

AFTER RECORDING RETURN TO:

PACIFICORP
Attn: Property Department
825 NE Multnomah, Suite 1700
Portland, Oregon 97232

Grantor: Samuel G. and Susan H. Davis

Grantee: PacifiCorp

Legal: OFF ORCHARD LANE @ 741 NOC #2004154482~

Tax Parcel: 03101500070000

Irrigation Pump System Settlement Agreement, Covenant, and Release

This Irrigation Pump System Settlement Agreement, Covenant, and Release (the "**Agreement**") is between PacifiCorp, an Oregon corporation, ("**PacifiCorp**"), and Samuel G. Davis and Susan H. Davis, jointly and severally ("**Landowner**"), each a "**Party**" and together the "**Parties**."

Background

- A. PacifiCorp is Federal Energy Regulatory Commission ("**FERC**") licensee of the Condit Hydroelectric Project, FERC Project No. P-2342 (the "**Project**"). The Project is located at approximately river mile 3.3 on the White Salmon River in Skamania and Klickitat Counties, Washington. PacifiCorp is currently decommissioning the Project (the "**Decommissioning Project**") in accordance with FERC orders, *see e.g., PacifiCorp*, 133 FERC ¶ 61,232 (2010), *order on reh'g*, 135 FERC ¶ 61,064 (2010) (the "**Surrender Order**"). On October 26, 2011, PacifiCorp breached Condit dam and drained the Project reservoir Northwestern Lake.
- B. Landowner owns that certain parcel of real property near the former reservoir known as Skamania County, Washington Tax Lot 03101500070000 located within Township 3 North, Range 10 East, Section 15 W.M. ("**Landowner's Property**"). Landowner maintains an irrigation pump system for agricultural purposes on Landowner's Property; this irrigation pump system and all related or connected equipment, machinery, and electronics of any kind is hereinafter referred to as the "**System**."
- C. On October 26, 2011, PacifiCorp breached Condit Dam and drained Northwestern Lake, all as authorized by FERC order. Landowner has subsequently developed problems with the System serving the Property. Landowner asserts that the electrical box containing breakers, relay switches, and other electrical parts necessary to run the System were damaged as a result of the movement of mud and silt after PacifiCorp's breach of the dam and during the draining of the reservoir.
- D. PacifiCorp has agreed to reimburse reasonable and prudent costs to repair the System. Under the terms and conditions of this Agreement, PacifiCorp will provide certain funding mitigation for the above described impacts to Landowner's System and Landowner will release PacifiCorp from any further claim or liability associated with impacts to the System.

Terms and Conditions

1. **Mitigation for Impacts to System.** Subject to all of the terms and conditions of the Agreement, the Landowner has elected to have the System repaired and PacifiCorp has agreed to reimburse the actual, reasonable costs for such repairs as specified herein (the "Reimbursement"). The activities and materials reasonably necessary to complete such repairs are referred to in this Agreement as the "Work." The Parties have agreed Landowner will retain Underwood Electric (the "Vendor") to perform repairs as necessary to restore function of the System. The Parties have also agreed that the Reimbursement referred to in this Section 1 of the Agreement and required to be paid by PacifiCorp under Section 1.2 of the Agreement will be as follows:

Reimbursement for Work. PacifiCorp will reimburse Landowner the first three thousand four hundred twenty-four and 00/100 dollars (\$3,424.00) of the Vendor's actual cost to repair the System as described in Estimate # 191 submitted by Underwood Electric and dated June 25, 2012. Except as provided herein, PacifiCorp will not be obligated under this or any other Agreement to contribute payment of any further costs related to repairs of Landowner's System.

- 1.1 **Documents to be Provided to PacifiCorp.** Upon PacifiCorp's execution of this Agreement and completion of the Work, the Landowner will provide PacifiCorp with a copy of the Vendor's invoice for the actual Work performed. The Vendor invoice must be in a form reasonably acceptable to PacifiCorp. PacifiCorp has no obligation to pay for any portion of the Work exceeding the Reimbursement amount listed above. PacifiCorp has no obligation to pay for any portion of the Work that has not been invoiced by the Vendor on or before December 31, 2012. PacifiCorp will not be responsible for any late fees, interest, or other charges assessed by the Vendor because of late payment of an invoice by the Landowner.
 - 1.2 **Payment.** Within thirty (30) days of PacifiCorp's receipt of the documents required by Section 1.1, PacifiCorp will pay to the Landowner the Reimbursement specified in Section 1 above.
 - 1.3 **Responsibility for the Work.** By agreeing to pay the Reimbursement specified above, PacifiCorp is not agreeing to be responsible for the Work or in any way representing or warranting that the Work will satisfactorily restore the function of the System. PacifiCorp has no responsibility for the Work beyond making the payment required by Section 1.2. Neither the Landowner nor the Vendor is an agent or employee of PacifiCorp.
2. **Release; Public Statements.** *The Parties acknowledge and agree that this Agreement is entered into in full settlement and resolution of a dispute regarding whether PacifiCorp has any obligation to Landowner with regard to impacts to the System. In consideration of the obligation undertaken by PacifiCorp under Section 1 of this Agreement, Landowner*

releases PacifiCorp (and all related parties, including subsidiaries, affiliates, agents, employees, and successors in interest) from all claims, liabilities, and damages of any kind (whether known or unknown) which are related in any way to the impact of the Project decommissioning on the System. This release does not apply to claims that Landowner may have against PacifiCorp in connection with enforcement of this Agreement. The terms of this release have been completely read and are fully understood and voluntarily accepted for the purpose of making a full and final compromise settlement of any and all claims (disputed or otherwise) arising from the impact of the Project decommissioning on the System. If Landowner makes any public statement regarding the impact of Project decommissioning on the System, Landowner will affirmatively state that it has entered into an agreement with PacifiCorp settling all claims for impacts to the System and that PacifiCorp has agreed to reimburse certain costs to repair the System.

3. Representations and Warranties.

3.1 Landowner's Representations and Warranties. Landowner represents and warrants to PacifiCorp as follows:

- (A) **Ownership.** Landowner is the owner of the System and associated improvements. No other person has any ownership interest in the System.
- (B) **No Conflicts.** There are no agreements, court or administrative orders, or other limitations that would prevent Landowner from entering into this Agreement and engaging in the activities and performing the obligations provided for herein.

3.2 PacifiCorp's Representations and Warranties. PacifiCorp represents and warrants to Landowner as follows:

- (A) **No Conflicts.** There are no agreements, court or administrative orders, or other limitations that would prevent PacifiCorp from entering into this Agreement and engaging in the activities and performing the obligations provided for herein.

4. Landowner's Successors in Interest; Recording. The Parties intend that the terms of this Agreement will be binding on the Landowner's successors in interest to the Landowner's Property and the System and that the release contained in Section 2 above will be treated as a covenant running with the land. Within ten (10) days of the full execution of this Agreement, PacifiCorp will record this Agreement with the relevant county office maintaining title records on the Landowner's Property. The Landowner hereby consents to PacifiCorp's recording (and if necessary re-recording) this Agreement. If there is any technical deficiency that prevents effective recording of this Agreement, the Parties will cooperate to cure the deficiency such that this Agreement can be recorded no later than twenty (20) days following full execution of this Agreement. Prior to any transfer of the Landowner's Property, the Landowner will provide its successor in interest with actual written notice of this Agreement, the release contained in Section 2, and the fact that the release is binding on Landowner's successors in interest.

5. **No Admission of Causation or Liability.** This Agreement is not an admission that PacifiCorp's actions in draining Northwestern Lake caused any impact on Landowner's Property or the System. PacifiCorp reserves any and all defenses against all claims.

6. **Notices.** Any notice or other communication required by this Agreement must be in writing and must be delivered personally or sent by certified or registered mail, or by express courier, postage prepaid, to the following addresses:

If to PacifiCorp:
PacifiCorp Property Management
825 NE Multnomah Street
Suite 1700
Portland, Oregon 97232

If to Landowner:
Samuel G. and Susan H. Davis
51 Thun Rd
Underwood, WA 98651

A notice is considered as having been given (1) on the day of personal delivery, or (2) two days after the date of mailing.

6.1 **Payment Address.** Payment to Landowner shall be made to the above address.

7. **Miscellaneous.**

7.1 **Choice of Law.** This Agreement is governed by the internal laws of Washington, without regard to its conflict-of-laws provisions.

7.2 **Entire Agreement; Modifications.** This Agreement constitutes the entire agreement between the Parties pertaining to the impact of the Project decommissioning on Landowner's System and supersedes all prior and contemporaneous agreements, representations, and undertakings. No supplement, modification, or amendment of this Agreement will be binding unless it is in writing and signed by both Parties.

7.3 **Waiver.** No waiver of any term of this Agreement constitutes a waiver of any other provision, whether similar or dissimilar. No waiver of any term constitutes a continuing waiver of that term. No waiver is binding unless signed in writing by the waiving Party.

7.4 **Severability.** If any term of this Agreement is for any reason invalid or unenforceable, the rest of this Agreement remains fully valid and enforceable, *except* that if the release of liability in Section 2 of this Agreement is found to be invalid, this Agreement will terminate and Landowner will repay PacifiCorp any funds PacifiCorp has provided Landowner for System Work. This Section 7.4 will survive termination of this Agreement.

7.5 **Binding Effect; Assignment.** This Agreement binds and inures to the benefit of both the Parties and their successors and assigns. But the Agreement cannot be assigned without the prior written consent of the other Party.

7.6 **Headings.** The headings in this Agreement are for convenience of reference only and do not constitute a part of it. The headings do not affect its interpretation.

7.7 **Interpretation.** Both Parties have had the opportunity to negotiate this Agreement and to seek the advice of legal counsel prior to entering into this Agreement. The provisions of this Agreement shall not be construed against the drafter. Unless the context requires otherwise:

(A) The term "including" contemplates "including but not limited to".

(B) The phrase "Project decommissioning" contemplates all actions associated with the decommissioning and removal of the Project including breach of the dam, draining of the reservoir, sediment transport, re-contouring and re-vegetation of the former reservoir area, dam removal and any and all projects related to decommissioning including work on Northwestern Lake Bridge and the relocation of the City of White Salmon's water transmission line.

7.8 **Counterparts.** This Agreement may be signed in counterparts, each one of which is considered an original, but all of which constitute one and the same instrument.

7.9 **Waiver of Jury Trial.** *To the fullest extent permitted by law, the Parties waive any right to a trial by jury respecting litigation directly or indirectly arising out of, under or in connection with this Agreement. Each Party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot or has not been waived.*

Agreed:

PacifiCorp, an Oregon corporation

Landowner

Mark Sturtevant

Jana Mejdell
Director, Real Estate Management
Mark Sturtevant
Managing Director, Hydro Resources

Samuel G. Davis

Sue Davis

Susan H. Davis

OREGON
STATE OF WASHINGTON)
COUNTY OF Multnomah) :ss.

The foregoing instrument was acknowledged before me this 19 day of August 2012 by Mark Sturtevant representing PacifiCorp.

Arianne Poindexter

NOTARY PUBLIC

