

1 **Attachment A**  
2 **Third Amended Site Certificate**  
3 **Port Westward Generating Project**

4  
5 **MEMORANDUM OF UNDERSTANDING**  
6 **THE CLIMATE TRUST AND PORTLAND GENERAL ELECTRIC COMPANY**  
7 **CARBON DIOXIDE STANDARD IMPLEMENTATION**  
8 **MONETARY PATH PAYMENT REQUIREMENT**  
9

10 [If the parties agree, they may substitute a bond for the letter of credit.]

11  
12 THIS MEMORANDUM OF UNDERSTANDING (this “Agreement”) is entered into as of the  
13 \_\_\_ day of \_\_\_\_\_, 200\_, by and between Portland General Electric Company (the “Project  
14 Owner”) in its capacity as owner of the Port Westward Generating Project, and The Climate  
15 Trust (“The Trust”).  
16

17 **RECITALS**  
18

- 19 1. The Project Owner intends to design, finance, construct, own and operate a natural  
20 gas-fired combined-cycle combustion turbine electric generating facility with a base-load  
21 net electric power output of about 560 MW and a peaking net electric power output of about  
22 650 MW near the City of Clatskanie, Oregon. The facility, together with its ancillary  
23 systems, shall be referred to herein as the “Project.”  
24
- 25 2. The State of Oregon requires new energy facilities to meet a carbon dioxide emissions  
26 standard as described in OAR 345-024-0550 through -0710.  
27
- 28 3. As a condition to the siting of the Project, the Project Owner is required to provide offset  
29 funds (“Offset Funds”) and selection and contracting funds (“Selection and Contracting  
30 Funds”) to The Trust. In accordance with Section D.15 of the Third Amended Site  
31 Certificate for the Port Westward Generating Project (the “Site Certificate”) that the Oregon  
32 Energy Facility Siting Council (the “Council”) granted to the Project Owner, dated  
33 January 28, 2005, the Project Owner shall establish a third-party letter of credit (the “Letter  
34 of Credit”) in The Trust’s name, acceptable to the Council, sufficient to meet the monetary  
35 path requirement. Under the terms and conditions of this Agreement, the monetary path  
36 payments will be disbursed to The Trust as specified in the Site Certificate and then by The  
37 Trust as specified in OAR 345-024-0710.  
38
- 39 4. The Trust is a qualified organization within the meaning of OAR 345-001-0010(46).  
40

41 NOW, THEREFORE, in consideration of the premises and mutual promises herein contained,  
42 the parties hereto agree as follows:  
43

- 44 **1. Initial Base-Load Monetary Path Payment and Initial Power Augmentation Monetary**  
45 **Path Payment.**

- 1  
2 1.1 The Project Owner has used the monetary path payment requirement calculations  
3 described in Section D.15 of the Site Certificate to calculate the Initial Base-Load  
4 Monetary Path Payment amount and has submitted them to the Oregon Office of  
5 Energy (the “Office”) for verification. The Trust acknowledges that the calculation  
6 of the Initial Base-Load Monetary Path Payment in fourth quarter, 2002 dollars  
7 presented in Appendix A is correct and consistent with the Site Certificate.  
8
- 9 1.2 The Project Owner has used the monetary path payment requirement calculations  
10 described in Section D.15 of the Site Certificate to calculate the Initial Power  
11 Augmentation Monetary Path Payment amount and has submitted them to the Office  
12 for verification. The Trust acknowledges that the calculation of the Initial Power  
13 Augmentation Monetary Path Payment in fourth quarter, 2002 dollars presented in  
14 Appendix A is correct and consistent with the Site Certificate.  
15
- 16 1.3 The Site Certificate requires that the Selection and Contracting Funds portion of both  
17 the Initial Base-Load Monetary Path Payment and the Initial Power Augmentation  
18 Monetary Path Payment be adjusted for inflation to the date of disbursement to The  
19 Trust using the U.S. Gross Domestic Product Implicit Price Deflator, Chain-Weight,  
20 published in the then current “Oregon Economic and Revenue Forecast” (the  
21 “Index”). The Project Owner shall pay to The Trust the Inflation-Adjusted Selection  
22 and Contracting Funds in the amount of \$\_\_\_\_\_ contemporaneously with  
23 execution of this Agreement. The Trust acknowledges that the calculations of the  
24 Inflation-Adjusted Selection and Contracting Funds presented in Appendix A are  
25 correct and consistent with the Site Certificate.  
26
- 27 1.4 Based on the verified calculations of the Initial Base-Load Monetary Path Payment  
28 and the Initial Power Augmentation Monetary Path Payment set forth in Appendix A,  
29 the Project Owner shall pay to the Trust \$\_\_\_\_\_ in Offset Funds in fourth  
30 quarter, 2002 dollars pursuant to Section 1.6 below. The Site Certificate requires that  
31 the Offset Funds portion of both the Initial Base-Load Monetary Path Payment and  
32 the Initial Power Augmentation Monetary Path Payment be adjusted for inflation  
33 from the fourth quarter, 2002, to the date of disbursement to The Trust using the  
34 Index.  
35
- 36 1.5 The Project Owner shall establish a Letter of Credit in the amount of \$\_\_\_\_\_ in  
37 favor of The Trust, in the form attached as Appendix B to this Agreement. The  
38 effective date of the Letter of Credit shall be \_\_\_\_\_, 200\_. The Trust shall be  
39 entitled to draw the entire amount of the Offset Funds secured by the Letter of Credit.  
40 The Project Owner shall pay the costs of establishing and maintaining the Letter of  
41 Credit and shall pay any transaction fees assessed by the issuer of the Letter of Credit.  
42
- 43 1.6 The Trust shall have the right to draw Offset Funds upon execution of a letter of  
44 intent to acquire an offset project. At the sole discretion of The Trust, the amount of  
45 Offset Funds drawn may correspond to the entire amount of Offset Funds available.  
46 The Trust may request less than the entire amount of the Offset Funds, but in no case

1 shall the cumulative amount of all requests exceed the total Monetary Path Payment  
2 Requirement, as adjusted for inflation.  
3

4 **2. Year One True-Up Base-Load Monetary Path Payment and Year One True-Up**  
5 **Power Augmentation Monetary Path Payment.**  
6

7 2.1 The Project Owner shall, within 30 days of filing its Year One Test reports to  
8 Council, calculate the Year One True-Up Base-Load Monetary Path Payment, if any,  
9 and the Year One True-Up Power Augmentation Monetary Path Payment, if any, as  
10 required by Section D.15 of the Site Certificate. The Project Owner shall submit  
11 these calculations to the Oregon Office of Energy for verification, as required by  
12 Section D.15 of the Site Certificate.  
13

14 2.2 Both the Year One True-Up Base-Load Monetary Path Payment and Year One True-  
15 Up Power Augmentation Monetary Path Payment, if any, shall be adjusted for 2002  
16 dollars from the calendar quarter of the Site Certificate approval to the Disbursement  
17 Date using the Index.  
18

19 2.3 If any Year One True-Up Base-Load Monetary Path Payment and/or Year One True-  
20 Up Power Augmentation Monetary Path Payment is due, the Project Owner shall pay  
21 this amount directly to The Trust within 30 days of filing its Year One Test report to  
22 the Council.  
23

24 2.4 In no case shall the calculations of this Section 2 cause the funding for the Initial  
25 Base-Load Monetary Path Payment and the Initial Power Augmentation Monetary  
26 Path Payment made available to The Trust by the Letter of Credit to diminish.  
27

28 **3. Periodic Five-Year Power Augmentation Monetary Path Payments.**  
29

30 3.1 Each five years after beginning commercial operation, the Project Owner shall report  
31 the annual average hours of usage of power augmentation to the Office as required by  
32 Section D.15 of the Site Certificate.  
33

34 3.2 If the Office of Energy determines that there are excess emissions for the five-year  
35 report period, the Office will specify the amount of Selection and Contracting Funds  
36 and Offset Funds that the Project Owner shall make available to The Trust. Each  
37 Periodic Five-Year Power Augmentation Monetary Path Payment, if any, shall be  
38 adjusted for inflation from fourth quarter, 2002, to the Disbursement Date using the  
39 Index.  
40

41 3.3 For any Periodic Five-Year Power Augmentation Monetary Path Payment, the  
42 Selection and Contracting Funds shall equal 20 percent of the value of any Offset  
43 Funds up to the first \$250,000 (in 2002 dollars) and 4.286 percent of the value of any  
44 Offset Funds in excess of \$250,000 (in 2002 dollars).  
45

1 3.4 The Project Owner shall disburse to The Trust the specified amount of any Periodic  
2 Five-Year Monetary Path Payment within 30 days of its notification by the Office of  
3 the amount that the Project Owner owes.  
4

5 **4. Undertaking by The Trust.**  
6

7 4.1 The Trust shall use the Initial Base-Load Monetary Path Payment and Initial Power  
8 Augmentation Monetary Path Payment, as well as any Year One True-Up Base-Load  
9 Monetary Path Payment, Year One True-Up Power Augmentation Monetary Path  
10 Payment, and/or Periodic Five-Year Power Augmentation Monetary Path Payments  
11 in accordance with OAR 345-024-0710.  
12

13 4.2 With respect to the Offset Funds portions of any Initial Base-Load Monetary Path  
14 Payment, Initial Power Augmentation Monetary Path Payment, Year One Base-Load  
15 Monetary Path Payment, Year One Power Augmentation Monetary Path Payment,  
16 and/or Periodic Five-Year Power Augmentation Monetary Path Payments, The Trust  
17 shall spend at least 80 percent of the Offset Funds for contracts to implement offsets,  
18 and may use up to 20 percent of the Offset Funds for monitoring, evaluation,  
19 administration, and enforcement of contracts to implement offsets.  
20

21 4.3 The Selection and Contracting Funds portions of any Initial Base-Load Monetary  
22 Path Payment, Initial Power Augmentation Monetary Path Payment, Year One Base-  
23 Load Monetary Path Payment, Year One Power Augmentation Monetary Path  
24 Payment, and/or Periodic Five-Year Power Augmentation Monetary Path Payments  
25 shall compensate The Trust for its costs of selecting offsets and contracting for the  
26 implementation of offsets and administrative costs related to operating The Trust as a  
27 qualified organization.  
28

29 4.4 The Trust shall use its best efforts to remain a qualified organization, as defined in  
30 OAR 345-001-0010(45), until The Trust has used all funds received from the Project  
31 Owner.  
32

33 4.5 The Trust shall notify the Project Owner of its intent to draw on the Letter of Credit at  
34 least one week before making a draw.  
35

36 **5. Limited Obligation of Project Owner.**  
37

38 The Trust acknowledges that, pursuant to OAR 345-024-0710(3), that the Project  
39 Owner and the Project shall have no obligation with regard to offsets for the Project  
40 other than to make available to The Trust the total amount of the monetary path  
41 payments.  
42

43 **6. Limited Participation by Project Owner in The Trust Decision Making.**  
44

45 The Project Owner shall appoint one nonvoting member to the Board of Directors of  
46 The Trust for a term lasting until The Trust has completed the contracting for the

1 offset funds provided by the Project Owner. The Project Owner shall have no  
2 approval rights over The Trust's offset contracts, disbursement of Offset Funds, or  
3 other day-to-day operations of The Trust.  
4

5 **7. Project Owner Agreement to Indemnify and Hold The Trust Harmless.**  
6

7 The Project Owner agrees to defend, hold harmless and indemnify The Trust from  
8 and against any and all claims, costs, liabilities, and expenses of any nature  
9 whatsoever, including reasonable attorneys' fees, resulting from or arising out of any  
10 failure by the Project Owner to make any payments required by this Agreement, or to  
11 establish the Letter of Credit described in Section 1.5 in a timely manner;  
12 PROVIDED, that the maximum amount of the Project Owner's liability to The Trust  
13 for claims, costs, liabilities and expenses, including attorneys' fees, arising out of the  
14 failure to make a payment or establish the Letter of Credit required by this Agreement  
15 in a timely manner shall not exceed twice the differential between the amount payable  
16 to The Trust on a particular date and the amount actually paid or made available to  
17 The Trust on or before that date. FURTHER PROVIDED, The Trust must make  
18 reasonable efforts to mitigate any losses, liabilities or expenses for which it seeks  
19 indemnification from the Project Owner.  
20

21 **8. General Provisions.**  
22

23 8.1 Governing Law: This Agreement shall be governed by and construed in accordance  
24 with the laws of the State of Oregon. Any ambiguity that may arise under this  
25 Agreement shall be given a fair and reasonable construction in accordance with the  
26 intention of the parties and without regard to which party caused or is deemed to have  
27 caused such ambiguity to exist.  
28

29 8.2 Amendments and Waivers: This Agreement may not be modified, supplemented,  
30 altered or amended, nor any provision hereof or rights hereunder be waived, except  
31 by an instrument in writing designated as an amendment of or waiver under this  
32 Agreement and signed by both parties. The waiver of any particular breach or default  
33 hereunder shall not constitute a waiver of any other breach or default. Failure or  
34 delay by any party to enforce any provision of this Agreement shall not in any way be  
35 construed as a waiver of such provision, nor shall it prevent such party from  
36 thereafter enforcing each and every provision of this Agreement.  
37

38 8.3 Entire Agreement: This Agreement constitutes the entire agreement between the  
39 parties hereto as to the matters set forth herein, and all prior proposals, commitments,  
40 understandings and agreements, whether oral or in writing, as to such matters are  
41 superseded by this Agreement.  
42

43 8.4 Assignment: The rights of the Project Owner under this Agreement may be assumed  
44 by any entity that acquires an ownership interest in the Project. Upon such  
45 assumption, such entity shall be deemed to be a party to this Agreement. The Trust  
46 may not assign this Agreement without the prior consent of the Project Owner and

1 Council; provided that, if the proposed assignee is a “qualified organization” as  
2 defined in OAR 345-001-0010(45), the Project Owner shall not unreasonably  
3 withhold such consent.  
4

5 8.5 Third-Party Beneficiaries: Nothing in this Agreement, whether express or implied, is  
6 intended to confer any rights or remedies on any persons other than the parties hereto  
7 and their respective authorized successors and permitted assigns.  
8

9 IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be  
10 executed by their respective duly authorized representatives, as of the day and year first above  
11 written.  
12

13 PORTLAND GENERAL ELECTRIC COMPANY

THE CLIMATE TRUST

14  
15  
16  
17 By: \_\_\_\_\_

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

18  
19 Name: \_\_\_\_\_

Name: \_\_\_\_\_

20  
21 Title: \_\_\_\_\_

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

22  
23 Date: \_\_\_\_\_

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

24  
25  
26 APPENDIX A: CALCULATION OF INITIAL BASE-LOAD AND POWER AUGMENTATION MONETARY  
27 PATH PAYMENT REQUIREMENT [NOT INCLUDED IN SITE CERTIFICATE]  
28

29 APPENDIX B: FORM OF LETTER OF CREDIT

30 /

31 /

32 /



1 If any request for payment hereunder is presented in compliance with the terms of this  
2 Letter of Credit to us at such address by \_\_\_\_ (local time) on any Business Day, payment will be  
3 made at or before \_\_\_\_\_ (local time) on \_\_\_\_\_, and if such request is so presented to us \_\_\_\_\_  
4 (local time) on any Business Day, payment will be made at or before \_\_\_\_\_.  
5

6 If a demand for payment made hereunder does not, in any instance, conform to the terms  
7 and conditions of this Letter of Credit, we shall give you prompt notice that your demand for  
8 payment was not effected in accordance with the terms and conditions of this Letter of Credit,  
9 stating the reasons therefore and that we will, upon your instructions, hold any documents at  
10 your disposal or return the same to you. Upon being notified that the demand for payment was  
11 not effected in conformity with this Letter of Credit, you may attempt to correct any such  
12 nonconforming demand to the extent you are able to do so; *provided, however*, that any draft or  
13 document presented to correct such nonconforming demand must be presented on or before the  
14 Termination Date.  
15

16 Communications with respect to this Letter of Credit shall be in writing and shall be  
17 addressed to us at \_\_\_\_\_, specifically referring therein to this Letter of Credit by number.  
18

19 As used herein, a “Business Day” shall mean any day other than Saturday or Sunday or a  
20 day on which banking institutions in the City of \_\_\_\_\_ are authorized or required by law to  
21 close.  
22

23 Presentation of any certificate hereunder shall be deemed to be authentic if signed by a  
24 person purporting to be your Executive Director.  
25

26 This Letter of Credit and the attached Annex A set forth in full our undertaking, and such  
27 undertaking shall not in any way be modified, amended, amplified, or limited by reference to any  
28 document, instrument or agreement referred to in this Letter of Credit, except only the  
29 certificates referred to herein, and any such reference shall not be deemed to incorporate herein  
30 by reference any document, instrument or agreement except for such certificates.  
31

32 \_\_\_\_\_ hereby engages solely with The Climate Trust that drafts drawn hereunder  
33 and in compliance with the terms of this Letter of Credit will be duly honored upon presentation  
34 to us by our prompt payment to you of the amount specified in the certificate accompanying such  
35 draft.  
36

37 This Letter of Credit and the attached Annex A shall be subject to the provisions (to the  
38 extent that such provisions are not inconsistent with this Letter of Credit) of the Uniform  
39 Customs and Practices for Documentary Credits, 1993 Revision, International Chamber of  
40 Commerce Publication No. 500. To the extent that the provisions of this Letter of Credit are not  
41 covered by such Uniform Customs and Practices, this Letter of Credit shall be governed by and  
42 enforced and construed in accordance with the laws of the State of Oregon.  
43

[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 \_\_\_\_\_ (the "Issuing Bank") with reference to the Irrevocable Letter of Credit No. \_\_\_\_\_ (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 \_\_\_\_\_, 200\_\_, between The Climate Trust and Portland General Electric Company (the "MOU") in the amount of \$\_\_\_\_\_ (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:

\_\_\_\_\_

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this certificate as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

THE CLIMATE TRUST, as Beneficiary

By: \_\_\_\_\_
Name:
Executive Director