

Exhibit B. Example of a Predevelopment Agreement

_____, 2001

In reply refer to: PGC-6

Contract No. 01PB-_____
_____ Wind Project

[Address of Wind Project Developer]

Dear _____:

On February 22, 2001, the Bonneville Power Administration (“Bonneville”) issued a Request for Wind Project Proposals (“RFP”). In response to the RFP, [name of wind project developer] (“Developer”) submitted a proposal to develop a wind power facility at _____ (“Project”) and to sell the electrical output to Bonneville. The Project would have a minimum installed wind turbine capacity of ___ megawatts (MW). Developer would be responsible for managing all development activities including, but not limited to (i) installation of meteorological towers and management of the wind resource assessment; (ii) arranging for geotechnical feasibility studies; (iii) arranging construction financing, vendor financing, term financing, and equity investment; (iv) preparing environmental studies; (v) submission of permitting and planning applications to all regulatory bodies having jurisdiction over the Project; and (vi) obtaining permits, licenses, and all other approvals necessary to construct, operate, and finance the Project (all collectively hereafter referred to as “Predevelopment Activities”).

Bonneville wishes to encourage the development of renewable energy resources in the Pacific Northwest, to proceed with the predevelopment of the Project in order to meet Bonneville’s contractual obligations, and to satisfy its obligations under the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (Public Law No. 96-501).

After considering Developer’s proposal, Bonneville would like to examine the Project site in further detail and to consider purchasing power from the Project.

If, after appropriate review pursuant to the National Environmental Policy Act (“NEPA”), Bonneville decides to purchase energy from the Project, then Developer would be responsible for completing the Predevelopment Activities for the Project.

CONFIDENTIAL

The terms and conditions pursuant to which Developer would sell, and Bonneville would purchase, output from the Project have been negotiated and are generally acceptable to Developer and Bonneville and are reflected in the form of the unexecuted Power Purchase Agreement (“PPA”), attached hereto as Exhibit A. Developer and Bonneville recognize that certain bracketed information will be updated and finalized prior to or at the time of execution of the PPA.

This letter agreement (“Agreement”) sets forth the obligations of Developer and Bonneville during the period during which they will respectively proceed with actions that are required before Developer and Bonneville will be in a position to decide whether to execute the PPA and proceed with development of the Project. In this Agreement, Developer and Bonneville are sometimes referred to individually as “Party” and collectively as “Parties.”

1. DEFINITIONS

Capitalized terms used in this Agreement shall have the respective meanings herein specified and shall include in the singular number the plural and in the plural number the singular.

- (a) “Predevelopment Costs” means (a) with respect to Developer, direct out-of-pocket expenses incurred by Developer after the date of this Agreement in connection with Predevelopment Activities related to the Project, including without limitation the cost items described in Part I of Exhibit B in an amount not to exceed \$_____ (or such higher amount agreed to in writing by Bonneville), and (b) with respect to Bonneville, direct out-of-pocket expenses incurred by Bonneville in connection with the Predevelopment Activities after the date of this Agreement, including without limitation the cost items described in Part II of Exhibit B in an amount not to exceed \$_____ (or such higher amount agreed to in writing by Developer); provided, however, that in all cases Predevelopment Costs shall exclude, unless stated otherwise in Exhibit B, salaries and benefits paid to employees of Developer or Bonneville; overhead costs of Developer or Bonneville; and lost or prospective profits or opportunity costs or any other special, punitive, exemplary, consequential, incidental, or indirect losses or damages described in Section 11 of this Agreement.

2. EXHIBITS

Exhibit A (unexecuted Power Purchase Agreement) and Exhibit B (Predevelopment Costs) are attached and incorporated into this Agreement.

3. TERM

This Agreement shall become effective on the date of signing of this Agreement by both Parties and shall continue in effect until the earlier of:

- (a) The date the PPA is signed by both Parties;

- (b) The expiration date of the U.S. Federal Tax Code Section 45 Production Tax Credit (“PTC”) as extended, or the expiration date of any such alternative credit or benefit that can be documented and agreed to between the Parties, but in no case later than December 31, 2003;
- (c) A date mutually agreed to by the Parties; or
- (d) The termination of this Agreement by either Party in accordance with the Termination provisions as set forth in Section 6 herein.

4. BONNEVILLE OPTION TO PURCHASE OUTPUT

During the term of this Agreement, Developer grants to Bonneville an exclusive option to purchase the output of up to ___MW of wind turbines or a ___-MW pro rata share of the output of wind turbines to be installed at the Project, pursuant to the terms and conditions of the PPA.

5. ACTIONS OF THE PARTIES

The Parties agree to perform the following actions:

- (a) Bonneville shall be the lead or cooperating Federal agency in the preparation of an environmental assessment (“EA”) or environmental impact statement (“EIS”) as required under regulations implementing NEPA (40 C.F.R. Parts 1500-1508). Bonneville shall have sole discretion to decide the level of environmental review necessary to satisfy the requirements of NEPA.
- (b) Bonneville shall, at its own expense, make diligent efforts to satisfy the requirements of the Endangered Species Act regarding consultation on the Windplant with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service.
- (c) Bonneville shall, at its own expense, contract with a third party contractor to prepare and conduct studies related to the EA or EIS. The third party contractor shall be selected and directed by Bonneville, however, Bonneville shall inform Developer about progress with regard to the EA or EIS in a timely manner.
- (d) ~~Developer~~ Bonneville’s Power Business Line shall, at its own expense, contract with Bonneville's Transmission Business Line ~~and other transmission service providers (if applicable)~~ to perform transmission system studies, if such studies are necessary to determine the availability of capacity on Bonneville’s _____ transmission line ~~and the transmission line(s) of other transmission service providers (if applicable)~~ for integrating transmitting the output from the Project as contemplated hereinto the load(s) it is intended to serve. ~~The studies shall also determine what system upgrades, if any, would be necessary and shall estimate their cost.~~

~~(e)~~ Developer shall, at its own expense, contract with Bonneville's Transmission Business Line and other transmission service providers (if applicable) to perform any interconnection facility studies necessary to interconnect the Project to Bonneville's transmission system.

~~(f)~~ (e) Developer shall, at its own expense, submit an interconnection request and negotiate ~~execute~~ an interconnection agreement with Bonneville's Transmission Business Line and other transmission service providers (if applicable), pursuant to which the interconnection facilities for the Project will be designed, constructed, and operated.

~~(g)~~ (f) Developer shall, at its own expense, take all actions it deems necessary or desirable to obtain a Conditional Use Permit, Site Certificate, and/or any other permits or licenses necessary to construct and operate the Project, which permits or licenses are final and not subject to any applicable appeal or notice periods (the "Final Permits").

~~(h)~~ (g) Developer agrees to provide design data related to the Project and other assistance reasonably requested by Bonneville for the purpose of satisfying the requirements in (a), (b), ~~and (c)~~, and (d) above.

~~(i)~~ (h) Bonneville's Power Business Line shall cooperate in providing any information or assistance reasonably requested by Developer for the purpose of satisfying the requirements in ~~(d)~~, (e), ~~(f)~~, and (g) above.

~~(j)~~ (i) Bonneville shall issue a Record of Decision ("ROD") with respect to whether or not it intends to execute the PPA either (i) within forty-five (45) calendar days after the publication in the Federal Register of the Notice of Availability of a Finding of No Significant Impact or the final EIS related to the Project, or (ii) within thirty (30) calendar days after the issuance of all Final Permits, whichever period expires later (such period (i) or (ii) is known as the "Decision Period"). However, the Decision Period shall be extended day-for-day for the amount of time that, in Bonneville's reasonable judgement, is necessary to respond to any appeal, request for reconsideration, or comment on the EA or EIS that Bonneville receives during the thirty (30) calendar day period following the publication in the Federal Register of the Notice of Availability referred to above in this subsection.

6. TERMINATION

(a) Termination for Convenience:

Either Party may terminate this Agreement for convenience upon thirty (30) calendar days written notice to the other Party ("Other Party"). In the event of such termination, the terminating Party shall reimburse the Other Party for the Other Party's Predevelopment Costs incurred or irrevocably committed or obligated at the time of receipt of notification of termination in accordance with the terms and conditions of this Agreement.

(b) Termination for Third-Party Cause:

If, for any reason beyond the reasonable control of either Party, development, construction, and/or operation of the Project, as contemplated herein, is prevented from being completed in spite of the reasonable efforts of the Parties, this Agreement shall terminate pursuant to mutual written declaration of the Parties of such termination and no reimbursement of Predevelopment Costs shall be due to either Party by the other Party.

(c) Termination due to Expiration of this Agreement:

If this Agreement expires pursuant to subsection 3(b) or 3(c) above, then no reimbursement of Predevelopment Costs shall be due to either Party by the other Party.

(d) Termination for which Reimbursement of Predevelopment Costs is Due from Bonneville:

1. If Bonneville fails to perform its obligations under this Agreement, then Developer may terminate this Agreement after providing thirty (30) days written notice to Bonneville stating the reasons for termination and Bonneville shall reimburse Developer for Developer's Predevelopment Costs and Bonneville shall have no further rights with respect to the Project.
2. If Bonneville fails to issue a ROD and execute the PPA in the form attached as Exhibit A (with such updates or modifications agreed to by the Parties) within the Decision Period, then this Agreement shall terminate and Bonneville shall reimburse Developer for Developer's Predevelopment Costs and Bonneville shall have no further rights with respect to the Project.

(e) Termination for which Reimbursement of Predevelopment Costs is Due from Developer:

1. If Developer fails to perform its obligations under this Agreement, then Bonneville may terminate this Agreement after providing thirty (30) days written notice to Developer stating the reasons for termination and Developer shall reimburse Bonneville for Bonneville's Predevelopment Costs.
2. If, within five (5) business days after Bonneville executes the PPA, Developer fails to execute the PPA in the form attached as Exhibit A (with such updates or modifications agreed to by the Parties) then this Agreement shall terminate and Developer shall reimburse Bonneville for Bonneville's Predevelopment Costs.

7. PAYMENT PROCEDURES

At such time as a Party becomes entitled to reimbursement of its Predevelopment Costs (“Recipient”), the Recipient shall prepare and submit to the other Party (“Payer”) an itemized statement detailing Predevelopment Costs incurred or irrevocably committed or obligated prior to the effective date of the termination that gave rise to the reimbursement. Payment of Predevelopment Costs shall be subject to Payer’s review and receipt of reasonable documentation substantiating the cost or expense. The Payer shall only be required to reimburse the Recipient for Predevelopment Costs for which invoices or other reasonable records are made available by the Recipient. The Payer shall reimburse the Recipient for all substantiated Predevelopment Costs within sixty (60) calendar days after the Recipient submits the itemized statement and back-up documentation.

8. CONFIDENTIALITY

Subject to the Freedom of Information Act and other applicable Federal laws, Bonneville hereby agrees that it will keep confidential and shall not disclose to any third party any proprietary and confidential information relating to or developed by Developer and/or any of its affiliates, agents or consultants for the Project provided to Bonneville, to the extent that such information is not in the public domain. Developer agrees to mark all such information “Proprietary” or “Confidential.” If Bonneville receives a request for information which is, in the opinion of Bonneville, required to be disclosed pursuant to applicable law or regulation (including any Freedom of Information Act request), Bonneville shall, prior to disclosure, provide Developer with reasonable advance notice of the time and scope of the intended disclosure in order to permit Developer to seek to prevent or limit the scope or impose conditions on such disclosure.

9. CHOICE OF LAW

The validity, interpretation, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Oregon to the extent Federal law does not apply.

10. SEVERABILITY

If any provision of this Agreement is determined to be invalid or unenforceable, the validity or enforceability of the other provisions shall not be affected to the extent that such invalid or unenforceable provision(s) do not materially alter the rights and obligations of the Parties’ original agreement.

11. DISPUTE RESOLUTION

Any dispute between the Parties arising out of this Agreement shall be settled by mandatory binding arbitration, which shall be held in Portland, Oregon, pursuant to the Commercial Arbitration Rules of the American Arbitration Association; however, in such arbitration proceedings the Parties shall have the same discovery rights as are provided by the Federal Rules of Civil Procedure. The Parties shall appoint a single arbitrator to resolve disputes arising under this Agreement. If the Parties are unable to reach

agreement on a single arbitrator, a single arbitrator shall be selected in accordance with the rules of the American Arbitration Association. In the event of any dispute concerning the respective rights and obligations of the Parties under this Agreement, the prevailing Party shall be entitled to receive from the other Party reasonable expenses, attorneys' fees, and costs. In no event shall either Party be liable to the other Party for any lost or prospective profits or opportunity costs or any other special, punitive, exemplary, consequential, incidental, or indirect losses or damages (in tort, contract, or otherwise) under or in respect to this Agreement or for any failure of performance related hereto howsoever caused.

12. NOTICES

All notices under this Agreement shall be in writing, and any such notice shall become effective upon receipt and shall be delivered by certified mail with appropriate postage prepaid, or by hand or by facsimile (telecopy) or by a courier service, and shall be directed to the address of such Party set forth below:

If to Developer:

Developer
[Address of Developer]

Telephone:
Telecopy:

If to Bonneville:

Bonneville Power Administration
Attn: Wind Project Manager
Mail Stop PGC/6
P.O. Box 3621
Portland, OR 97208

905 NE 11th Street
Portland, OR 97232

Telephone: (503) 230-4386
Telecopy: (503) 230-4973

Sincerely,

Greg Delwiche
Vice President, Generation Supply
Bonneville Power Administration

ACCEPTED AND AGREED:

Developer

By: _____

EXHIBIT B

Predevelopment Costs

Part I:

Developer's Predevelopment Costs shall include, but shall not be limited to, the following:

- Payments to third parties for the preparation of documents related to the land use and energy facility site permits for the Project
- Payments to outside legal counsel retained to represent Developer regarding any appeal of the Project permits.
- Payments to third parties for preparation of environmental studies, and preparing and submitting permitting and planning applications and obtaining permits, licenses, and all other approvals necessary to construct, operate, and finance the Project
- Payments to third parties for feasibility and design work associated with electrical, civil, and other engineering for the Project
- Payments to Bonneville's Transmission Business Line and other transmission services providers (if applicable) for performance of ~~transmission system studies or~~ interconnection facility studies or the development of any plans of interconnection necessary to interconnect the Project to Bonneville's transmission system

Part II:

Bonneville's Predevelopment Costs shall include, but shall not be limited to, the following:

- Payments to third parties for the preparation of the EA or EIS and other documents and studies necessary to satisfy the requirements of NEPA, the Endangered Species Act, compliance with federal and other applicable cultural resource regulations, and the energy facility permitting requirements of _____ County and the State of _____ related to the Project
- Payments to outside legal counsel retained to ensure compliance with NEPA, the Endangered Species Act, and the energy facility permitting requirements of the State of _____ related to the Project
- Payments to outside legal counsel retained to represent Bonneville regarding any appeal of the Project permits
- Payments to Bonneville's Transmission Business Line for performance of transmission system studies necessary to determine the availability of transmission capacity to transmit the output from the Project to the load(s) it is intended to serve