoid impact on any existing
16 structures within the boundaries of recorded historic site OR-KL-40.
17

18 **D.11. RECREATION**

19 [No Conditions]

20

21 **D.12. PUBLIC SERVICES**

- 22
- 23 (1) The certificate holder shall maintain the on-site fire protection system in conformance
24 with applicable fire codes and National Fire Protection Association standards. The fire
25 protection system shall include provisions for a firewater loop system with hydrants
26 placed near major equipment, an automatic CO₂-based fire suppression system for each
27 of the facility’s four combustion turbine compartments, and portable fire extinguishers.
28

29 **D.13. WASTE MINIMIZATION, OAR 345-022-0120**

- 30
- 31 (1) During construction, operation and retirement of the facility, the certificate holder shall
32 separate recyclable materials from the solid waste stream to the extent practicable, store
33 those materials on site until sufficient quantities exist to make recycling economic, and
34 periodically deliver or sell those materials to a recycling facility.
35
- 36 (2) During construction, operation and retirement of the facility, the certificate holder shall
37 segregate all used oily rags and oil-absorbent materials for disposal in a licensed landfill.
38
- 39 (3) During operation and retirement of the facility, the certificate holder shall ship spent
40 selective catalytic reduction (“SCR”) catalyst to the manufacturer, a metals reclaiming
41 facility, or another Department approved facility.
42
- 43 (4) During operation of the facility, the certificate holder shall collect combustion turbine
44 wash rinse water and wastewater from plant drains in a holding tank and shall

1 periodically transport the stored wastewater to licensed off-site recycling or disposal
2 facilities.
3

4 **D.14. CARBON DIOXIDE STANDARD**
5

6 (1) Within 30 days after the effective date of the site certificate:
7

8 (a) The certificate holder shall report to ODOE the gross kWh of electric energy
9 produced and the total Btu (HHV) of natural gas consumed during operation of
10 the energy facility under the temporary exemption of ORS 469.320(2)(g) from the
11 beginning of commercial operation until the effective date of the site certificate.
12

13 (b) The certificate holder shall report to ODOE the annual average hours, times of
14 year, and average temperature, relative humidity and barometric pressure when
15 the certificate holder intends to operate the non-base load power plant. It shall
16 also report the net electric power output and the heat rate (HHV), based on
17 historical data, at those conditions.
18

19 (c) When reporting historical gross output, natural gas use, net electric power output,
20 and heat rate for paragraphs (a) and (b), the certificate holder shall submit to
21 ODOE an affidavit certifying the data.
22

23 (d) Upon receiving and verifying the information required by Conditions D.14(1)(a)
24 and D.14(1)(b), ODOE will calculate the facility's excess CO₂ emissions during
25 the facility's operations under the temporary exemption from the date of initial
26 operation to the effective date of the site certificate. The Department will then
27 calculate the nominal amount of offset funds required to cover the excess CO₂
28 emissions during the period of operation under the temporary exemption. The
29 Department will deduct that amount from the offset funds paid by the certificate
30 holder's predecessor to The Climate Trust as a condition of the Order Granting
31 Exemption, dated May 18, 2001. The Department will apply the remaining offset
32 funds, if any, in nominal dollars as a credit towards the certificate holder's offset
33 funds obligation under the site certificate. The Department will calculate the
34 selection and contracting funds based on the net offset funds the certificate holder
35 owes. The Department will notify the certificate holder of the applicable prorated
36 credit and the net amount due for offset funds and selection and contracting funds.
37

38 (2) Within 30 days after the effective date of the site certificate, the certificate holder shall
39 enter into a Memorandum of Understanding ("MOU") with The Climate Trust that
40 establishes the disbursement mechanism to transfer offset funds and selection and
41 contracting funds to The Climate Trust.
42

43 (a) The MOU shall be substantially in the form of Attachment A to this site
44 certificate.

- 1
2 (b) Either the certificate holder or The Climate Trust may submit to the Council for
3 the Council's resolution any dispute between the certificate holder and The
4 Climate Trust concerning the terms of the MOU or any other issues related to the
5 monetary path payment requirement. The Council's decision shall be binding on
6 all parties.
7
- 8 (3) Within 60 days after the effective date of the site certificate, the certificate holder shall
9 disburse to The Climate Trust the full amount of the initial monetary path payment
10 requirement (in 2005 dollars), if any, as calculated by ODOE under Condition
11 D.14(1)(d). The Department may extend this deadline if it fails to provide the certificate
12 holder with timely notice of the monetary path payment requirement or the amount of the
13 prorated credit in accordance with Condition D.14(1)(d).
14
- 15 (4) Before beginning construction of any element of the distillate fuel modification:
16
- 17 (a) The certificate holder shall submit to ODOE written design information sufficient
18 to verify the energy facility's designed new and clean heat rate (HHV) and its net
19 power output at the average annual site condition during the times of year when
20 the certificate holder intends to operate the facility using distillate fuel. The
21 certificate holder shall submit to ODOE an affidavit certifying the heat rate
22 (HHV) and net electric power output using distillate fuel.
23
- 24 (b) The certificate holder shall report to ODOE the annual average hours and times of
25 year when the certificate holder intends to operate the facility using a) natural gas
26 and b) distillate fuel.
27
- 28 (c) Upon receiving and verifying the information required by Conditions D.14(4)(a)
29 and D.14(4)(b), ODOE will in combination with the information received per
30 Condition D.14(1), as applicable, calculate the revised monetary path payment
31 requirement using the designed new and clean heat rate (HHV) and its net power
32 output at the average annual site condition during the times of year when the
33 certificate holder intends to operate the facility with distillate fuel, along with the
34 annual average hours of operation with natural gas and distillate fuel. The
35 Department will notify the certificate holder of the net amount of offset funds,
36 adjusted for the remainder of any prorated credit, and the amount of selection and
37 contracting funds, based on the net offset funds due, if any, that the certificate
38 holder shall provide The Climate Trust as the revised natural gas/distillate fuel
39 monetary path payment requirement.
40
- 41 (d) The certificate holder shall disburse to The Climate Trust the full amount of the
42 monetary path payment requirement (in 2005 dollars) calculated by ODOE under
43 Condition D.14(4)(c) pursuant to the MOU and site certificate conditions, within
44 30 days of notification by ODOE of the amount owed.

- 1
2 (5) Within the first 12 months after completing installation of the distillate fuel modification,
3 the certificate holder shall conduct a 3-hour test at full power when firing the energy
4 facility with natural gas fuel (“Year One Test-1”) and a 3-hour test at full power when
5 firing the energy facility with distillate fuel (“Year One Test-2”).
6
- 7 (a) The certificate holder shall conduct the Year One Test-1 to determine the actual
8 heat rate (“Year One Heat Rate-1”) and the net electric power output (“Year One
9 Capacity-1”) on a new and clean basis, without degradation, with the results
10 adjusted for the average annual site condition for temperature, barometric
11 pressure, and relative humidity during the times of year when the certificate
12 holder intends to operate the facility using natural gas fuel. The certificate holder
13 shall calculate carbon dioxide emissions using a rate of 117 pounds of carbon
14 dioxide per million Btu of natural gas fuel.
15
- 16 (b) The certificate holder shall conduct the Year One Test-2 to determine the actual
17 heat rate (“Year One Heat Rate-2”) and the net electric power output (“Year One
18 Capacity-2”) on a new and clean basis, without degradation, with the results
19 adjusted for the average annual site condition for temperature, barometric
20 pressure, and relative humidity during the times of year when the certificate
21 holder intends to operate the facility using distillate fuel. The certificate holder
22 shall calculate carbon dioxide emissions using a rate of 161 pounds of carbon
23 dioxide per million Btu of distillate fuel.
24
- 25 (c) The certificate holder shall notify ODOE at least 60 days before conducting the
26 tests required under Conditions D.14(5)(a) and D.14(5)(b) unless the certificate
27 holder and ODOE have mutually agreed that less notice will suffice.
28
- 29 (d) Before conducting the tests required under Conditions D.14(5)(a) and D.14(5)(b),
30 the certificate holder shall, in a timely manner, provide to ODOE for its approval
31 a copy of the protocol for conducting the tests. The certificate holder shall not
32 conduct the tests until the Office has approved the testing protocols.
33
- 34 (e) Within two months after completing the Year One Tests, the certificate holder
35 shall provide to the Council reports of the results of the Year One Tests.
36
- 37 (6) Based on the data from the Year One Heat Rate and Year One Capacity Tests conducted
38 under Conditions D.14(5)(a) and D.14(5)(b), ODOE will recalculate the revised monetary
39 path payment requirement for operation of the facility with both natural gas and distillate
40 fuel. If the recalculated amount exceeds the net sum of monetary path payment
41 requirements calculated by ODOE in accordance with Conditions D.14(1)(d) and
42 D.14(4)(c), the certificate holder shall fully disburse the excess amount (in 2005 dollars)
43 directly to The Climate Trust within 30 days after notification by ODOE of the
44 recalculated amounts.

- 1
2 (a) For recalculating the monetary path payment requirement, ODOE will use an
3 offset fund rate of \$0.85 per ton of carbon dioxide (in 2005 dollars) and will
4 calculate selection and contracting funds based on 20 percent of the first \$250,000
5 in offset funds and 4.286 percent of any offset funds in excess of \$250,000 (in
6 2005 dollars).
7
8 (b) In no event shall the certificate holder receive a refund from The Climate Trust of
9 any amount it paid to The Climate Trust under Conditions D.14(3) and D.14(4)(d)
10 based on the calculations made using the Year One Heat Rate and the Year One
11 Capacity Tests.
12
13 (7) The Department will calculate whether the certificate holder owes supplemental
14 monetary path payments due to increased hours the certificate holder operates the non-
15 base load energy facility as follows:
16
17 (a) Each five years after the effective date of the site certificate (“five-year reporting
18 period”), the certificate holder shall report to ODOE the annual average hours the
19 energy facility operated with natural gas fuel and the annual average hours the
20 energy facility operated with distillate fuel during that five-year reporting period,
21 pursuant to OAR 345-024-0590. The certificate holder shall submit five-year
22 reports to ODOE within 30 days of the anniversary date of the site certificate.
23
24 (b) Prior to installation of the distillate fuel modification, ODOE will use the net
25 power output and heat rate reported under Condition D.14(1)(b) to calculate
26 whether the certificate holder owes supplemental monetary path payments due to
27 increased hours that it operates the non-base load energy facility with natural gas
28 fuel only.
29
30 (c) After installation of the distillate fuel modification, ODOE will use the Year One
31 Capacities and Year One Heat Rates that the certificate holder reports for the
32 energy facility, pursuant to Condition D.14(6), to calculate whether the certificate
33 holder owes supplemental monetary path payments due to increased hours that it
34 operates the non-base load energy facility with natural gas and distillate fuel. The
35 first reporting period for use of distillate fuel shall be pro-rated to match the five-
36 year reporting cycles already established.
37
38 (d) If ODOE determines that the facility exceeded the projected total excess carbon
39 dioxide emissions for natural gas or distillate fuel, prorated for five years, during
40 any five-year reporting period described in Condition D.14(7)(a), the certificate
41 holder shall offset excess emissions for the specific reporting period according to
42 Condition D.14(7)(d)(A) and shall offset the estimated future excess emissions
43 according to Condition D.14(7)(d)(B), as follows:
44

- 1 (A) In determining whether there have been excess carbon dioxide emissions
2 that the certificate holder must offset for a five-year reporting period,
3 ODOE shall apply OAR 345-024-0600(4)(a). Any remaining offset funds
4 after all credits from operation as a temporary energy facility have been
5 applied for initial monetary path payments may be credited pursuant to
6 OAR 345-024-0600(4)(a). The certificate holder shall pay for the excess
7 emissions at \$0.85 per ton of carbon dioxide emissions (in 2005 dollars).
8 The Department will notify the certificate holder and The Climate Trust of
9 the amount of supplemental payment required to offset excess emissions.
10
11 (B) The Department shall calculate estimated future excess emissions for the
12 remaining period of the deemed 30-year life of the facility using the
13 parameters specified in OAR 345-024-0600(4)(b). The certificate holder
14 shall pay for the estimated excess emissions at \$ 0.85 per ton of carbon
15 dioxide (in 2005 dollars). The Department will notify the certificate holder
16 of the amount of supplemental payment required to offset future excess
17 emissions.
18
19 (C) The certificate holder shall offset excess emissions identified in
20 Conditions D.14(7)(d)(A) and D.14(7)(d)(B) using the monetary path as
21 described in OAR 345-024-0710, provided that selection and contracting
22 funds shall equal twenty (20) percent of the amount of any offset funds up
23 to the first \$250,000 (in 2005 dollars) and 4.286 percent of the amount of
24 any offset funds in excess of \$250,000 (in 2005 dollars).
25
26 (e) The certificate holder shall disburse the supplemental offset funds and
27 supplemental selection and contracting funds to The Climate Trust within 30 days
28 after notification by ODOE of the amount that the certificate holder owes.
29
30 (8) For any transfer of the site certificate that the Council approves pursuant to OAR 345-
31 027-0100:
32
33 (a) The new certificate holder shall enter into a MOU with The Climate Trust, as
34 described in Condition D.14(2) unless the new certificate holder demonstrates to
35 the satisfaction of ODOE that there has been a valid assignment of the current
36 certificate holder's MOU to the new certificate holder. The Council may approve
37 a new MOU without a site certificate amendment.
38
39 (b) Either the new certificate holder or The Climate Trust may submit to the Council
40 for the Council's resolution any dispute between the new certificate holder and
41 The Climate Trust concerning the terms of the MOU or any other issues related to
42 the monetary path payment requirement. The Council's decision shall be binding
43 on all parties.
44

- 1 (9) The combustion turbines for the non-base load energy facility shall be fueled with
2 pipeline-quality natural gas or distillate fuel.
3
- 4 (10) The certificate holder shall calculate 2005 dollars using the Index set forth in Condition
5 D.2(4)(c) (Retirement and Financial Assurance).
6
- 7 (11) Notwithstanding any references to the carbon dioxide emissions standard and the
8 monetary offset rate in Conditions D.14(4) through D.14(7), if the certificate holder does
9 not begin installation of the distillate fuel modification within two years of the effective
10 date of this site certificate pursuant to Condition D.14(4), then the appropriate carbon
11 dioxide emissions standard and monetary offset rate in effect at the time it subsequently
12 begins construction shall apply to the distillate fuel modification.
13
- 14 (12) With respect to incremental capacity and fuel consumption increases for which the
15 certificate holder has not previously complied with the carbon dioxide standard, the
16 certificate holder shall comply substantially with Conditions D.14(1) through D.14(11) in
17 lieu of the Council's requiring an amendment, provided that:
18
- 19 (a) The Council determines, pursuant to OAR 345-027-0050, that the certificate
20 holder does not otherwise require an amendment, and further provided that:
21
- 22 (b) The certificate holder shall meet the appropriate carbon dioxide emissions
23 standard and monetary offset rate in effect at the time the Council makes its
24 determination pursuant to OAR 345-027-0050.
25

26 **E. OTHER APPLICABLE REGULATORY REQUIREMENTS**

27 **E.1. REQUIREMENTS UNDER COUNCIL JURISDICTION**

28
29 **E.1.a. Noise**

- 30
- 31 (1) During construction of the distillate fuel modifications, the certificate holder shall
32 schedule most construction to occur during daylight hours. Construction work at night
33 shall be limited to work inside buildings and other structures when possible.
34
- 35 (2) During construction of the distillate fuel modifications, the certificate holder shall require
36 contractors to equip all combustion engine-powered equipment with working exhaust
37 mufflers.
38
- 39 (3) During construction of the distillate fuel modifications, the certificate holder shall
40 establish a complaint response system at the construction manager's office to address
41 noise complaints.
42

1 **E.1.b. Public Health and Safety**

- 2
- 3 (1) The certificate holder shall operate the transmission line in continued accordance with the
- 4 requirements of the National Electrical Safety Code.
- 5
- 6 (2) The certificate holder shall take reasonable steps to reduce or manage exposure to
- 7 electromagnetic fields (EMF), consistent with Council findings presented in the “Report
- 8 of EMF Committee to the Energy Facility Siting Council,” March 30, 1993, and any
- 9 subsequent Council findings. Effective on the date of this site certificate, the certificate
- 10 holder shall provide information to the public, upon request, about EMF levels
- 11 associated with the energy facility and related transmission lines.
- 12

13 **F. CONDITIONS PURSUANT TO COUNCIL RULES**

14

15 **F.1. MANDATORY CONDITIONS IN SITE CERTIFICATES**

16

17 **Amendment of Site Certificate**

- 18 (1) The Council shall not change the conditions of the Site Certificate except in accordance
- 19 with the applicable provisions of OAR 345, Division 27, in effect on the date of the
- 20 Council action.
- 21

22 **Legal Description**

- 23 (2) Within 30 days after the effective date of the site certificate, the certificate holder shall
- 24 submit to ODOE a legal description of the site, except as provided in OAR 345-027-
- 25 0023(6).
- 26

27 **General Requirements**

- 28 (3) The Certificate Holder shall design, construct, operate, and retire the facility:
- 29
- 30 (a) Substantially as described in the Site Certificate;
- 31
- 32 (b) In compliance with the requirements of ORS Chapter 469, applicable Council
- 33 rules, and applicable state and local laws, rules and ordinances in effect at the
- 34 time the Council issues the Site Certificate; and,
- 35
- 36 (c) In compliance with all applicable permit requirements of other state agencies.
- 37

38 **Beginning and Completing Construction.**

- 39 (4) If the certificate holder elects to install the distillate fuel modification, it shall report
- 40 promptly to ODOE the date on which it began construction of the modification, as
- 41 defined in OAR 345-001-0010(11). In reporting the beginning of construction, the
- 42 certificate holder shall describe all work performed on the site before beginning
- 43 construction, including work performed before the Council issued the site certificate, and
- 44 shall state the cost of that work, all as set forth under OAR 345-026-0048.

- 1
2 (5) The certificate holder shall not begin construction, as defined in OAR 345-001-0010, or
3 create a clearing on any part of the site until the certificate holder has construction rights
4 on all parts of the site. For the purpose of this condition, “construction rights” means the
5 legal right to engage in construction activities.
6

7 **F.2 OTHER CONDITIONS BY RULE**

8 9 **Incident Reports**

- 10 (1) With respect to the related or supporting natural gas pipeline, the Certificate Holder shall
11 submit to the Department copies of all incident reports required under 49 CFR §191.15
12 that involve the pipeline.
13

14 **Monitoring Programs**

- 15 (2) If the certificate holder becomes aware of a significant environmental change or impact
16 attributable to the facility, the certificate holder shall, as soon as possible, submit a
17 written report to ODOE describing the impact on the facility and its ability to comply
18 with any affected site certificate conditions.
19

20 **Compliance Plans**

- 21 (3) Within 30 days of the effective date of the site certificate, the certificate holder shall
22 implement a plan that verifies compliance with all site certificate terms and conditions
23 and applicable statutes and rules and shall submit a copy of the plan to ODOE. The
24 certificate holder shall document the compliance plan and maintain it for inspection by
25 ODOE or the Council.
26

27 **Reporting**

- 28 (4) The certificate holder shall, within 120 days after the end of each calendar year after the
29 effective date of the site certificate, submit an annual report to the Council that addresses
30 the subjects listed in OAR 345-026-0080(2). The Council secretary and the certificate
31 holder may, by mutual agreement, change the reporting date.
32
33 (5) To the extent that information required by OAR 345-026-0080(2) is contained in reports
34 the certificate holder submits to other state, federal or local agencies, the certificate
35 holder may submit excerpts from such other reports. The Council reserves the right to
36 request full copies of such excerpted reports.
37

38 **Schedule Modification**

- 39 (6) The certificate holder shall promptly notify ODOE of any changes in major milestones
40 for construction, decommissioning, operation, or retirement schedules. Major milestones
41 are those identified by the certificate holder in its construction, retirement or
42 decommissioning plans.
43

44 **Correspondence with Other State or Federal Agencies**

- 1 (7) The certificate holder and ODOE shall exchange copies of all correspondence or
2 summaries of correspondence related to compliance with statutes, rules and local
3 ordinances on which the Council determined compliance, except for material withheld
4 from public disclosure under state or federal law or under Council rules. The certificate
5 holder may submit abstracts of reports in place of full reports; however, the certificate
6 holder shall provide full copies of abstracted reports and any summarized correspondence
7 at the request of ODOE.
8

9 **Notification of Incidents**

- 10 (8) The certificate holder shall notify ODOE within 72 hours of any occurrence involving the
11 facility if:
12
13 (a) There is an attempt by anyone to interfere with its safe operation;
14
15 (b) A natural event such as an earthquake, flood, tsunami or tornado, or a human-
16 caused event such as a fire or explosion, affects or threatens to affect the public
17 health and safety or the environment; or,
18 (c) There is any fatal injury at the facility.
19

20 **G. GENERAL CONDITIONS**

- 21 (1) The general arrangement of the Klamath Generation Peakers shall be substantially as
22 shown in the ASC.
23

24 **Successors and Assigns**

- 25 (2) Before any transfer of ownership of the facility or ownership of the Certificate Holder,
26 the Certificate Holder shall inform the Department of the proposed new owners. The
27 requirements OAR 345-027-0100 shall apply to any transfer of ownership that requires a
28 transfer of the Site Certificate.
29

30 **Severability and Construction**

- 31 (3) If any provision of this Site Certificate is declared by a court to be illegal or in conflict
32 with any law, the validity of the remaining terms and conditions shall not be affected, and
33 the rights and obligations of the parties shall be construed and enforced as if the Site
34 Certificate did not contain the particular provision held to be invalid. In the event of a
35 conflict between the conditions contained in the Site Certificate and the Council's Order,
36 the conditions contained in this Site Certificate shall control.
37

38 **Governing Law and Forum**

- 39 (4) This Site Certificate shall be governed by the laws of the State of Oregon.
40
41 (5) Any litigation or arbitration arising out of this agreement shall be conducted in an
42 appropriate forum in Oregon.
43

1 **IN WITNESS WHEREOF**, this Site Certificate has been executed by the State of Oregon,
2 acting by and through its Energy Facility Siting Council, and Klamath Energy LLC.

3
4 ENERGY FACILITY SITING COUNCIL
5
6
7

8 By: _____ Date:
9 Hans Neukomm, Chair

10
11 KLAMATH ENERGY LLC
12
13

14
15 By: _____ Date:
16
17

18 **ATTACHMENT A**

19 MEMORANDUM OF UNDERSTANDING: MONETARY PATH PAYMENT REQUIREMENT

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ATTACHMENT A

KLAMATH GENERATION PEAKERS

**MEMORANDUM OF UNDERSTANDING
THE CLIMATE TRUST AND KLAMATH ENERGY, LLC
CARBON DIOXIDE STANDARD IMPLEMENTATION
MONETARY PATH PAYMENT REQUIREMENT**

THIS MEMORANDUM OF UNDERSTANDING (this “Agreement”) is entered into as of the ___ day of _____, 2005, by and between Klamath Energy, LLC, (the “Project Owner”) in its capacity as owner of the Klamath Generation Peakers, and The Climate Trust (“The Trust”).

RECITALS

1. The Project Owner operates a natural gas-fired, simple cycle, combustion turbine, non-base load, energy generating facility located on Collins’ Products property about 4.5 miles southwest of the City of Klamath Falls, Oregon. The Oregon Energy Facility Siting Council (the “Council”) granted the Site Certificate for the Klamath Generation Peakers (the “Site Certificate”), effective _____, 2005. The Project Owner has an option to modify the facility to burn both natural gas and distillate fuel. The modified, dual fuel-fired facility would have a net electric power output of about 93.6 MW when fired with natural gas and a net electric power output of about 92.2 MW when fired with distillate fuel. The facility, together with its ancillary systems, shall be referred to herein as the “Project.” The Project Owner previously operated the facility under and exemption as a temporary energy facility pursuant to ORS 469.320(2)(g) and provided a monetary path payment under a separate Agreement.
2. The State of Oregon requires energy facilities to meet a carbon dioxide emissions standard as described in OAR 345-024-0550 through -0710. This is a non-base load power plant, as described in OAR 345-024-0590.
3. As a condition to the siting of the Project, the Project Owner is required to provide offset funds (“Offset Funds”) and selection and contracting funds (“Selection and Contracting Funds”) to The Trust. In accordance with Section D.15 of the Site Certificate, the Project Owner shall pay to The Trust one Monetary Path Payment within 30 days after the effective date of the Site Certificate. Further, provided the Project Owner proceeds with installation of a distillate fuel modification, it shall pay a second Monetary Path Payment before beginning construction of any element of the distillate fuel modification. As described in Section D.15 of the Site Certificate, the Project Owner may also be required to make a Year One True-Up Non-Base Load Monetary Path Payment based on Year One Tests and Periodic Five-Year Monetary Path Payments based on actual hours of operation. Under this agreement, the monetary path payments shall be disbursed: (1) to

1 The Trust as specified in the Site Certificate, and (2) by The Trust as specified in OAR
2 345-024-0710.

3
4 4. The Trust is a qualified organization within the meaning of OAR 345-001-0010.

5
6 NOW, THEREFORE, in consideration of the premises and mutual promises herein contained,
7 the parties hereto agree as follows:

8
9 **1. Initial Non-Base Load Monetary Path Payments**

10 (b) The Site Certificate requires that all Monetary Path Payments be paid to
11 The Trust in 2005 dollars that are adjusted for inflation to the date of
12 disbursement using the U.S. Gross Domestic Product Implicit Price
13 Deflator, Chain-Weight, published in the then current "Oregon Economic
14 and Revenue Forecast" (the "Index").

15
16 (c) The Oregon Department of Energy (the "Department") has used the
17 monetary path payment requirement calculations described in the Site
18 Certificate to calculate the Initial Non-Base Load Monetary Path Payment
19 amount applicable to the Project when it is using natural gas fuel. The
20 Trust acknowledges that the calculation of the Initial Non-Base Load
21 Monetary Path Payment amount in 2005 dollars presented in Appendix A
22 when the facility is using natural gas fuel is correct and consistent with the
23 Site Certificate. The Project Owner and The Trust acknowledge that the
24 Monetary Path Payments may be adjusted to the date of disbursement to
25 maintain their value in 2005 dollars, adjusted for inflation, as provided by
26 the Site Certificate.

27
28 1.3 Based on the calculations of the Initial Non-Base Load Monetary
29 Path Payment amount set forth in Appendix A when the facility is using
30 natural gas fuel, the Project Owner shall pay to The Trust \$_____

31 in Offset Funds in 2005 dollars within 30 days of execution of this
32 Agreement upon timely notification by the Department of the amount it
33 owes. The Site Certificate requires that the amount of the Offset Funds
34 portion of the Initial Non-Base Load Monetary Path Payment be adjusted for
35 inflation to the date of disbursement to The Trust using the Index. Pursuant
36 to conditions in the Site Certificate, this amount may be zero.

37
38 1.4 Based on the calculations of the Initial Non-Base Load Monetary Path Payment
39 amount when the facility is using natural gas fuel, the Project Owner shall pay to
40 The Trust Inflation-Adjusted Selection and Contracting Funds in the amount of
41 \$_____ within 30 days of the execution of this Agreement upon timely
42 notification by the Department of the amount it owes. The Site Certificate
43 requires that the amount of the Selection and Contracting Funds portion of the
44 Initial Non-Base Load Monetary Path Payment be adjusted for inflation to the

1 date of disbursement to The Trust using the Index. Pursuant to conditions in the
2 Site Certificate, this amount may be zero.

- 3
4 1.5 Before beginning construction of any element of the distillate fuel modification,
5 the Project Owner shall pay to The Trust Offset Funds and Selection and
6 Contracting Funds in the amounts calculated by the Department (in 2005 dollars)
7 in accordance with Condition D.15(4) of the Site Certificate or as the calculation
8 may be modified by Condition D.15(11).
9

10 **2. Year One True-Up Non-Base Load Monetary Path Payment**

11 2.1 Within the first 12 months after installation of the distillate fuel
12 modification, the Project Owner shall conduct Year One Tests as outlined
13 under Condition D.15(5) of the Site Certificate. Within two months after
14 completing the Year One Tests, the Project Owner must provide to the
15 Council reports of the results of the Year One Tests.
16

17 2.2 Within 30 days after filing its Year One Test reports with the
18 Council pursuant to Condition D.15(5) of the Site Certificate, the
19 Department shall recalculate the initial Monetary Path Payment Requirement
20 (the "Year One True-Up Non-Base Load Monetary Path Payment").
21

- 22 2.3 The amount of Year One True-Up Non-Base Load Monetary Path Payment shall
23 be adjusted for 2005 dollars to the Disbursement Date using the Index.
24

25 2.4 If the Year One True-Up Non-Base Load Monetary Path Payment
26 exceeds the sum of monetary path payment requirements calculated by the
27 Department in accordance with Conditions D.15(1)(d) and D.15(4)(c) of the
28 Site Certificate, the Project Owner shall pay the excess amount (in 2005
29 dollars) directly to The Trust within 30 days after its notification by the
30 Department of the amount that the Project Owner owes.
31

32 2.5 In no case shall the calculations of this Section 2 result in a refund
33 to the Project Owner of any amount already paid to The Trust.
34

35 2.6 Calculations in Section 2 may be modified by Condition D.15(11).
36

37 **3. Periodic Five-Year Monetary Path Payments**

38 3.1 Each five years after the effective date of the Site Certificate, the Project
39 Owner shall report to the Department the annual average hours of operation with
40 natural gas and the annual average hours of operation with distillate fuel during
41 that five-year period, as required by the Site Certificate.
42

- 43 3.2 If the Department determines that there are excess emissions for the five-year
44 report period, the Department will specify the amount of Offset Funds and

1 Selection and Contracting Funds that the Project Owner shall pay to The Trust.
2 Each Periodic Five-Year Monetary Path Payment, if any, shall be paid in 2005
3 dollars, adjusted for inflation to the Disbursement Date using the Index.
4

5 3.3 For any Periodic Five-Year Monetary Path Payment, the amount of Selection and
6 Contracting Funds shall equal 20 percent of the value of any Offset Funds up to
7 the first \$250,000 (in 2005 dollars) and 4.286 percent of the value of any Offset
8 Funds in excess of \$250,000 (in 2005 dollars).
9

10 3.4 The Project Owner shall disburse to The Trust the specified
11 amount of any Periodic Five-Year Monetary Path Payment within 30 days
12 after its notification by the Department of the amount that the Project Owner
13 owes.
14

15 3.5 Calculation of the Index year in Section 3 may be modified by
16 Condition D.15(11).
17

18 **4. Undertaking by The Trust**

19 4.1 The Trust shall use the Initial Non-Base Load Monetary Path
20 Payments as well as any Year One True-Up Non-Base Load Monetary Path
21 Payment and/or Periodic Five-Year Monetary Path Payments in accordance
22 with OAR 345-024-0710.
23

24 4.2 With respect to the Offset Funds portions of any Initial Non-Base
25 Load Monetary Path Payment, Year One Non-Base Load Monetary Path
26 Payment, and/or Periodic Five-Year Monetary Path Payments, The Trust
27 shall spend at least 80 percent of the Offset Funds for contracts to implement
28 offsets, and may use up to 20 percent of the Offset Funds for monitoring,
29 evaluation, administration, and enforcement of contracts to implement
30 offsets. The Trust shall spend Offset Funds solely for contracts to implement
31 offsets or for monitoring, evaluation, administration, and enforcement of
32 contracts to implement offsets.
33

34 4.3 The Selection and Contracting Funds portions of any Initial Non-
35 Base Load Monetary Path Payment, Year One Non-Base Load Monetary
36 Path Payment, and/or Periodic Five-Year Monetary Path Payments shall
37 compensate The Trust for its costs of selecting offsets and contracting for the
38 implementation of offsets and administrative costs related to operating The
39 Trust as a qualified organization.
40

41 4.4 The Trust shall use its best efforts to remain a qualified
42 organization, as defined in OAR 345-001-0010, until The Trust has used all
43 funds received from the Project Owner.
44

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

2 The Trust acknowledges, pursuant to OAR 345-024-0710(3), that the Project Owner and the
3 Project shall have no obligation with regard to offsets for the Project other than to make available
4 to The Trust the total amount of the monetary path payments.
5

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

7 The Project Owner shall appoint one nonvoting member to the Board of Directors of The Trust
8 for a term lasting until The Trust has completed the contracting for the offset funds provided by
9 the Project Owner if the Project Owner provides offset funds to The Trust. The Project Owner
10 shall have no approval rights over The Trust's offset contracts, disbursement of Offset Funds, or
11 other operations of The Trust.
12

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

14 The Project Owner agrees to defend, hold harmless and indemnify The Trust from and against
15 any and all claims, costs, liabilities, and expenses of any nature whatsoever, including reasonable
16 attorneys' fees, resulting from or arising out of any failure by the Project Owner to make any
17 payments required by this Agreement; PROVIDED, that the maximum amount of the Project
18 Owner's liability to The Trust for claims, costs, liabilities and expenses, including attorneys' fees,
19 arising out of the failure to make a payment required by this Agreement in a timely manner shall
20 not exceed twice the differential between the amount payable to The Trust on a particular date
21 and the amount actually paid or made available to The Trust on or before that date. FURTHER
22 PROVIDED, The Trust must make reasonable efforts to mitigate any losses, liabilities or
23 expenses for which it seeks indemnification from the Project Owner.
24

25 **8. General Provisions.**

26 8.1 Disputes. Either the Project Owner or The Trust may submit to the Council for the
27 Council's resolution any dispute between the Project Owner and The Trust
28 concerning the terms of this Agreement or any other issues related to the
29 monetary path payment requirement. The Council's decision shall be binding on
30 all parties.
31

32 8.2 Governing Law: This Agreement shall be governed by and construed in
33 accordance with the laws of the State of Oregon. Any ambiguity that may arise
34 under this Agreement shall be given a fair and reasonable construction in
35 accordance with the intention of the parties and without regard to which party
36 caused or is deemed to have caused such ambiguity to exist.
37

38 8.3 Amendments and Waivers: This Agreement may not be modified, supplemented,
39 altered or amended, nor any provision hereof or rights hereunder be waived,
40 except by an instrument in writing designated as an amendment of or waiver
41 under this Agreement and signed by both parties. The waiver of any particular
42 breach or default hereunder shall not constitute a waiver of any other breach or
43 default. Failure or delay by any party to enforce any provision of this Agreement
44 shall not in any way be construed as a waiver of such provision, nor shall it

1 prevent such party from thereafter enforcing each and every provision of this
2 Agreement.

3
4 8.4 Entire Agreement: This Agreement constitutes the entire agreement between the
5 parties hereto as to the matters set forth herein, and all prior proposals,
6 commitments, understandings and agreements, whether oral or in writing, as to
7 such matters are superseded by this Agreement.

8
9 8.5 Assignment: The rights of the Project Owner under this Agreement may be
10 assumed by any entity that acquires an ownership interest in the Project. Upon
11 such assumption and upon written acknowledgment by the entity of its
12 responsibilities under this Agreement, such entity shall be deemed to be a party to
13 this Agreement. The Trust may not assign this Agreement without the prior
14 consent of the Project Owner and Council; provided that, if the proposed assignee
15 is a "qualified organization" as defined in OAR 345-001-0010, the Project Owner
16 shall not unreasonably withhold such consent.

17
18 8.6 Third-Party Beneficiaries: Nothing in this Agreement, whether express or
19 implied, is intended to confer any rights or remedies on any persons other than the
20 parties hereto and their respective authorized successors and permitted assigns.

21
22 IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be
23 executed by their respective duly authorized representatives, as of the day and year first above
24 written.

25
26 KLAMATH ENERGY, LLC

THE CLIMATE TRUST

27
28 By: _____

By: _____

29
30 Name: _____

Name: _____

31
32 Title: _____

Title: _____

33
34 Date: _____

Date: _____

35
36
37 APPENDIX A: CALCULATION OF INITIAL NON-BASE LOAD MONETARY PATH PAYMENT REQUIRED
38 [NOT INCLUDED IN SITE CERTIFICATE]
39