

ATTACHMENT H



Corporate Headquarters
6575 West Loop South, Suite 300
Bellaire, TX 77401

February 28, 2020

Klamath River Renewal Corporation
2001 Addison Street
Suite 300, Office 317
Berkeley, CA 94704
Attn: Laura Hazlett
Telephone No.: (510) 679-6928
Email Address: lhazlett@klamathrenewal.org

Re: Draft Form of Habitat Restoration, Maintenance and Liability Transfer Agreement

Dear Ms. Hazlett:

Resource Environmental Solutions, LLC ("**RES**") is pleased to furnish this letter to you in connection with the planned submittal by the Klamath River Renewal Corporation (the "**KRRC**") to FERC in connection with the KRRC's License Transfer Application. All capitalized terms used and not otherwise defined herein shall have the meanings set forth in the draft Habitat Restoration, Maintenance and Liability Transfer Agreement (the "**Draft RES Agreement**"), attached hereto in Attachment A (Draft Form of Habitat Restoration, Maintenance and Liability Transfer Agreement).

Since April 2019, RES, working with the KRRC, has advanced the design of the habitat restoration and maintenance work to the 60% level. As a result of this work, the KRRC and RES have agreed that it would be in both parties' interest to have RES enter into a direct agreement with the KRRC. The Draft RES Agreement sets forth the detailed terms of the anticipated direct agreement. In the Draft RES Agreement, RES assumes responsibility for compliance with the Contractor Regulatory Compliance Terms and the adaptive management obligations that are expected to apply to the KRRC as the named permittee thereunder.

As part of the development of the 60% design, the KRRC and RES have negotiated the compensation to be paid to RES for the performance of the Habitat Project Work. Based on such negotiations, the KRRC and RES acknowledge and agree that the guaranteed maximum price ("**GMP**") for the Habitat Project Work is \$77,958,514 (composed of \$48,097,244 for the Habitat Restoration Work and \$29,861,270 for the Habitat Maintenance Services) and is established for the purpose of making the required February 28, 2020 submittal to FERC with respect to the license transfer application. Any subsequent negotiations between the KRRC and RES, including those conducted pursuant to Article 5 of the Draft RES Agreement regarding the Habitat Project Work Implementation Contract Amendment, shall be conducted on the basis of such GMP.

The KRRC and RES acknowledge and agree that while significant progress has been made in the negotiation of the Draft RES Agreement and the version submitted on February 28, 2020 is substantially complete, the Draft RES Agreement will not be ready for execution until the negotiations conclude and final terms are agreed upon. The KRRC and RES further acknowledge and agree that (1) the Draft RES Agreement reflects multiple telephonic meetings, an exchange of multiple drafts among the parties, a two-day in-person negotiation among the parties, and the involvement of key stakeholders such as PacifiCorp, California, and Oregon; and (2) the KRRC and RES are each committed to continuing to work with one another and the other stakeholders in good faith and expect that a final version will be executed on or before April 1, 2020. This letter is an expression of intent to continue to negotiate in good faith with respect to the Draft RES Agreement based on the GMP set forth above. This is not a contract and shall not be binding or enforceable, in any respect, on either RES or the KRRC. The parties shall be bound only once the Draft RES Agreement is executed in final form.



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Bellaire, TX 77401

If the foregoing understandings are agreeable to the KRRC, please indicate that fact by signing the acknowledgment below and returning the same to me by email to elliott@res.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Elliott M. Bouillion", written over a horizontal line.

Elliott M. Bouillion
President & Chief Executive Officer
Resource Environmental Solutions, LLC

Acknowledged and Agreed:

Klamath River Renewal Corporation:

A handwritten signature in black ink, appearing to read "Laura Hazlett", written over a horizontal line.

Name: Laura Hazlett

Title: Chief Operations Officer and Chief Financial Officer



Corporate Headquarters
6575 West Loop South, Suite 300
Bellaire, TX 77401

ATTACHMENT A

DRAFT FORM OF HABITAT RESTORATION, MAINTENANCE AND LIABILITY TRANSFER AGREEMENT



HABITAT RESTORATION, MAINTENANCE AND LIABILITY TRANSFER AGREEMENT

ENTERED INTO
IN CONNECTION WITH
THE REMOVAL OF THE LOWER KLAMATH RIVER DAMS

between

THE KLAMATH RIVER RENEWAL CORPORATION

and

HGS, LLC

Dated

[_____], 2020

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 - Attachment 12A – Key Personnel Organization Chart
 - Attachment 12B – Key Personnel Roles
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TRANSACTION FORMS

- A. Form of Guaranty Agreement
- B. Form of Performance Bond
- C. Form of Payment Bond

REFERENCE DOCUMENTS

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2. Historical Photos
3. Pre-Dam Topographic Maps and Surfaces
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5. Preliminary Design Drawings
6. Definite Plan
7. Water Surface and Other Reservoir Data (Confidential; Subject to NDA)
8. CPUC Funding Agreement
9. OPUC Funding Agreement
10. California Proposition 1 Funding Agreement, as Amended
11. Klamath Hydroelectric Settlement Agreement, as Amended
12. PacifiCorp Operations and Maintenance Agreement
13. Sample Form of KHSA Indemnity Agreement
14. USBR Modeling Files

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(continued)

RELIANCE DOCUMENTS

1. Project Implementation Work Limits
2. Site Base Maps – Topographic and Bathymetric Surveys
3. Geotechnical Data Report
4. Phase 1 Environmental Site Assessment
5. Phase 2 Environmental Site Assessment
6. Draft Biological Existing Conditions Report (from Draft Biological Assessment)
7. [Cultural Resources document to be identified]
8. Property Boundary Survey
9. Existing Conditions Assessment Report
10. KRRC Native Seed Collection Summary

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HABITAT RESTORATION, MAINTENANCE AND LIABILITY TRANSFER AGREEMENT

ENTERED INTO
IN CONNECTION WITH
THE REMOVAL OF THE LOWER KLAMATH RIVER DAMS

THIS HABITAT RESTORATION, MAINTENANCE AND LIABILITY TRANSFER AGREEMENT ("Agreement") is made and entered into as of [____], 2020, between the Klamath River Renewal Corporation, a not-for-profit corporation organized under the laws of the State of California (the "KRRC"), and HGS, LLC, a limited liability company organized and existing under the laws of the Commonwealth of Virginia and authorized to do business in the State of California and the State of Oregon (the "Contractor").

RECITALS

WHEREAS, PacifiCorp owns four hydroelectric dams on the lower Klamath River each operating under Federal Energy Regulatory Commission regulatory jurisdiction;

WHEREAS, the dams have been the subject of lengthy and extensive negotiations by multiple parties, which culminated in the Klamath Hydroelectric Settlement Agreement dated February 18, 2010, as amended April 6, 2016 and November 30, 2016 (the "KHSA");

WHEREAS, in order to implement the terms of the KHSA, the KRRC was formed as a California non-profit corporation on February 29, 2016;

WHEREAS, the KHSA provides primarily for the removal of the four lower Klamath River hydroelectric dams, and related design, construction, demolition and habitat restoration and maintenance work;

WHEREAS, funding for the project will be provided from (1) \$200 million in surcharges collected from PacifiCorp's Oregon and California utility customers, as authorized by the California Public Utilities Commission and the Oregon Public Utilities Commission, and (2) \$250 million from the proceeds of bonds issued by the State of California;

WHEREAS, PacifiCorp, in conjunction with the KRRC, has applied to FERC for the transfer to the KRRC of the license under which the dams are operated;

WHEREAS, the KRRC has also applied to FERC for the surrender of the FERC license;

WHEREAS, the KRRC has entered into a project agreement with Kiewit Infrastructure West Co. dated April 24, 2019 for planning, design, construction, demolition and implementation services necessary to carry out and complete the dam removal;

WHEREAS, the governmental permits, licenses and approvals for the project will require habitat restoration and maintenance services following dam removal;

WHEREAS, the KRRC has developed an extensive liability protection package, composed of parent company guarantees, surety bonds, insurance, contractor indemnities, contractor performance guarantees, and litigation mitigation and defense funds, which as a whole are intended to mitigate risk to the maximum extent feasible;

WHEREAS, in connection with the KRRC's February 28, 2020 submittal to FERC with respect to its application for the FERC License Transfer Order and prior to the execution of

this Agreement, the KRRC and Contractor executed a letter agreement relating to the guaranteed maximum price for the habitat project work, reflecting extensive planning and design efforts and workscope and risk negotiations, in order to create significant price transparency and cost certainty assurances for the KRRC as of the date of the FERC submittal;

WHEREAS, this Agreement is being executed and delivered concurrently with the execution and delivery of a conditional guaranteed maximum price amendment to the project agreement between KRRC and Kiewit Infrastructure West Co.;

WHEREAS, neither the project implementation obligations of Kiewit Infrastructure West Co. under the project agreement nor the liability transfer and habitat restoration and maintenance obligations of the Contractor (other than certain preliminary services obligations) under this Agreement shall become effective until the project agreement and this Agreement each have been amended under the respective terms thereof to establish mutually acceptable definitive pricing and terms following the receipt of all governmental licenses, permits and approvals required for the project;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS.

As used in this Agreement, the following terms shall have the meanings set forth below:

“Additional Preliminary Services” has the meaning set forth in subsection 5.2(B) (Additional Preliminary Services).

“Adjacent and Related Lands” means the parcels of real property on which ancillary Habitat Maintenance Services, including flood protection measures and downstream sediment removal, are to be performed, as more particularly described in Appendix 2 (KRRC Property Description), and as to which the KRRC will, by the Habitat Project Work Implementation Contract Amendment Date, have acquired easements or other interests in real property sufficient for the purposes of the Project.

“Affiliate” means, in respect of a person, any other person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first person, where “control” means, with respect to the relationship between or among two or more persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a person, whether through the ownership of voting securities, as trustee, personal representative or executor, by statute, contract, credit arrangement or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of trustees or similar body governing the affairs of such person.

“Agreement” means this Habitat Restoration, Maintenance and Liability Transfer Agreement in connection with the Removal of the Lower Klamath River Dams between the Contractor and the KRRC, including the Appendices and all other Contract Documents.

“Annual Report” has the meaning set forth in subsection 8.3(C) (Annual Reports).

“Appendix” means each of the Appendices and, as applicable, any attachments thereto, that are appended to this Agreement and identified as such in the Table of Contents to this Agreement.

“Applicable Law” means (1) any applicable federal, state or local law, statute, code or regulation; (2) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule, or other order of any Governmental Body having appropriate jurisdiction; (3) any established interpretation of law or regulation utilized by an appropriate Governmental Body if such interpretation is publicly documented by such Governmental Body and generally applicable; (4) any Governmental Approval; and (5) any consent order or decree, settlement agreement or similar agreement between the KRRC and any Governmental Body; in each case having the force of law and applicable from time to time, over the Project, the Contract Obligations or any other transaction contemplated hereby.

“Bankruptcy Law” means the United States Bankruptcy Code, 11 U.S.C. 101 *et seq.*, as amended from time to time and any successor statute thereto. “Bankruptcy Law” shall also include any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due.

“Base Habitat Maintenance Services Fee” has the meaning set forth in Section 9.3 (Base Habitat Maintenance Services Fee).

“Base Habitat Restoration Work Price” has the meaning set forth in subsection 7.1(B) (Base Habitat Restoration Work Price).

“Base Habitat Restoration Work Price Adjustment” has the meaning set forth in subsection 7.1(C) (Base Habitat Restoration Work Price Adjustments).

“Base Preliminary Services” means those services designated as Base Preliminary Services in Appendix 4 (Preliminary Services).

“Baseline Date” means the Contract Date, except that upon the execution and delivery of the Habitat Project Work Implementation Contract Amendment, the Baseline Date shall mean the Habitat Project Work Implementation Contract Amendment Date.

“Billing Period” means each month of a Contract Year except that:

(1) The first Billing Period of the first Contract Year shall begin on the Habitat Project Work Commencement Date and shall continue to the last day of the month, in which the Habitat Project Work Commencement Date occurs; and

(2) The last Billing Period of the last Contract Year shall end on the last day of the Term.

Any computation made on the basis of a Billing Period shall be adjusted on a pro rata basis to take into account any Billing Period of less than the actual number of days in the month to which such Billing Period relates.

“Billing Statement” means, for each Billing Period, the monthly invoice prepared by the Contractor and delivered to the KRRC in accordance with Article 9 (Compensation for Habitat Maintenance Services).

“Board of Directors” means the board of directors of the KRRC.

“Books and Records” has the meaning set forth in subsection 18.11(A) (Books and Records).

“Business Day” means a day other than a Saturday, Sunday or an official federal holiday.

“California Proposition 1 Grant Funding Agreement” means the Funding for Water Quality, Supply, Treatment, and Storage Projects of 2014 (Proposition 1) grant funding agreement effective as of July 1, 2016 between the KRRC and the State of California, acting through the California Natural Resources Agency (Agreement Number P11601-0), as amended.

“CEQA” refers to the California Environmental Quality Act (Cal. Pub. Res. Code § 21000 *et seq.*).

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.*, and applicable regulations promulgated thereunder, each as amended from time to time.

“Contract Administration Memorandum” has the meaning set forth in subsection 18.4(B) (Contract Administration Memoranda).

“Contract Amendment” has the meaning set forth in subsection 18.5(A) (Amendments Generally).

“Contract Compensation” means the Habitat Restoration Work Price and the Habitat Maintenance Services Fee.

“Contract Date” means the date on which this Agreement is executed and delivered by the Parties hereto.

“Contract Documents” means:

- (1) This Agreement and all Appendices;
- (2) The Habitat Project Work Implementation Contract Amendment;
- (3) Any other Contract Amendment;
- (4) Any notice to proceed; and
- (5) Any Contract Administration Memorandum.

It is specifically understood, however, that neither the KHSA, nor the Funding Agreements, nor the Definite Plan (except to the extent any work or services described therein constitute terms and conditions contained in any Contractor Regulatory Compliance Term) shall constitute “Contract Documents”.

“Contract Obligations” means the obligations of the Contractor to perform the Habitat Restoration Work, the Habitat Maintenance Services, the Contractor Regulatory Compliance Obligations, and other express obligations of the Contractor under this Agreement.

“Contract Representative” means, in the case of the Contractor, the Contractor Representative and, in the case of the KRRC, the KRRC Representative.

“Contract Standards” means the standards, terms, conditions, methods, techniques and practices imposed or required by:

- (1) Applicable Law;
- (2) The Contractor Regulatory Compliance Terms;
- (3) The Insurance Requirements; and
- (4) Any other standard, term, condition, obligation or requirement specifically provided in the Contract Documents to be performed by the Contractor.

“Contract Year” means each of:

- (1) The period from the Contract Date to the next June 30th;
 - (2) Each subsequent period of 12 calendar months commencing on July 1st;
- and
- (3) The period from July 1st in the year in which this Agreement expires or is terminated (for whatever reason) to and including the Termination Date.

“Contractor” means HGS, LLC, a limited liability company organized and existing under the laws of the Commonwealth of Virginia.

“Contractor-Allocated KRRC Regulatory Terms” means the KRRC Regulatory Terms allocated to the Contractor pursuant to Appendix 6 (Allocation of Responsibility between the Contractor and the Project Company with respect to the KRRC Governmental Approvals).

“Contractor Fault” means:

- (1) A breach by the Contractor of any of its obligations under this Agreement;
- (2) A breach of any representation or warranty made by the Contractor under this Agreement;
- (3) Willful misconduct of the Contractor or any other Contractor Person; or
- (4) A negligent act or omission of the Contractor or any other Contractor Person.

“Contractor Indemnitee” has the meaning set forth in subsection 16.1(B) (Indemnification-Related Defined Terms).

“Contractor Indemnification Act, Event or Circumstance” has the meaning set forth in subsection 16.1(B) (Indemnification-Related Defined Terms).

“Contractor Indemnity” means the indemnity obligations of the Contractor under subsection 16.1(B) (Indemnification-Related Defined Terms).

“Contractor Governmental Approvals” means those local Governmental Approvals pursuant to which the Contractor will be the named permittee under, and is obligated to apply for, as set forth in Table 5-2 of Appendix 5 (Role of the KRRC, Contractor and Project Company in Obtaining the Governmental Approvals).

“Contractor Person” means:

- (1) The Contractor;
- (2) Any director, officer, employee or agent of the Contractor in each case acting as such;
- (3) Any Subcontractor and any representative, advisor of the Contractor, in any such person’s capacity as a provider of services directly or indirectly to the Contractor in connection with the Habitat Project Work; and
- (4) Anyone for whose acts any of the foregoing may be legally or contractually liable in connection with this Agreement, including officers, directors, employees, representatives, agents, consultants and contractors.

“Contractor Regulatory Compliance Obligations” means all duties and obligations imposed by any Governmental Body under the Contractor Regulatory Compliance Terms during the Term, irrespective of the identity of the permittee.

“Contractor Regulatory Compliance Terms” means the Contractor-Allocated KRRC Regulatory Terms and the Contractor Governmental Approvals.

“Contractor Representative” has the meaning set forth in subsection 18.6(A) (Contractor Representative and Senior Supervisors).

“Convenience Termination Notice Period” has the meaning set forth in Section 14.4(A) (Convenience Termination Right and Payment).

“Cost Substantiation” means the process of providing evidence of actual costs in accordance with Section 18.10 (Cost Substantiation).

“County” means each of Siskiyou County and Klamath County.

“County Memoranda of Agreement” or **“County MOA’s”** means the Memoranda of Agreement between the KRRC and each County relating to the Project.

“CPUC” means the California Public Utilities Commission.

“CPUC Funding Agreement” means the agreement dated December 13, 2017 between the KRRC and the CPUC providing funding for the Project.

“Deductions” has the meaning specified in Section 8.7 (Deductions).

“Definite Plan” means the Definite Plan for Facilities Removal, dated June 28, 2018 (titled “Definite Plan for the Lower Klamath Project”), prepared by the KRRC pursuant to Section 10.2.1 of the KHSR, as updated or amended from time to time. The Definite Plan is summarized in Appendix 1 (Summary of the Definite Plan).

“Deliverable Material” means Habitat Restoration Work Deliverable Material, Preliminary Services Deliverable Material, and all other documents, reports, studies, surveys, computer programs, warranties, manuals, submittals, licenses and materials required to be delivered by the Contractor to the KRRC in the performance of the Habitat Project Work.

“Encumbrances” means any Lien, lease, mortgage, security interest, charge, judgment, judicial award, attachment or encumbrance of any kind with respect to the Habitat Project Work.

“Environmental Impact Report” or **“EIR”** means the environmental impact report with respect to the Project prepared by the Water Resources Control Board pursuant to CEQA, in draft and final forms as applicable.

“Environmental Mitigation Measures” has the meaning set forth in Section 4.5 (Environmental Review).

“Event of Default” means, with respect to the Contractor, those items specified in Section 14.2 (Events of Default by the Contractor) and, with respect to the KRRC, those items specified in Section 14.3 (Events of Default by the KRRC).

“Expiration Date” has the meaning set forth in subsection 3.1(A) (Term).

“Extraordinary Items” has the meaning set forth in Section 9.4 (Extraordinary Items).

“Facilities” means the following specific hydropower facilities within the jurisdictional boundary of FERC Project No. 14803: J.C. Boyle Dam, Copco No. 1 Dam, Copco No. 2 Dam and Iron Gate Dam, and appurtenant works, structures, improvements, assets, equipment and ancillary facilities constituting part of the KHP licensed to PacifiCorp as of the

Contract Date, as more particularly described in Section 1.4 (Facilities) to Appendix 2 (KRRC Property Description). For the purposes of this Agreement, the term “Facilities” is synonymous with “Lower Klamath Project”, as such term is used in the Definite Plan, Transfer Application and Surrender Application.

“Facilities Removal” means physical removal of all or part of each of the Facilities to achieve at a minimum a free-flowing condition and volitional fish passage, site remediation and restoration, including previously inundated lands, measures to avoid or minimize adverse downstream impacts, and all associated permitting for such actions.

“Facilities Removal Defense Fund” has the meaning set forth in subsection 4.3(I) (Facilities Removal Defense Fund).

“Fees and Costs” means reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses reasonably incurred in connection with investigating, preparing for, defending or otherwise appropriately responding to any Legal Proceeding.

“FERC” means the Federal Energy Regulatory Commission.

“FERC License Orders” means the FERC License Transfer Order and the FERC License Surrender Order.

“FERC License Surrender Order” means the final order or orders issued by FERC approving the Surrender Application.

“FERC License Transfer Order” means the final order or orders issued by FERC approving the Transfer Application.

“Funders” means the CPUC, the OPUC and the State of California.

“Funding Agreements” means the CPUC Funding Agreement, the OPUC Funding Agreement and the California Proposition 1 Grant Funding Agreement.

“Funding Requirements” means the requirements for funding the Project established by the Funders under the Funding Agreements.

“Governmental Approvals” means any permit, license, authorization, consent, certification, exemption, ruling, entitlement, variance or approval issued by a Governmental Body required under Applicable Law to be obtained or maintained by any person with respect to the Project, including Governmental Approvals identified in Appendix 5 (Role of the KRRC, Contractor and Project Company in Obtaining the Governmental Approvals). Governmental Approvals includes the KRRC Governmental Approvals, Contractor Governmental Approvals and Project Company Governmental Approvals.

“Governmental Body” means any federal, State, regional or local legislative, executive, judicial or other governmental board, department, agency, authority, commission, administration, court or other body, or any official thereof, having jurisdiction in any way over or in respect of any aspect of the performance of the Project.

“Guarantor” means Resource Environmental Solutions, LLC, a limited liability company organized and existing under the laws of the State of Louisiana.

“Guaranty Agreement” means the Guaranty Agreement from the Guarantor to the KRRC in the form set forth as Transaction Form A (Form of Guaranty Agreement).

“Habitat Maintenance Services” means everything required by the Contractor Regulatory Compliance Terms to be furnished and done by the Contractor under Article 8 (Habitat Maintenance Services), and all other work to be performed hereunder and expressly relating to habitat maintenance services.

“Habitat Maintenance Services Fee” has the meaning set forth in Section 9.2 (Habitat Maintenance Services Fee).

“Habitat Project Work” means the Habitat Restoration Work and the Habitat Maintenance Services.

“Habitat Project Work Area” means the area described in, and shown on the map attached to, Appendix 3 (Habitat Project Work Area Description) within which the Habitat Project Work is to be performed.

“Habitat Project Work Commencement Date” means the date, following satisfaction of the Habitat Project Work Commencement Date Conditions by the Contractor, upon which the Contractor shall have the right to proceed with the Habitat Restoration Work, as determined in accordance with subsection 6.3(A) (Habitat Project Work Commencement Date Generally).

“Habitat Project Work Commencement Date Conditions” means the conditions set forth in subsection 6.3(A) (Habitat Project Work Commencement Date Generally).

“Habitat Project Work Implementation Contract Amendment” has the meaning set forth in subsection 5.9(B) (Habitat Project Work Implementation Contract Amendment Generally).

“Habitat Project Work Implementation Contract Amendment Date” has the meaning set forth in subsection 5.9(B) (Habitat Project Work Implementation Contract Amendment Generally).

“Habitat Project Work Manager” has the meaning set forth in subsection 10.1(A) (Habitat Project Work Manager).

“Habitat Restoration Work” means everything required by the Contractor Regulatory Compliance Terms to be furnished and done by the Contractor under Article 6 (Habitat Restoration Work), and all other work to be performed hereunder and expressly relating to habitat restoration work.

“Habitat Restoration Work Deliverable Material” means all documents, reports, studies, surveys, computer programs, warranties, manuals, submittals, licenses and other documents and materials required to be delivered by the Contractor to the KRRC in the performance of the Habitat Restoration Work pursuant to this Agreement.

“Habitat Restoration Work Quality Management Plan” means the Contractor’s plan for quality assurance and quality control in implementing the Habitat Restoration Work, to be developed as part of the Preliminary Services in accordance with the requirements set forth in Appendix 4 (Preliminary Services) and Appendix 9 (Habitat Restoration Work Quality Control Requirements).

“Habitat Restoration Work Price” has the meaning set forth in subsection 7.1(A) (Habitat Restoration Work Price Generally).

“Hazardous Material” means any waste, substance, object or material defined or regulated as hazardous under Applicable Law, including “hazardous substances” as defined under CERCLA, “hazardous waste” as defined under RCRA and in California Health and Safety Code Section 25117, “hazardous material” as defined under US DOT regulations (49 CFR Parts 100–180), and “hazardous material” as defined in Oregon Administrative Rules 340-142-0001.

“Health and Safety Plan” means the Contractor’s plan for health and safety in implementing the Habitat Restoration Work, to be developed as part of the Preliminary Services in accordance with the Contract Standards and the requirements in Appendix 4 (Preliminary Services) and Appendix 8 (General Habitat Restoration Work Requirements).

“Health and Safety Representative” has the meaning set forth in subsection 6.8(A) (Health and Safety Representative).

“Insurance Requirement” means any rule, regulation, code or requirement issued by any insurance company that has issued a policy of Required Insurance under this Agreement or by any insurance company that has issued a policy of insurance required to be obtained and maintained by the KRRC in connection with this Agreement, compliance with which is a condition to the effectiveness of such policy.

“Intellectual Property” means any trade secrets, proprietary rights, patents, copyrights or trademarks recognized under Applicable Law.

“Key Personnel” means individuals identified in Appendix 12 (Key Personnel and Approved Subcontractors).

“KHP” means PacifiCorp’s Klamath Hydroelectric Project (FERC No. 2082) constructed between 1911 and 1962, consisting of the following eight hydroelectric developments: (1) East Side; (2) West Side; (3) Keno (non-generating); (4) J.C. Boyle; (5) Copco No. 1; (6) Copco No. 2; (7) Fall Creek; and (8) Iron Gate.

“KHSa” means the Klamath Hydroelectric Settlement Agreement dated February 18, 2010, as amended April 6, 2016 and November 30, 2016, between the United States Department of Interior, the United States Department of Commerce, the State of California, the State of Oregon, Humboldt County, the State of California, the Yurok Tribe, the Karuk Tribe, the Upper Klamath Water Users Association, certain conservation and fishing groups, PacifiCorp, as the licensee for the Klamath Hydroelectric Project, and various other Parties, as amended.

“Klamath County” means Klamath County, Oregon.

“KRRC” means the Klamath River Renewal Corporation, a not-for-profit corporation organized and existing under the laws of the State of California.

“KRRC Fault” means:

- (1) A breach by the KRRC of any of its obligations under this Agreement;
- (2) A failure of KRRC to obtain and maintain the insurance coverage set forth in Section 15.2 (KRRC-Provided Insurance) and to designate the Contractor as an additional insured on such policies;

(3) A breach of any representation or warranty by the KRRC under this Agreement;

(4) Willful misconduct of the KRRC or a Contractor Indemnatee; or

(5) A negligent act or omission of the KRRC or a Contractor Indemnatee.

“KRRC Governmental Approvals” means those Governmental Approvals which the KRRC will be the permittee of, and is responsible for applying for and paying the fees for, as set forth in Table 5-1 of Appendix 5 (Role of the KRRC, Contractor and Project Company in Obtaining the Governmental Approvals).

“KRRC Property” means the parcels of land and improvements to land owned by, or leased or licensed to, the KRRC as of the Habitat Project Work Implementation Contract Amendment Date, as described in Appendix 2 (KRRC Property Description).

“KRRC Representative” has the meaning set forth in subsection 18.6(B) (KRRC Representative).

“KRRC Regulatory Terms” means the terms and conditions of the KRRC Governmental Approvals.

“Legal Proceeding” means every action, suit, investigation, litigation, arbitration, administrative proceeding, including contested permit actions, and other legal or equitable proceeding having a bearing upon this Agreement or the work to be performed pursuant to this Agreement.

“Lien” means any and every lien against the Project or against any monies due or to become due from the KRRC to the Contractor under this Agreement, for or on account of the Contract Obligations, including mechanics’, materialmen’s, laborers’ and lenders’ liens.

“Local Impact Mitigation Fund” has the meaning set forth in subsection 4.3(H) (Local Impact Mitigation Fund)

“Loss-and-Expense” has the meaning set forth in subsection 16.1(B) (Indemnification-Related Defined Terms).

“Monthly Maintenance Service Report” has the meaning set forth in subsection 8.3(A) (Monthly Maintenance Service Reports).

“NEPA” means the National Environmental Policy Act, and applicable regulations promulgated thereunder, each as amended from time to time.

“NEPA Compliance Document” means the environmental assessment, environmental impact statement or other compliance document with respect to the FERC License Transfer Order or the FERC License Surrender Order prepared by FERC pursuant to NEPA, in draft and final forms as applicable.

“Non-Binding Mediation” means the voluntary system of dispute resolution through third-party mediation established by Article 13 (Dispute Resolution).

“OPUC” means the Oregon Public Utilities Commission.

“OPUC Funding Agreement” means the agreement dated January 24, 2017 between the KRRC and the OPUC providing funding for the Project.

“OSHA” means both the California Occupational Safety and Health Act, Chapter 3.2, Division 1, Title 8 of the California Code of Regulations, including all applicable regulations promulgated thereunder, and the Occupational Safety and Health Act of 1970, 29 U.S.C. 650 *et seq.*, including the applicable regulations promulgated thereunder, as amended or superseded from time to time.

“Overdue Rate” means the rate of interest set forth in California Code of Civil Procedure Section 685.010(a).

“PacifiCorp” means PacifiCorp, a regulated utility company organized and existing under the laws of the State of Oregon.

“PacifiCorp Property Access Agreement” means the property access agreement the Contractor will enter into with PacifiCorp pursuant to subsection 5.1(C) (PacifiCorp Property Access Agreement) in order to grant the Contractor a license to access PacifiCorp held property until PacifiCorp transfers such property to the KRRC pursuant to the terms of the KHSA.

“Parties” means the KRRC and the Contractor.

“Payment Bond” means the labor and materials payment bond provided by the Contractor to secure the payment obligations of the Contractor for any Habitat Project Work, as described in and maintained pursuant to this Agreement and in the form set forth in Transaction Form C (Form of Payment Bond).

“Payment Request” means a written submission by the Contractor in the form approved by the KRRC and accompanied by all required supporting documentation, requesting payment hereunder of any portion of the Habitat Restoration Work Price.

“Performance Bond” means the Performance Bond provided by the Contractor as described in and maintained pursuant to this Agreement and in the form set forth in Transaction Form B (Form of Performance Bond), as further described in Section 17.2 (Bonds).

“Permitted Encumbrances” means, as of any particular time, any one or more of the following:

(1) Encumbrances for utility charges, Taxes, rates and assessments not yet delinquent or, if delinquent, the validity of which is being contested diligently and in good faith by the Contractor and against which the Contractor has established appropriate reserves in accordance with generally accepted accounting principles;

(2) Any encumbrance arising out of any judgment rendered that is being contested diligently and in good faith by the Contractor, the execution of which has been stayed or against which a bond or bonds in the aggregate principal amount equal to such judgments shall have been posted with a financially-sound insurer and which does not have a material and adverse effect on the ability of the Contractor to perform the Project Habitat Work in accordance with this Agreement;

(3) Any encumbrance arising in the ordinary course of business imposed by law dealing with materialmen’s, mechanics’, workmen’s, repairmen’s, warehousemen’s, landlords’, vendors’ or carriers’ encumbrances created by law, or deposits or pledges which are not yet due or, if due, the validity of which is being contested diligently and in good faith by the Contractor and against which the Contractor has established appropriate reserves or bonded against, at the KRRC’s request;

(4) Servitudes, licenses, leases, easements, restrictions, rights-of-way, rights in the nature of easements or similar items which shall not individually or in the aggregate materially and adversely impair the ability of the Contractor to perform the Habitat Project Work in accordance with this Agreement,;

(5) Applicable zoning and building bylaws and ordinances, municipal bylaws and regulations, and restrictive covenants, which individually or in the aggregate do not materially interfere with and adversely affect the Habitat Project Work by the Contractor in accordance with this Agreement;

(6) Encumbrances which are created on or before the Contract Date;

(7) Encumbrances which are created by a change in Applicable Law on or after the Contract Date; and

(8) Any encumbrance created by an act or omission of the KRRC.

“Preliminary Services” means the Base Preliminary Services and any Additional Preliminary Services performed by the Contractor hereunder prior to the Habitat Project Work Implementation Contract Amendment Date.

“Preliminary Services Deliverable Material” means all documents, reports, studies, surveys, computer programs, warranties, manuals, submittals, licenses and other documents and materials required to be delivered by the Contractor to the KRRC in the performance of the Preliminary Services pursuant to this Agreement.

“Preliminary Services Fee” means the fee to be paid by the KRRC to the Contractor for the performance of the Preliminary Services consisting of both a fixed-price component and a time-and-materials component, as set forth in Section 4.6 of Appendix 4 (Preliminary Services).

“Preliminary Services Period” means the period between the Contract Date and the Habitat Project Work Implementation Contract Amendment Date.

“Preliminary Services Schedule” has the meaning set forth in Section 5.3 (Preliminary Services Schedule).

“Preliminary Services Tasks” means the tasks specified in Appendix 4 (Preliminary Services).

“Procurement Management Plan” means the Contractor’s plan for managing its procurement processes during performance of the Habitat Restoration Work, to be developed as part of the Preliminary Services in accordance with the requirements in Appendix 4 (Preliminary Services).

“Program Manager” means any individual or firm, or team of individuals or firms, under contract with the KRRC, including subcontractors, and designated by the KRRC from time to time as part of its professional services consulting, engineering or construction oversight team for purposes of administering this Agreement on behalf of the KRRC.

“Project” means the Project Implementation Work, Habitat Project Work, and all other work relating to Facilities Removal to be performed by the Project Company under the Project Agreement and by the Contractor under this Agreement.

“Project Agreement” means the Project Agreement for Design, Construction, Demolition and Habitat Restoration Services in connection with the Removal of the Lower Klamath River Dams, dated April 24, 2019, between the KRRC and the Project Company.

“Project Company” means Kiewit Infrastructure West Co., a corporation organized and existing under the laws of the State of Delaware.

“Project Company-Allocated KRRC Regulatory Terms” means the KRRC Regulatory Terms allocated to the Project Company pursuant to Appendix 6 (Allocation of Responsibility between the Contractor and the Project Company with respect to the KRRC Governmental Approvals).

“Project Company Fault” has the meaning set forth in Section 1.1 (Definitions) of the Project Agreement.

“Project Company Governmental Approvals” means those Governmental Approvals under which the Project Company will be the named permittee, and for which it is obligated to apply, as set forth in Table 5-3 of Appendix 5 (Role of the KRRC, Contractor and Project Company in Obtaining the Governmental Approvals).

“Project Company Regulatory Compliance Terms” means the Project Company-Allocated KRRC Regulatory Terms and the Project Company Governmental Approvals.

“Project Implementation Commencement Date Conditions” has the meaning set forth in subsection 6.3(A) (Project Implementation Commencement Date Generally) of the Project Agreement.

“Project Implementation Contract Amendment” has the meaning set forth in subsection 5.11(A) (Project Implementation Contract Amendment Generally) of the Project Agreement.

“Project Implementation Contract Amendment Date” has the meaning set forth in subsection 5.11(A) (Project Implementation Contract Amendment Generally) of the Project Agreement.

“Project Implementation Work” has the meaning set forth in Section 1.1 (Definitions) of the Project Agreement.

“Project Site” means the KRRC Property and the Adjacent and Related Lands.

“RCRA” means the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, and applicable regulations promulgated thereunder, each as amended from time to time.

“Reference Documents” means the documents identified as such in the Table of Contents to this Agreement, as existing in form and substance on the Habitat Project Work Implementation Contract Amendment Date and accessible at [_____] under the folder labeled “Reference Documents as of the Habitat Project Work Implementation Contract Amendment Date”.

“Regulated Site Condition” means:

- (1) Surface or subsurface structures, materials or conditions having historical, archaeological, cultural, religious, scientific or similar significance that is subject to the protections of Applicable Law;

(2) The presence or habitat of a species that is classified under Applicable Law as endangered, rare, threatened, of special concern, or similarly subject to the protections of Applicable Law;

(3) The presence anywhere in, on, under or adjacent to the Project Site on the Baseline Date of wells or underground storage tanks for the storage of chemicals, petroleum products or Regulated Substances that is subject to the protections of Applicable Law; and

(4) The treatment, storage, disposal or other handling of Regulated Substances anywhere in, on or under the Project Site (including presence in surface water, groundwater, soils or subsurface strata) that is subject to the protections of Applicable Law, but not including Regulated Substances used, stored or otherwise brought to the Project Site by the Contractor or any Subcontractor as provided in Section 4.6 (Regulated Site Condition).

“Regulated Substance” means (1) any oil, petroleum or petroleum product and (2) Hazardous Material; except that *de minimis* quantities of any of the foregoing shall not constitute a Regulated Substance hereunder.

“Related Project” has the meaning set forth in subsection 6.5(A) (Related Projects Generally).

“Related Projects Coordination Protocol” has the meaning set forth in subsection 6.5(A) (Related Project Generally).

“Reliance Documents” means the documents identified as such in the Table of Contents to this Agreement, as existing in form and substance on the Habitat Project Work Implementation Contract Amendment Date and accessible at [_____] under the folder labeled “Reliance Documents as of the Habitat Project Work Implementation Contract Amendment Date”.

“Relief Request Notice” has the meaning set forth in subsection 12.3(C) (Submittal of Relief Request).

“Required Insurance” means the insurance policies and coverage required to be provided by the Contractor under this Agreement, as set forth in Section 15.1 (Contractor Provided Insurance) and Appendix 11 (Insurance Requirements).

“Restricted Person” means any person who (or any member of a group of persons acting together, any one of which):

(1) Is disbarred, suspended, or otherwise disqualified from federal, State, or KRRRC contracting for any services similar in nature to the Contract Obligations (including those debarred by the California Division of Labor Standards Enforcement; see www.dir.ca.gov/dlse/debar.html);

(2) Was or is subject to any material claim of the United States, the State or the KRRRC in any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the determination of whether the person falls within this definition is being made, and which (in respect of any such pending claim, if it were to be successful) would, in the KRRRC’s view, in either case, be reasonably likely to materially affect the ability of the Contractor to perform its obligations under this Agreement;

(3) In the case of an individual, he or she (or in the case of a legal entity, any of the members of the board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence for any criminal offense (other than minor traffic offenses or misdemeanors) less than 5 years prior to the date at which the determination of whether the person falls within this definition is being made;

(4) Has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by the United States for reasons other than its trade or economic policies; or

(5) Has as its primary business the illegal manufacture, sale, distribution or promotion of narcotic substances or arms, or is or has been involved in terrorism.

“Security Instruments” means the Guaranty Agreement, the Performance Bond and the Payment Bond.

“Security Plan” means the Contractor’s plan for security at the Habitat Project Work Area in implementing the Habitat Restoration Work, to be developed with the Project Company as part of the Preliminary Services in accordance with the Contract Standards and the requirements in Appendix 4 (Preliminary Services) and Appendix 8 (General Habitat Restoration Work Requirements).

“Senior Supervisors” has the meaning set forth in subsection 18.6(A) (Contractor Representative and Senior Supervisors).

“Separate Contractor” means any person or entity under contract with the KRRC for the performance of work associated with the Related Projects.

“Siskiyou County” means Siskiyou County, California.

“SLBE Firms” means any small local business enterprise primarily based in Klamath County, Siskiyou County, Del Norte County, Humboldt County, Jackson County, Josephine County, Douglas County, Lake County, Trinity County, Shasta County, Tehama County or Modoc County, with particular preference given to enterprises based in Klamath County, Siskiyou County, Del Norte County, or Humboldt County.

“SLTBE Firms” means the SLBE Firms and the TBE Firms.

“SLTBE Goals” has the meaning set forth in subsection 10.3(H) (SLTBE Goals).

“Specifications” means the documents prepared by or on behalf of the Contractor comprising written technical descriptions of materials, equipment, restoration systems, standards, and workmanship for the Habitat Restoration Work and certain administrative details applicable thereto.

“State”, when used with respect to a matter as to which either of the States has any regulatory, administrative, approval, review or other legal right or powers, means either or both of the States having such right or powers, as applicable.

“States” means both the State of California and the State of Oregon.

“Subcontract” means any contract entered into by the Contractor, or a Subcontractor of the Contractor of any tier, with one or more persons in connection with the carrying out of the Contractor’s obligations under this Agreement, whether for the furnishing of

labor, materials, equipment, Supplies, services or otherwise, including contracts for Habitat Project Work.

“Subcontractor” means any person, other than the Contractor, that enters into a Subcontract, including Suppliers and any subcontractors performing Habitat Project Work.

“Supplier” means a manufacturer, distributor, materialman, fabricator, distributor, vendor or other supplier having a Subcontract to furnish Supplies.

“Supplies” means plant or other natural material, equipment systems or other supplies furnished in connection with the Habitat Project Work.

“Surety” means the surety company issuing the Performance Bond or Payment Bond, as applicable.

“Surrender Application” means the Application for Surrender of License for Major Project and Removal of Habitat Maintenance Services filed with FERC by the KRRC and PacifiCorp on September 23, 2016, seeking FERC’s approval to surrender the license for the Facilities and to achieve, by implementation of the Definite Plan, a free-flowing condition and volitional fish passage through the portions of the Klamath River occupied by the Facilities.

“Tax” means any tax, fee, levy, duty, impost, charge, surcharge, assessment or withholding, or any payment-in-lieu thereof, and any related interest, penalty or addition to tax.

“TBE Firms” means any tribal business enterprise that is at least 51% owned by an Indian tribe or by Indian tribe members. For the purposes of this definition, an “Indian tribe” means any Indian tribe, band, nation or other organized group or community of Indians, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians or is recognized as such by the State in which the tribe, band, nation or community resides.

“Term” has the meaning set forth in Section 3.1 (Effective Date and Term).

“Termination Date” means the earlier of the Expiration Date or the date of termination of this Agreement under Article 14 (Breach, Default, Remedies and Termination).

“Transaction Form” means any of the transaction forms identified in the Table of Contents to this Agreement.

“Transfer Application” means the Joint Application for Approval of License Amendment and License Transfer filed with FERC by the KRRC and PacifiCorp on September 23, 2016, seeking FERC’s approval of a separate license for the Facilities and to transfer the license for the Facilities from PacifiCorp to the KRRC.

“Uncontrollable Circumstance” means, and is limited to, any of the following acts, events or conditions that materially expands the scope, interferes with, delays or increases the cost of performing the Contractor’s obligations under this Agreement, to the extent that such act, event or condition is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Agreement on the part of the Contractor:

- (1) Errors, omissions or inaccuracies in the information contained in the Reliance Documents, as provided in subsection 4.8(B) (Reliance by Contractor on the Reliance Documents;

- (2) Defects in the interrelated work of the KRRC or a Separate Contractor, as provided in subsection 6.5(D) (Interrelated Work);
- (3) Disputes associated with the work of a Separate Contractor, as provided in subsection 6.5(E) (Disputes Associated with Separate Work);
- (4) Any KRRC order suspending the Habitat Restoration Work issued pursuant to Section 6.6 (Suspension of Work);
- (5) Delays in connection with KRRC testing or inspections, as provided in subsection 6.10(C) (KRRC Tests, Observations and Inspection);
- (6) The exercise by KRRC or any Governmental Body of any right either may have to restrict access to the Habitat Project Work Area;
- (7) Any filing, petition or similar request by the KRRC to change, amend, terminate or otherwise modify any Contractor-Allocated KRRC Regulatory Terms, without the prior written consent of and consultation with the Contractor, resulting in an amendment to, or modification of a Contractor-Allocated KRRC Regulatory Term;
- (8) Any KRRC Fault or any Project Company Fault, each not made due to Contractor Fault;
- (9) Any Project Company “Uncontrollable Circumstance” (as defined in the Project Agreement) that materially and adversely affects the performance by the Project Company of its obligations under the Project Agreement, where such non-performance materially and adversely affects the Contractor’s Contract Obligations;
- (10) The terms and conditions of any new Governmental Approval necessary for the Habitat Project Work but that, due to KRRC’s error or omission, is not identified until after the Habitat Project Work Implementation Contract Amendment Date; or
- (11) Any third party litigation filed against the KRRC, any Contractor Indemnatee, or any Governmental Body in connection with a Governmental Approval that results in a court order, settlement, or similar outcome restraining the performance of, or altering, the Habitat Project Work, to the extent not due to or arising out of Contractor Fault.

“Utilities” means any and all utility services and installations whatsoever (including gas, water, sewer, electricity, telephone, and telecommunications), and all piping, wiring, conduit, and other fixtures of every kind whatsoever related thereto or used in connection therewith.

“Water Resources Control Board” means the California State Water Resources Control Board.

SECTION 1.2. INTERPRETATION.

This Agreement shall be interpreted according to the following provisions, except to the extent the context or the express provisions of this Agreement otherwise require:

(A) Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(B) Persons. Words importing persons include firms, individuals, legal personal representatives, companies, associations, joint ventures, general partnerships, limited partnerships, limited liability corporations, trusts, business trusts, corporations, Governmental Bodies and other legal entities.

(C) Headings. The Table of Contents and any headings preceding the text of the Articles, Sections and subsections of this Agreement shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

(D) References Hereto. The terms “hereto”, “hereby”, “hereof”, “herein”, “hereunder” and any similar terms refer to this Agreement.

(E) References to Days and Time of Day. All references to days herein are references to calendar days, unless otherwise indicated, such as by reference to Business Days. If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act shall be extended to the next Business Day. Each reference to time of day is a reference to Pacific Standard time or Pacific Daylight Saving time, as the case may be.

(F) References to Including. The words “include”, “includes” and “including” are to be construed as meaning “include without limitation”, “includes without limitation” and “including without limitation”, respectively.

(G) References to Statutes. Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, codes of practice or instruments made under the relevant statute.

(H) References to the KRRC, Governmental Bodies and Private Persons. Each reference to the KRRC or a Governmental Body is deemed to include a reference to any successor to the KRRC or such Governmental Body or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of the KRRC or such Governmental Body. Each reference to a private person that is not an individual is deemed to include a reference to its successors and permitted assigns.

(I) References to Documents and Standards. Each reference to an agreement, document, standard, principle or other instrument includes a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned.

(J) References to All Reasonable Efforts. The expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of either Party, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each Party’s obligations hereunder to mitigate delays and additional costs to the other Party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances.

(K) References to Knowledge. All references to “knowledge”, “knowing”, “know” or “knew” shall be interpreted as references to a Party having actual knowledge.

(L) References to Dollar Amounts. All statements of, or references to, dollar amounts or money, including references to “\$” and “dollars”, are to the lawful currency of the

United States of America. All payments required to be made by either Party hereunder shall be made in dollars.

(M) References to Promptly. All references to “promptly” shall be interpreted as meaning such action shall occur within a reasonable period of time given the circumstances.

(N) Entire Agreement. This Agreement contains the entire agreement between the Parties hereto with respect to the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, this Agreement shall completely and fully supersede all other understandings and agreements among the Parties hereto with respect to such transactions.

(O) Standards of Workmanship and Materials. Any reference in the Contract Documents to materials, equipment, systems or supplies (whether such references are in lists, notes, schedules, or otherwise) shall be construed to require the Contractor to furnish the same in accordance with the grades and standards therefor indicated in the Contract Documents. Where the Contract Documents do not specify any explicit quality or standard for habitat restoration and maintenance materials or workmanship, the Contractor shall use only workmanship and new materials of a quality consistent with that of habitat restoration and maintenance workmanship and materials that are specified elsewhere in the Contract Documents, and the Contract Documents are to be interpreted accordingly.

(P) Technical Standards and Codes. References in the Contract Documents to all professional and technical standards and codes are to the most recently published professional and technical standards and codes of the institute, organization, association, authority or society specified, all as in effect as of the Contract Date. Unless otherwise specified to the contrary, all such professional and technical standards and codes shall apply as if incorporated in the Contract Documents.

(Q) Causing Performance. A Party shall itself perform, or shall cause to be performed, subject to any limitations specifically imposed hereby with respect to Subcontractors or otherwise, the obligations affirmatively undertaken by such party under this Agreement.

(R) Party Bearing Cost of Performance. All obligations undertaken by each Party shall be performed at the cost of the Party undertaking the obligation or responsibility, unless the other Party has explicitly agreed herein to bear all or a portion of the cost either directly, by reimbursement to the other Party or through an adjustment to the Contract Compensation.

(S) Interpretation of Contract Documents. The Contract Documents are intended to be complementary, and what is set forth in any one document is as binding as if set forth in each document. The Parties recognize that Contract Amendments may provide for specific modification to the terms and conditions of other Contract Documents, in which case the modified terms and conditions shall govern, as expressly set forth in the Contract Amendment. All terms and conditions of such other Contract Documents that are not expressly modified or deleted by a Contract Amendment, however, shall remain in effect. Subject to the foregoing terms in this Section, subsection (T) (Applicability and Consistency of Contract Standards) of this Section shall govern matters of interpretation related to the applicability and consistency of the Contract Documents, the requirements of which are included among the Contract Standards. Matters of interpretation and application of the Contract Documents that are agreed upon by the Parties may be reflected in a Contract Administration Memorandum prepared in accordance with Section 18.4 (Contract Administration).

(T) Applicability and Consistency of Contract Standards. The Contractor shall be obligated to comply only with those Contract Standards which are applicable in any particular

case. Where more than one Contract Standard applies to any particular performance obligation of the Contractor hereunder, each such applicable Contract Standard shall be complied with.

(U) Delivery of Documents in Digital Format. In the Contract Documents, the Contractor is obligated to deliver reports, records and other documentary submittals in connection with the performance of its duties hereunder. The Contractor agrees that all such documents shall be submitted to the KRRC in digital form, and at the KRRC's request in printed form. Digital copies shall consist of computer readable data submitted in any standard interchange format which the KRRC may reasonably request to facilitate the administration and enforcement of this Agreement.

(V) Severability. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision shall be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement, unless such continued effectiveness as modified would be contrary to the basic understandings and intentions of the Parties as expressed herein. If any provision of this Agreement is held to be invalid, unenforceable or illegal, the Parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect.

(W) Drafting Responsibility. The Parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement to the effect that ambiguous or conflicting terms or provisions should be construed against the Party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.

(X) No Third-Party Rights; States and PacifiCorp Excepted. This Agreement is exclusively for the benefit of the KRRC and the Contractor; provided, however, that the States and PacifiCorp, shall be third party beneficiaries hereof as provided by KHSa Appendix L and as expressly provided for in Article 16 (Indemnification) and Appendix 11 (Insurance Requirements). This Agreement shall not provide any other third parties with any remedy, claim, liability, reimbursement, cause of action or other rights.

(Y) Acting Reasonably and in Good Faith; Discretion. Each Party shall act reasonably and in good faith in the exercise of its rights hereunder, except where a Party has the right to act in its "discretion" by the express terms hereof. When a Party expressly has "discretion", it means that Party has the sole, absolute and unfettered discretion, with no requirement to act reasonably or provide reasons unless specifically required under the provisions of this Agreement. When a Party does not expressly have "discretion" it means that the Party shall act reasonably.

(Z) Counterparts and Delivery by Electronic Mail. This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Agreement. Any Party may deliver an executed copy of this Agreement by electronic mail and such counterpart shall be deemed effective upon receipt.

(AA) Governing Law. This Agreement shall be governed by and construed in accordance with the applicable laws of the State of California without regard to the choice of law provisions thereof.

(BB) Defined Terms. The definitions set forth in Section 1.1 (Definitions) shall control in the event of any conflict with any definitions used elsewhere in this Agreement.

(CC) Interpolation. If any calculation hereunder is to be made by reference to a chart or table of values, and the reference calculation falls between two stated values, the calculation shall be made on the basis of linear interpolation.

(DD) Accounting and Financial Terms. All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with generally accepted accounting principles.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE KRRC.

In addition to any other representations and warranties made by the KRRC in this Agreement, the KRRC represents and warrants that:

(A) Existence and Powers. The KRRC is a not-for-profit corporation organized and existing under and by virtue of the laws of the State of California, with the full legal right, power and authority to enter into and perform its obligations under this Agreement.

(B) Due Authorization and Binding Obligation. This Agreement has been duly authorized, executed and delivered by all necessary action of the KRRC and constitutes a legal, valid and binding obligation of the KRRC, enforceable against the KRRC in accordance with its terms and Applicable Law, except to the extent that its enforceability may be limited by the Bankruptcy Law or by equitable principles of general application.

(C) KHSA and Funding Agreements. The execution and delivery of this Agreement and the performance by the KRRC of its obligations hereunder does not require the consent or approval of any party to the KHSA or the Funding Agreements, except such as have been duly obtained as of the Contract Date.

(D) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution, delivery and performance of this Agreement by the KRRC, except such as have been duly obtained or made.

(E) No Conflict. Neither the execution nor delivery by the KRRC of this Agreement nor the performance by the KRRC of its obligations in connection with the transactions contemplated hereby nor the fulfillment by the KRRC of the terms or conditions hereof (1) conflicts with, violates or results in a breach of any of its organizational or charter documents; or (2) conflicts with, violates or results in a breach of any contract, agreement or instrument to which the KRRC or any of its Affiliates is a party or by which the KRRC or any of its Affiliates or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

(F) No Litigation. There is no Legal Proceeding, at law or in equity, before or by any court, arbitral tribunal or other Governmental Body pending against the KRRC, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Agreement by the KRRC or the validity, legality or enforceability of this Agreement against the KRRC or on the ability of the KRRC to perform its obligations hereunder.

SECTION 2.2. REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR.

In addition to any other representations and warranties made by the Contractor in this Agreement, the Contractor represents and warrants that:

(A) Existence and Powers. The Contractor is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia and has the authority to do business in the States and in any other state in which it conducts its

activities, with the full legal right, power and authority to enter into and perform its obligations under this Agreement.

(B) Due Authorization and Binding Obligation. This Agreement has been duly authorized, executed and delivered by all necessary corporate action of the Contractor and constitutes a legal, valid and binding obligation of the Contractor, enforceable against the Contractor in accordance with its terms, except to the extent that its enforceability may be limited by the Bankruptcy Law or by equitable principles of general application.

(C) No Conflict. Neither the execution nor delivery by the Contractor of this Agreement nor the performance by the Contractor of its obligations in connection with the transactions contemplated hereby nor the fulfillment by the Contractor of the terms or conditions hereof (1) conflicts with, violates or results in a breach of any of its organizational or charter documents; or (2) conflicts with, violates or results in a breach of any contract, agreement or instrument to which the Contractor or any of its Affiliates is a party or by which the Contractor or any of its Affiliates or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

(D) No Commitments Limiting Ability to Perform Contract Obligations. The Contractor has no commitments, obligations, or impediments of any kind that would have a material and adverse impact on the ability of the Contractor to perform the Contract Obligations in accordance with the Contract Standards. The Contractor covenants that it will not enter into any such commitment throughout the Term.

(E) No Organizational Approvals Required. No internal approval, authorization, order or consent is required for the valid execution and delivery of this Agreement by the Contractor except as such have been duly obtained or made as of the Contract Date.

(F) Licensing and Registration Requirements. The Contractor possesses all professional licenses required to perform the Habitat Project Work, subject to obtaining all Contractor Governmental Approvals required under this Agreement, and is not in violation of any of the terms or conditions of such licenses.

(G) No Litigation. There is no Legal Proceeding, at law or in equity, before or by any court, arbitral tribunal or other Governmental Body pending against the Contractor, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Agreement by the Contractor or the validity, legality or enforceability of this Agreement against the Contractor or on the ability of the Contractor to perform its obligations hereunder.

(H) Claims and Demands. There are no material and adverse claims or demands based in environmental, contract or tort law pending against the Contractor or any of its Affiliates with respect to any facilities designed or constructed by the Contractor or any of its Affiliates that would have a material and adverse effect upon the ability of the Contractor to perform the Contract Obligations.

(I) Applicable Law Compliance. To the best of its knowledge after due inquiry, the Contractor and its Affiliates are not in material violation of any law, order, rule or regulation with respect to any facilities designed or constructed by the Contractor or any of its Affiliates.

(J) Information Supplied by the Contractor. The information supplied by the Contractor in the documents identified in Appendix 13 (Contractor-Supplied Information) in connection with the Project are true, correct and complete in all material respects.

(K) Intellectual Property. To the Contractor's knowledge after due inquiry, the Contractor owns, or has sufficient rights to use, all Intellectual Property necessary for the Habitat Project Work without any material conflict with the rights of others.

(L) Practicability of Performance. Subject to, and in accordance with, the express terms of this Agreement, the Contractor assumes the risk of the practicability and possibility of performance of its Contract Obligations in compliance with the requirements of this Agreement and agrees that sufficient consideration for the assumption of such risk is included in the Contract Compensation.

ARTICLE 3

TERM

SECTION 3.1. EFFECTIVE DATE AND TERM.

(A) Term. This Agreement shall become effective, and the term hereof (the “**Term**”) shall commence, on the Contract Date, and shall continue in effect until all of the Contractor Regulatory Compliance Terms have expired or are otherwise no longer in force and effect (the “**Expiration Date**”) or, if this Agreement is terminated earlier by either Party in accordance with their respective termination rights under Article 14 (Breach, Default, Remedies and Termination), to the Termination Date.

(B) Commencement of Habitat Project Work. The obligation of the Contractor to perform the Habitat Project Work shall commence on the Habitat Project Work Commencement Date and shall continue throughout the balance of the Term in accordance with and subject to the express terms of this Agreement.

(C) Accrued Rights. No termination of this Agreement shall:

(1) Limit or otherwise affect the respective rights and obligations of the Parties accrued prior to the Termination Date; or

(2) Preclude either Party from impleading the other Party in any Legal Proceeding originated by a third party as to any matter arising during the Term.

SECTION 3.2. SURVIVAL.

Notwithstanding any other provision of this Agreement, this Section and the following provisions hereof shall survive the expiration or any earlier termination of this Agreement:

(1) Article 2 (Representations and Warranties);

(2) Article 13 (Dispute Resolution);

(3) Article 14 (Breach, Default, Remedies and Termination), as applicable to the surviving obligations of the Parties following the Termination Date;

(4) Article 16 (Indemnification), including all of the indemnities, limitations and releases set forth therein, with respect to claims first arising or occurring during the Term;

(5) Section 18.8 (Interest on Overdue Obligations);

(6) Section 18.11 (Retention and Audit of Books and Records);

(7) Appendix 11 (Insurance Requirements), with respect to claims first arising or occurring during the Term;

(8) All provisions of this Agreement with respect to payment obligations of the Contractor or the KRRC, in each case, that accrued prior to the Termination Date;

(9) Any other provisions which either expressly or by their context should survive expiration or early termination of this Agreement or the completion of the Contract Obligations; and

(10) Any provisions necessary to give effect to the provisions referenced or described in this Section.

ARTICLE 4

OVERVIEW AND GENERAL TERMS

SECTION 4.1. PROJECT OVERVIEW.

(A) Project Background. The Project is being implemented pursuant to the terms of the KHSa, a settlement agreement which represents the culmination of a lengthy period of planning, development and dispute resolution among the 53 KHSa signatories. The KRRC was formed as a California not-for-profit corporation pursuant to the KHSa for purposes of implementing the Project. Implementation requires, as preconditions, primarily environmental reviews, FERC license transfer and surrender, the issuance of governmental licenses, permits and approvals, and PacifiCorp land transfer. Project engineering, design, permitting and cost-estimating work has been undertaken by the Project Company, and by the Contractor as a subcontractor to the Project Company, under the Project Agreement in anticipation of the implementation of the Project once all preconditions have been satisfied. Additional preliminary services are to be provided by the Project Company under the Project Agreement and by the Contractor under this Agreement prior to the Project Implementation Contract Amendment Date under the Project Agreement and the Habitat Project Work Implementation Contract Amendment Date under this Agreement, which are expected to occur concurrently. The Project consists of Facilities Removal to be performed by the Project Company under the Project Agreement, and of the related Habitat Restoration Work and Habitat Maintenance Services to be performed by the Contractor hereunder.

(B) Habitat Project Work Generally. The Habitat Project Work consists generally of rim stability improvements; sourcing of plant materials; seed collection and propagation; invasive exotic vegetation removal; terrestrial restoration of former reservoir and other disturbed areas with native vegetation and engineered habitat features, including excavation to optimize near-channel habitat and improve floodplain and tributary connectivity, installation of large wood habitat features, riparian bank revegetation, and installation of bank stability or channel fringe complexity features in select locations; installation of irrigation systems; plant establishment and maintenance; and plant monitoring and reporting. This subsection is provided for summary and overview purposes only, is non-binding on the Parties in all respects, and shall not be used in the interpretation or application of this Agreement.

(C) Contractor Regulatory Compliance Terms Generally. The Contractor Regulatory Compliance Terms are those Governmental Approval terms and conditions required for the Contractor to perform the Habitat Project Work. The KRRC is responsible for managing the application process for, and obtaining, the KRRC Governmental Approvals, of which certain KRRC Regulatory Terms will be Contractor-Allocated KRRC Regulatory Terms and therefore Contractor Regulatory Compliance Terms. The Contractor is responsible for managing the application process for, and obtaining, the Contractor Governmental Approvals. The Contractor shall reasonably cooperate with and assist the KRRC in applying for and obtaining the KRRC Governmental Approvals, but shall have no responsibility to obtain or to comply with the terms and conditions any KRRC Regulatory Terms that are not Contractor-Allocated KRRC Regulatory Terms.

(D) Reliance by the KRRC. The Contractor acknowledges and agrees that the KRRC is entering into this Agreement in reliance on the Contractor's expertise with respect to the performance of the Contract Obligations. The Contractor recognizes that the Project will serve an essential public service and is critically important in order to enable the KRRC to continue to meet its obligations under the KHSa, the Funding Agreements and the FERC License Orders and its obligations as permittee under the KRRC Governmental Approvals.

SECTION 4.2. TERMS OF PRICING.

(A) Preliminary Services and Pricing and Terms. The Preliminary Services Fee and the scope of the Preliminary Services have been negotiated and agreed to by the Parties and set forth in Section 5.3 (Compensation for Preliminary Services) as of the Contract Date.

(B) Contract Compensation. The Habitat Restoration Work Price and the Habitat Maintenance Fee have been established as of the Contract Date on the basis and subject to the terms and conditions described in Section 5.9 (Habitat Project Work Implementation Contract Amendment).

(C) Expected Amendment of this Agreement Prior to Commencement of the Habitat Project Work. As of the Contract Date, the Parties expect (but without any obligation or liability whatsoever for the failure to agree to the same) to enter into the Habitat Project Work Implementation Contract Amendment following the receipt of all KRRC Governmental Approvals and Contractor Governmental Approvals necessary to commence the Habitat Project Work, and that the Habitat Project Work will thereupon commence.

SECTION 4.3. OVERVIEW OF PROJECT RISK ALLOCATION AND MITIGATION.

(A) Non-Binding Summary and Overview. This Section is provided for summary and overview purposes only, is non-binding on the Parties in any respect, and shall not be used in the interpretation or application of this Agreement. This overview is qualified in its entirety by the specific terms and conditions of the various agreements and instruments that are referred to herein, including this Agreement and the Project Agreement.

(B) Liability Protection Package Generally. The Project involves a number of risks to the KRRC, the Contractor and the Project Company that are intrinsic to Facilities Removal, and a comprehensive risk allocation and mitigation program has been developed that the KRRC believes is appropriate to the Project. The Project risk allocation and mitigation program consists primarily of the package of liability protections that are summarized in this Section.

(C) Intrinsic Risks in Facilities Removal. Among the general risks intrinsic to Facilities Removal that the KRRC, the Contractor, the Project Company and the Contractor Indemnitees have identified and evaluated are the risks of (1) non-performance by any Project contractor; (2) the occurrence of insurable or uninsurable force majeure events or other circumstances outside the control of the KRRC, the Project Company or the Contractor; (3) impacts on public lands and private property, businesses or interests, and claims filed by persons alleging damage or injury from those impacts, or otherwise objecting to Facilities Removal and its consequences; and (4) potential actions that may be taken by Governmental Bodies to enforce, augment or modify the terms and conditions of the Governmental Approvals.

(D) Liability Protection Package Elements. The primary elements of the liability protection package for the Project consist of (1) parent company guarantees and surety bonds required to be provided by the Contractor and the Project Company under this Agreement and the Project Agreement; (2) the insurance required to be provided under this Agreement and the Project Agreement; (3) the express indemnity protections provided by the Contractor under this Agreement and by the Project Company under the Project Agreement; (4) the commitments of the Contractor under this Agreement to comply with the Contractor Regulatory Compliance Terms; (5) the establishment of the Local Impact Mitigation Fund to handle claims for damages resulting from Facilities Removal; (6) the establishment of the Facilities Removal Defense Fund

to pay legal expenses incurred defending certain claims that may arise from Facilities Removal; and (7) the KRRC contingency reserve.

(E) Contractor Performance Guarantees. The Project is expected to be implemented in part by the Contractor under this Agreement and in part by the Project Company under the Project Agreement. The risk of contract non-performance has been mitigated by unconditional contract performance guarantees provided respectively by the parent companies of the Contractor and the Project Company, and by performance bonds furnished respectively by the Contractor and the Project Company.

(F) Insurance. The insurance policies required to be provided by the Contractor under this Agreement and by the Project Company under the Project Agreement include coverage for (1) builder's risk (in the case of the Project Company only); (2) professional liability; (3) commercial general liability; (4) commercial automobile liability; (5) workers' compensation and employer's liability; (6) excess liability; and (7) watercraft and aircraft liability. The KRRC is also obligated under this Agreement and under the Project Agreement to provide contractor's pollution liability and pollution legal liability insurance, and will acquire an owner's interest policy as well.

(G) Contractor Regulatory Compliance Terms. The Contractor Regulatory Compliance Terms contain provisions under which various Governmental Bodies have the right to impose obligations, to be determined in the future, relating to restoration of habitat and adaptive management requirements arising from the Facilities Removal. The liability associated with such terms and conditions has been transferred to the Contractor in accordance with and subject to the express terms of this Agreement.

(H) Local Impact Mitigation Fund. The KRRC has established, or will establish, a separate fund (the "**Local Impact Mitigation Fund**") to handle certain damages or injuries that may result from the impact of Facilities Removal. The Local Impact Mitigation Fund is or will be a dedicated balance sheet reserve or escrow fund sized to respond to such damages based on detailed, formal risk analyses.

(I) Facilities Removal Defense Fund. The KRRC has also established, or will establish, a separate fund (the "**Facilities Removal Defense Fund**") to pay for the legal expenses incurred by (1) the Contractor Indemnitees, and (2) the Project Company and the Contractor (to the extent such entities are not required by the Project Agreement or this Agreement, respectively, to indemnify for such claim) in defending potential claims filed by persons alleging damages or injuries resulting from the impact of Facilities Removal. The Facilities Removal Defense Fund, a companion fund to the Local Impact Mitigation Fund, also is or will be a dedicated KRRC balance sheet reserve or escrow fund established for similar purposes.

(J) KRRC Contingency Reserve. The KRRC has further reserved funds on its balance sheet for contingency events that may or may not occur under the Project Agreement or this Agreement, including Uncontrollable Circumstances. These reserves, along with any other available KRRC funds, are also available to respond to any KHSa indemnification claim by the States or PacifiCorp made pursuant to Section 7.1.3 of the KHSa in the event that any of the other liability protections referred to in this Section are insufficient to pay such claims.

SECTION 4.4. CONTRACTOR RESPONSIBILITIES GENERALLY.

(A) Scope of the Contract Obligations. The Contractor agrees to perform all Contract Obligations in accordance with the Contract Standards. In no event shall the Contractor commence, or be obligated to commence, the Habitat Restoration Work or Habitat Maintenance Services prior to Habitat Project Work Commencement Date. Upon and following

the Habitat Project Work Commencement Date, the Contractor shall be solely responsible for undertaking and performing the Habitat Restoration Services and Habitat Maintenance Services in accordance with the Contract Documents.

(B) Compliance with Funding Requirements. The Contractor shall comply with all applicable Funding Requirements; per diem and mileage rates for travel reimbursement purposes approved or set by the General Services Administration (GSA); prevailing wage requirements; and State audit requirements. The Contractor shall include the applicable Funding Requirements in all Subcontracts in a manner that effectively establishes the right of the Funders to enforce such requirements. In the event of a change in applicable Funding Requirements (including any such change in prevailing wage or other requirements) effective following the Contract Date, the Contractor shall be entitled to an adjustment to the Contract Compensation to account for any additional incremental cost of compliance. The Contractor shall, upon request, provide the KRRC with an acknowledgment of compliance with any Funding Requirement, together with appropriate supporting documentation not already in the KRRC's possession.

(C) Cooperation. The Contractor agrees to reasonably cooperate with the KRRC and any other contractor engaged by the KRRC in connection with the work to be performed toward completion of the Project and any Related Project, including the Program Manager. The KRRC and the Contractor each recognizes that a cooperative and collaborative environment among all persons engaged in performing such work is essential to the successful implementation of the Project and each agree to use all reasonable efforts to work with all such other persons toward fostering such an environment.

(D) Responsibility for Personnel and Subcontractors. All obligations of the Contractor under this Agreement shall be performed by Contractor employees, agents or Subcontractors (subject to the limitations set forth in Article 10 (Management, Labor and Subcontractors)) who are qualified to perform the specific services and meet all licensing and certification requirements of Applicable Law. The Contractor shall be fully responsible, in accordance with, and subject to, the terms and conditions of this Agreement, for all Contract Obligations performed on behalf of Contractor by its employees, agents or Subcontractors.

SECTION 4.5. ENVIRONMENTAL REVIEW.

(A) EIR. As of the Contract Date, a draft EIR is being prepared with respect to the Project by the Water Resources Control Board under CEQA. The Parties acknowledge and agree that the finalization and certification of the EIR is a condition to the occurrence of the Habitat Project Work Commencement Date.

(B) NEPA Compliance Document. As of the Contract Date, applications for the FERC License Orders have been filed. The Parties acknowledge and agree that the issuance of the FERC License Surrender Order will require the preparation of a NEPA Compliance Document, and that the finalization of a NEPA Compliance Document and the FERC License Surrender Order are conditions to the occurrence of the Habitat Project Work Commencement Date.

(C) EIR and NEPA Compliance Document Environmental Mitigation Measures. The Parties acknowledge and agree that the environmental mitigation measures required under the certified EIR and the NEPA Compliance Document shall be incorporated in the Habitat Maintenance Services as confirmed or revised as part of the Habitat Project Work Implementation Contract Amendment, to the extent such amendment is entered into hereby by the Parties.

SECTION 4.6. REGULATED SITE CONDITIONS.

In performing the Habitat Project Work, the Contractor shall exercise due care, in light of all relevant facts and circumstances, to avoid exacerbating any Regulated Site Condition after the location and existence of such Regulated Site Condition has been disclosed to the Contractor or becomes actually known by the Contractor through physical observation. Notwithstanding anything to the contrary in this Section, the Contractor shall bear full responsibility for the Contractor's handling, treatment, storage, removal, remediation, avoidance or other appropriate action (if any), with respect to:

(1) any Regulated Substance present at, on, in, under or migrating or emanating to or from the Project Site, that was generated by or brought or caused to be brought to the Project Site or the Habitat Project Work Area by any act or omission of the Contractor or any of its Subcontractors (which shall not include any Regulated Substances (including arsenic) contained in the sediments at the Project Site); and

(2) the Contractor shall indemnify, defend and hold harmless the Contractor Indemnitees in accordance with and to the extent provided in Article 16 (Indemnification) from and against all Loss-and-Expense to the extent resulting from Contractor's failure to meet its responsibilities under clause (1) of this Section;.

provided, however, and notwithstanding anything in this Agreement to the contrary, the Contractor shall have no liability hereunder or otherwise (including in respect of any indemnification or performance obligations and notwithstanding any changes to any Contractor Regulatory Compliance Term) relating to, arising from or in connection with (i) any Regulated Substance pre-existing in any sediment at the Project Site or Habitat Project Work Area that was not first introduced by the Contractor, or (ii) any arsenic present in soil or groundwater that was not first introduced by the Contractor. The Parties agree that any cost or liability associated with such Regulated Substance shall be exclusively handled through the Local Impact Mitigation Fund or the KRRC's insurance.

SECTION 4.7. ACCESS TO AND SUITABILITY OF THE HABITAT PROJECT WORK AREA.

(A) Familiarity with the Habitat Project Work Area. Prior to the Contract Date, the Contractor's agents and representatives shall have inspected and become familiar with the Habitat Project Work Area, their physical condition relevant to the obligations of the Contractor pursuant to this Agreement, including surface conditions, natural terrain, vegetation, roads, Utilities, topographical conditions and air and water quality conditions. Further, as of the Contract Date, the Contractor shall be familiar with all local and other conditions which may be material to the Contractor's performance of the Contract Obligations (including transportation; seasons and climate; access, availability, disposal, handling and storage of materials and equipment; and availability and quality of labor and Utilities); the Contractor shall have reviewed all information made available by the KRRC and the Project Company regarding the Project, the Project Site, the Habitat Project Work Area and the Habitat Project Work provided to or developed by the Contractor pursuant to or in connection with this Agreement and the Project Agreement, including the information contained in the Reference Documents; the Contractor shall have made all other site investigations that it deems necessary to make a determination as to the condition of the Project, the Project Site and the Habitat Project Work Area, to confirm that the Habitat Project Work Area constitutes an acceptable and suitable site for the Habitat Restoration Work and the Habitat Maintenance Services, and to confirm the Contract Compensation. Subject to (i) the proviso at the end of Section 4.6 (Regulated Site Condition) and (ii) the Contractor's relief for Uncontrollable Circumstances, the Contractor accepts the Project Site and Habitat Project Work Area in their "as-is" condition and acknowledges that the Project Site and Habitat Project

Work Areas contains undeveloped property containing natural and wild waters, terrain, plants and animals.

(B) Independent Verification of KRRC-Provided Project Site Information. The Contractor acknowledges that it is responsible for the independent verification and confirmation of any Project Site and Habitat Project Work Area information supplied to it in good faith. Subject to (i) the proviso at the end of Section 4.6 (Regulated Site Condition) and (ii) the Contractor's relief for Uncontrollable Circumstances, the Contractor assumes full responsibility for inspecting the Project Site and the Habitat Project Work Area and for the means and methods that it employs when performing the Habitat Project Work.

(C) Access to the Project Site and Habitat Project Work Area. Following the transfer of any PacifiCorp owned properties to the KRRC, the execution of this Agreement shall be deemed to constitute the granting of a license to the Contractor to access the Project Site and the Habitat Project Work Area for the purposes of performing the Contract Obligations. The Contractor shall assume all risks associated with its accessing the Project Site and Habitat Project Work Area and shall indemnify, defend and hold harmless the Contractor Indemnitees in accordance with and to the extent provided in Article 16 (Indemnification) from and against all Loss-and-Expense resulting therefrom. For the duration of the Term, the Contractor shall have all Project Site and Habitat Project Work Area access rights as are necessary for the performance of the Contract Obligations in accordance with the Contract Documents and Contract Standards and such access rights shall not be subject to any further KRRC approval. Notwithstanding any of the foregoing, the Contractor shall at all times comply with the Project Site and Habitat Project Work Area access requirements and restrictions expressly set forth in the Contract Documents.

(D) Water Supply. In connection with the negotiation of the Habitat Project Work Implementation Contractor Amendment, pursuant to Section 5.9 (Habitat Project Work Implementation Contract Amendment), the KRRC and the Contractor shall negotiate an appropriate allocation of responsibility for obtaining water necessary for the performance of any Habitat Project Work.

SECTION 4.8. INFORMATION PROVIDED BY OR ON BEHALF OF THE KRRC.

(A) Generally. The KRRC makes no representation or warranty with respect to any information provided to the Contractor by or on behalf of the KRRC in connection with this Agreement except as specifically provided in subsection (B) (Reliance by Contractor on the Reliance Documents) of this Section. Except (1) for information set forth in Reliance Documents, and (2) as set forth in the Contract Documents (including in relation to relief for Uncontrollable Circumstances), the Contractor shall assess all risks related to the Contract Obligations and independently verify and confirm all information supplied to it by or on behalf of the KRRC and upon which the Contractor elects to rely in connection herewith. Except as otherwise provided in subsection (B) (Reliance by Contractor on the Reliance Documents) of this Section and as may reasonably be requested by the Contractor, agreed upon by the KRRC in its discretion, and expressly established in the Habitat Project Work Implementation Contract Amendment, the Contractor shall have no right to relief hereunder or to make any claim against the KRRC, or to seek any adjustment to the Contract Compensation as the result of any error, omission or insufficiency relating to any information provided to the Contractor by or on behalf of the KRRC in connection with this Agreement.

(B) Reliance by Contractor on the Reliance Documents. The Contractor shall be entitled to the reasonable use of the information contained in the Reliance Documents in performing the Habitat Restoration Work, shall not be required to re-perform the work required to develop such information, and shall be entitled to fully rely on the Reliance Documents as provided in this Section. If the Contractor establishes that any error, omission or insufficiency

in the information contained in the Reliance Documents has a material and adverse impact on the Contractor's cost or time for performance of the Habitat Restoration Work, then the Contractor shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in Article 12 (Uncontrollable Circumstances).

(C) No Reliance by Contractor on the Reference Documents. The Reference Documents are provided for reference purposes only and the Contractor shall not be entitled to rely on the information contained in any Reference Document. No misstatement, omission, insufficiency or otherwise in a Reference Document shall entitle the Contractor to Uncontrollable Circumstance or other relief hereunder.

SECTION 4.9. ENGAGEMENT OF THE PROGRAM MANAGER AND OTHER KRRC REPRESENTATIVES.

The Contractor shall reasonably cooperate with the Program Manager and any other representative designated by the KRRC from time to time. The services of the Program Manager and other KRRC-designated representatives may include the following:

- (1) Reviewing and monitoring the performance of the Habitat Project Work;
- (2) Reviewing and monitoring the performance of the Habitat Project Work;
- (3) Reviewing Payment Requests and Billing Statements; and
- (4) Reviewing and advising the KRRC with respect to any material changes to the Habitat Maintenance Services during the Term.

It is understood that the services intended to be provided by the Program Manager shall be of an observational and review nature only, and that the Program Manager shall not have authority to interfere with, halt or delay in any way the Habitat Project Work. The fees of the Program Manager shall be paid by the KRRC. Nothing in this Section shall be construed to limit the right of any KRRC personnel or representative having the authority to protect health and safety from inspecting the Habitat Project Work or otherwise exercising any power permitted under Applicable Law.

SECTION 4.10. MANAGEMENT OF KRRC REAL PROPERTY.

The KRRC shall be responsible for all inspections, security, insurance and other management obligations with respect to the Project Site, including KRRC Property and the Habitat Project Work Area that are normally attendant to property ownership. The Contractor shall have no such property management responsibility except insofar as any of the Contract Obligations may impose similar responsibilities on the Contractor. The Contractor shall, however, promptly inform the KRRC of any circumstance occurring on the KRRC Property or the Habitat Project Work Area that should be brought to the attention of the KRRC in light of the KRRC's property management obligations.

SECTION 4.11. DELIVERABLE MATERIAL.

(A) KRRC Irrevocable License and Use of Deliverable Material. The Contractor hereby assigns to the KRRC an irrevocable license to all Deliverable Material and all ideas, methods or information specifically developed for such Deliverable Material. All such documents and information, including all ideas or methods represented by such information, may be used as the KRRC reasonably determines and shall be delivered to the KRRC at no additional cost to the KRRC as required hereunder, upon request or upon the Termination Date. The KRRC's use

of any such Deliverable Material (including drafts, working copies, and incomplete documents or information such as ideas or methods or information) for any purpose other than the Project, shall be at the KRRC's own risk, and the Contractor shall have no liability therefor.

(B) Contractor Ownership of Deliverable Material. Except as provided in subsection (A) of this Section, the Contractor hereby retains all right, title and interest, including any copyrights, patents, or any other Intellectual Property rights in all Deliverable Material and all ideas, methods or information specifically developed for such Deliverable Material.

ARTICLE 5

PRELIMINARY SERVICES AND HABITAT PROJECT WORK IMPLEMENTATION CONTRACT AMENDMENT DATE

SECTION 5.1. SCOPE OF THE PRELIMINARY SERVICES.

(A) Generally. The Contractor shall render and perform the Preliminary Services to and for the KRRC in accordance with Appendix 4 (Preliminary Services) and the terms and conditions of this Agreement. The Contractor's responsibility to perform the Preliminary Services shall include the employment of or the subcontracting for all necessary professionals, technicians and engineers, properly qualified, licensed and skilled in the various aspects of the Preliminary Services. All Preliminary Services shall be performed in accordance with the Contract Standards, as applicable.

(B) Preliminary Services Tasks. The Contractor acknowledges that the Preliminary Services are divided into discrete Preliminary Services Tasks associated with the advancement of the Preliminary Services. The Contractor shall commence the Preliminary Services as of the Contract Date. The Contractor shall proceed to complete the Preliminary Services in coordination with the KRRC and shall perform work among Preliminary Services Tasks on a concurrent basis as appropriate in order to achieve the Preliminary Services Schedule objectives. The Contractor shall be compensated for Preliminary Services on both a fixed fee and a time-and-materials basis in accordance with Section 5.3 (Compensation for Preliminary Services).

(C) PacifiCorp Property Access Agreement. The Parties acknowledge and agree that the execution, delivery and effectiveness of the PacifiCorp Property Access Agreement is a condition to the ability of the Contractor to perform some of the Preliminary Services Tasks. The Parties agree to work together to cause the PacifiCorp Property Access Agreement to be negotiated, completed and effective consistent with the Preliminary Services Schedule and establish terms and conditions that are reasonably necessary for the timely performance of the Preliminary Services. The PacifiCorp Property Access Agreement will establish the terms and conditions of the Contractor's access to the Project Site prior to the transfer of any PacifiCorp properties to the KRRC. Following any such transfer of PacifiCorp property to the KRRC, the Contractor shall be authorized to access such property pursuant to subsection 4.7(C) (Access to Project Site and Habitat Project Work Area).

(D) Uncontrollable Circumstance Relief Inapplicable During the Preliminary Services Period. The Uncontrollable Circumstance relief provisions of this Agreement apply only during the Habitat Project Work. Preliminary Services to be provided hereunder are in the nature of professional services. In the event that any circumstance expands or limits the Preliminary Services workscope or extends or reduces the expected time frame for its completion, the Parties shall negotiate, in good faith, appropriate adjustments to the Preliminary Services Schedule and additional compensation provided for in Appendix 4 (Preliminary Services).

(E) KRRC to Provide Assurance of Funding. In order to assure the Contractor that the Funders are funding the KRRC in a manner consistent with the KRRC's payment obligations to the Contractor during the Preliminary Services Period, the KRRC shall, when reasonably requested by the Contractor, provide bank statements, financial statements or other materials or information reasonably required to demonstrate KRRC's ability to meet such payment obligations. The KRRC shall not be required to provide such materials more than once a month.

SECTION 5.2. CHANGES TO THE SCOPE OF THE PRELIMINARY SERVICES.

(A) Generally. The KRRC shall have the right to make changes to the scope of the Preliminary Services set forth in Appendix 4 (Preliminary Services) at any time, in its discretion, by written notice to the Contractor, subject to the terms and conditions of this Section. Changes to the scope of the Preliminary Services may be made by the KRRC to account for any reason determined by the KRRC.

(B) Additional Preliminary Services. Except as otherwise specifically provided in this Section, the Contractor shall be entitled to an equitable adjustment to the Preliminary Services Fee and the Preliminary Services Schedule in the event of any expansion of the scope of the Base Preliminary Services pursuant to this Section (the “**Additional Preliminary Services**”). Any expansion of the scope of the Base Preliminary Services under this Section and the corresponding equitable adjustment to the Preliminary Services Fee and the Preliminary Services Schedule shall be reflected in a Contract Amendment. The Contractor shall not be entitled to compensation for any Additional Preliminary Services beyond the scope of the Base Preliminary Services unless, prior to the performance of any such Additional Preliminary Services, the Contractor shall have received express written authorization from the KRRC to perform the Additional Preliminary Services. In the absence of any KRRC-directed change to the scope of the Base Preliminary Services reflected in a Contract Amendment, the Contractor shall have no obligation to perform work outside the scope of the Base Preliminary Services.

(C) Additional Preliminary Services Resulting from Delay. Extra costs resulting from delays caused by Uncontrollable Circumstances shall be deemed to be costs resulting from Additional Preliminary Services, as and to the extent provided in Article 12 (Uncontrollable Circumstances) if the Contractor demonstrates that the costs claimed (1) resulted from time or expenses actually incurred in performing the Preliminary Services, (2) were incurred by Contractor as a direct result of the delay and not otherwise within the scope of the Preliminary Services, and (3) are reasonably documented.

(D) Exclusions from Additional Preliminary Services. Additional Preliminary Services shall not include work or services necessary during the Preliminary Services because of negligent errors, omissions or conflicts of any type in the Contractor’s Preliminary Services Deliverable Material. All such work or services shall constitute Base Preliminary Services and shall be performed at no additional cost to the KRRC, and shall include any required corrections or revisions to the Preliminary Services Deliverable Material.

(E) Changes that Reduce the Scope of the Preliminary Services. The KRRC shall have the right to reduce the scope of the Preliminary Services at any time by written notice to the Contractor. Changes to the Preliminary Services that reduce the scope of the Preliminary Services shall be effective upon the delivery of the written notice by the KRRC pursuant to this Section. Any reduction in the scope of the Preliminary Services may result in an appropriate reduction in unpaid portions of the Preliminary Services Fee and an adjustment to the Preliminary Services Schedule, as appropriate, which shall be reflected in a Contract Amendment.

(F) Reallocation of Preliminary Services Tasks Workscope and the Preliminary Services Fee. Notwithstanding any other provision of this Section, the KRRC Contract Representative may, in consultation with the Contractor, reallocate the workscope among existing and new Preliminary Services Tasks and also reallocate each Preliminary Services Task compensation among the other Preliminary Services Tasks. Any reallocation of workscope, or Preliminary Services Task compensation shall be reflected in a Contract Administration Memorandum.

SECTION 5.3. COMPENSATION FOR PRELIMINARY SERVICES.

(A) Contractor Services Performed Prior to the Contract Date. The Parties acknowledge and agree that the Contractor has performed professional and other services to advance the development of the Project prior to the Contract Date based upon its expertise in the environmental restoration field. These services were performed as a subcontractor to the Project Company under the Project Agreement between [_____] and [_____, 2020], and as a service provider directly to KRRC under the [_____] Agreement], dated [_____] between KRRC and the Contractor. The Contractor represents that such services were provided in accordance with the standards and requirements set forth in the applicable agreement, and have been paid for in full. The Deliverable Material created pursuant to such services shall be subject to the irrevocable license and ownership provision of Section 4.11 (Deliverable Material) of this Agreement. The Base Preliminary Services constitute a continuation of the services provided under such agreements, commencing on the Contract Date.

(B) Compensation for Base Preliminary Services. During the Preliminary Services Period, the KRRC shall pay the Contractor the Preliminary Services Fee in the manner and subject to the terms and conditions set forth in this Agreement and in Section 4.6 (Preliminary Services Fee) of Appendix 4 (Preliminary Services). The Preliminary Services Fee for the Base Preliminary Services shall be payable in part on a fixed-fee basis as provided in subsection (C) of this Section, and in part on a time-and-materials basis as provided in subsection (D) of this Section. The Contractor agrees that the Preliminary Services Fee (as it may be increased in accordance with the terms of this Agreement) shall be the Contractor's entire compensation and reimbursement for the performance of the Preliminary Services, inclusive of all costs, expenses and disbursements paid or incurred by the Contractor, as well as all overhead, administration, risk and profit. The Preliminary Services Fee shall be subject to adjustment solely in accordance with Section 5.2 (Changes to the Scope of the Preliminary Services).

(C) Fixed Fee Compensation for Base Preliminary Services. The Base Preliminary Services for which the Contractor is entitled to be paid the Preliminary Services Fee on a fixed-fee basis are the Base Preliminary Services described in Section 4.6 of Appendix 4 (Preliminary Services). The fixed-fee component of the Preliminary Services Fee is [\$_____]. This amount shall be payable in installments based on completion of the milestones and tasks set forth in Section 4.6 of Appendix 4.

(D) Time and Materials Compensation for Base Preliminary Services. The Base Preliminary Services for which the Contractor is entitled to be paid the Preliminary Services Fee on a time-and-materials basis are the Base Preliminary Services described in Section 4.6 of Appendix 4 (Preliminary Services). The budgeted amount for the time-and-materials component of the Preliminary Services Fee is [\$_____] based upon the work scope and projected level of effort. This amount shall be payable in installments based on the completion of the milestones and tasks set forth in Section 4.6 of Appendix 4.

(E) Compensation for Additional Preliminary Services. The Contractor shall be compensated for any Additional Preliminary Services on a time and materials or fixed-price basis, agreed to in writing through a Contract Amendment executed by the KRRC and the Contractor.

(F) Payment Requests and Payment. The Contractor shall provide the KRRC with a Payment Request for the performance of the Preliminary Services on a monthly basis in accordance with the specific requirements set forth in Appendix 4 (Preliminary Services). The Payment Request shall state the amount payable for the month and the total amount paid against the Preliminary Services Fee through the date of the Payment Request, along with a monthly progress report regarding the performance of the Preliminary Services and such other information or documentation as the KRRC may reasonably require. The KRRC shall make

payment to the Contractor of all properly supported invoiced amounts within 30 days of receipt of the Payment Request, subject to the terms and conditions of this Agreement. Payments of the Preliminary Services Fee shall not be subject to retainage holdback or, except as provided in subsection (G) (Non-Compliant Preliminary Services) and subsection (H) (Billing Statement Disputes) of this Section, offset.

(G) Non-Compliant Preliminary Services. Nothing contained in this Agreement shall require the KRRC to pay for any Preliminary Services which are not performed in accordance with the terms and conditions of this Agreement.

(H) Billing Statement Disputes. If the KRRC disputes in good faith any Payment Request for Preliminary Services, the KRRC shall pay all undisputed amounts when due but may withhold payment of the disputed amount, and shall provide the Contractor with a written objection indicating the amount being disputed and the detailed reasons then known to the KRRC for the dispute. In the event that the Contractor disputes any amounts offset by the KRRC, it shall provide the KRRC with a written objection indicating the amount being disputed and the detailed reasons then known to the Contractor. If the Contractor is unable to reach agreement with the KRRC as to the payment dispute, the undisputed amount shall be paid by the KRRC and the Contractor may elect to initiate dispute resolution procedures in accordance with Section 13.1 (Dispute Resolution Procedures). When any billing dispute is finally resolved, if payment by the KRRC to the Contractor of amounts withheld is required, such payment shall be made within 30 days of the date of resolution of the dispute, together with interest thereon, from the date originally due, determined as provided in Section 18.8 (Interest on Overdue Obligations) of this Project Agreement.

SECTION 5.4. PRELIMINARY SERVICES SCHEDULE.

The “**Preliminary Services Schedule**” is set forth in, and shall be updated as provided in, Appendix 4 (Preliminary Services). The Contractor agrees to complete the Preliminary Services in a diligent, efficient and timely manner in accordance with the Preliminary Services Schedule. The Contractor acknowledges and agrees that any delays in the Contractor’s completion of its Preliminary Services under this Agreement or performance beyond the number of days agreed to herein for completion of a Preliminary Services Task may cause injury and damage to the KRRC. The KRRC reserves the right to extend the Preliminary Services Schedule as the KRRC reasonably deems necessary or appropriate. The Parties acknowledge and agree, however, that the Preliminary Services Fee as of the Contract Date assumes that the Preliminary Services will be completed by May 1, 2021 and any Preliminary Services to be performed subsequent to that date shall result in an appropriate adjustment to the Preliminary Services Fee to be negotiated in good faith by the KRRC and the Contractor.

SECTION 5.5. SUSPENSION OF PRELIMINARY SERVICES.

The KRRC may, for any reason through a written notice executed by the KRRC Contract Representative, order the Contractor to suspend performance of the Preliminary Services. Prior to any resumption of work at the KRRC’s direction, the Contractor shall notify the KRRC Contract Representative of any additional time and costs the Contractor believes it is entitled to within 30 days of its receipt of the request to resume suspended work or for Additional Preliminary Services Deliverable Material outside the scope of the Preliminary Services or changes in the scope of the Preliminary Services. If the Contractor establishes that the suspension of the Preliminary Services had a material and adverse effect on the Contractor’s time or costs for the performance of the Preliminary Services, the Contractor shall be entitled to time and cost relief, as appropriate and determined by the KRRC acting reasonably and subject to the Contractor’s duty to mitigate in Section 18.7 (General Duty to Mitigate).

SECTION 5.6. COORDINATION WITH THE KRRC.

(A) Meetings and Reports Generally. The Contractor shall hold periodic, but no more than every two weeks, meetings and conferences with the KRRC during the Preliminary Services to verify and confirm that the development of the Contract Obligations (1) has the full benefit of the KRRC's experience and knowledge of existing needs, (2) is consistent with the KRRC's current policies and standards, and (3) is proceeding in accordance with the Preliminary Services Schedule. The Contractor shall also keep the KRRC regularly informed as to the progress of the Preliminary Services through the submittal of monthly progress reports in accordance with the requirements set forth in Appendix 4 (Preliminary Services). The monthly progress report shall include a section on the progress of the design and list any concerns, actions, changes, and reviews and approvals from the KRRC that the Contractor requires. The Contractor shall indicate any Governmental Body or Utility requirements and issues of which the KRRC should be aware of, and if there are KRRC requirements for interacting with such Governmental Bodies, Utilities or other groups.

(B) Information Provided by the KRRC. The KRRC shall make available for the Contractor's use in the performance of the Preliminary Services all existing plans, maps, field notes, statistics, computations, and other data in the KRRC's possession relating to the Contract Obligations, including as reasonably requested in writing by the Contractor, at no cost to the Contractor. Except as otherwise provided in Section 4.8 (Information Provided by or on Behalf of the KRRC), all such information is provided to the Contractor for the sole purpose of the Contractor's convenience and for use in relation to the performance of the Preliminary Services and may not be relied upon by the Contractor. The Contractor shall promptly notify the KRRC in writing when it reasonably believes or suspects that information provided by the KRRC is not accurate. Any and all information provided by the KRRC shall remain the property of the KRRC and shall be returned (or destroyed) promptly to the KRRC upon written request.

(C) Required Design Information. Notwithstanding the provisions of subsection (B) (Information Provided by the KRRC) of this Section and except as provided in Section 4.8 (Information Provided by or on Behalf of the KRRC), the Contractor acknowledges and agrees that, pursuant to its performance as a subcontractor to the Project Company under the Project Agreement prior to the Contract Date, the Contractor was responsible for obtaining and verifying all information required (as further described in the Project Agreement) in order to properly design the Habitat Project Work so that it is designed, constructed and performs in accordance with Applicable Law and the Contract Standards.

SECTION 5.7. HABITAT PROJECT WORK DESIGN.

(A) Design Considerations. The design of the Habitat Project Work to the 60% level was performed by the Contractor as a subcontractor to the Project Company under the Project Agreement prior to the Contract Date. The Parties do not expect the Habitat Project Work's design to be materially advanced during this Agreement's Preliminary Services Period. The Contractor represents that the design of the Habitat Project Work developed by the Contractor prior to the Contract Date pursuant to the Project Agreement was undertaken by a design team exercising such degree of care, skill and diligence as would reasonably be expected from consultants qualified to perform services similar in scope, nature and complexity to the design and by a Contractor appointed design team that:

- (1) Was so qualified;
- (2) Included (as required by Applicable Law) licensed or registered professional engineers and architects; and

(3) Had sufficient expertise and experience to expeditiously and efficiently perform all of the design in a proper and professional manner to the Contract Standards.

(B) Contractor Assumption of Full Design Liability. The Contractor acknowledges and agrees that if and when the Habitat Project Work Implementation Contract Amendment is executed by the Parties and notwithstanding the fact that the earlier design work was performed by the Contractor as a subcontractor to the Project Company pursuant to the Project Agreement, that the Contractor will have the sole and exclusive responsibility and liability for the performance of the Habitat Project Work in accordance with Section 6.4 (Final Design Responsibilities and Risk Assumption), and subject to the terms and conditions of the Contract Documents. Accordingly, during the Preliminary Services Period, the Contractor shall not propose or agree to any element of the Contract Obligations or other work product to be incorporated in the Habitat Project Work Implementation Contract Amendment that would, in its reasonable judgment, be inconsistent with the assumption of such responsibility and liability.

SECTION 5.8. PERMITTING RESPONSIBILITIES AND SCHEDULE.

(A) Obtaining All Remaining KRRC Governmental Approvals. Promptly following the Contract Date, the KRRC and the Contractor, working with the Project Company, shall continue and carry to completion the performance of their respective obligations to obtain, or assist in obtaining, the KRRC Governmental Approvals, as further described in Appendix 4 (Preliminary Services). The Parties shall cooperate and keep each other apprised of progress in obtaining all required Governmental Approvals, and any potential cost or schedule impacts of proposed terms and conditions in the draft forms of the Governmental Approvals.

(B) Preliminary Services Relating to Permitting. Appendix 5 (Role of the KRRC, Contractor and Project Company in Obtaining the Governmental Approvals) sets forth, as of the Contract Date, the Governmental Approvals expected to be required for the Project, and the division of responsibility between the KRRC, the Contractor and the Project Company for managing the process of applying for and obtaining each of the Governmental Approvals. During the performance of the Preliminary Services, the Contractor shall review and confirm all Contractor Governmental Approvals that are required for the Habitat Restoration Work, identifying the permit name, issuing agency and permittee or approval holder and assist the KRRC in acquiring the KRRC Governmental Approvals. In connection therewith, the Contractor shall:

(1) Prepare and complete all required filings, applications and reports and develop and furnish all necessary data, information, plans, documentation and supporting material required to be prepared, completed, developed and furnished by the Contractor pursuant to Appendix 5 (Role of the KRRC, Contractor and Project Company in Obtaining the Governmental Approvals);

(2) Familiarize itself with all Contractor Regulatory Compliance Terms;

(3) Attend all meetings and hearings required by Appendix 5 (Role of the KRRC, Contractor and Project Company in Obtaining the Governmental Approvals);

(4) Cooperate with and reasonably assist the KRRC in carrying out any of the KRRC's responsibilities hereunder with respect to the KRRC Governmental Approvals as and to the extent provided in subsection (E) (Contractor Responsibilities in Connection with KRRC Governmental Approvals) of this Section;

(5) Pay all required permit and filing fees relating to Contractor Governmental Approvals;

(6) Take all other action reasonably necessary, as soon as practicable in the performance of the Preliminary Services and Habitat Restoration Work to, as applicable, seek to obtain, maintain, renew and extend all Contractor Governmental Approvals; and

(7) Comply with the terms and conditions of all Contractor Regulatory Compliance Terms.

(C) Application Process. The KRRC shall be notified by the Contractor prior to any application or data submittal by the Contractor with any Governmental Body regarding any Governmental Approval. The Contractor shall not knowingly take any action in any application, data submittal or other communication with any Governmental Body regarding Governmental Approvals or the terms and conditions thereof that would impose any unreasonable cost or unreasonable burden on the KRRC or that would materially contravene any KRRC policies with respect to the matters contained therein. The KRRC reserves the right, after reasonable notification and consultation with the Contractor, to reasonably modify, alter, amend, delete or supplement any information supplied, or term or condition proposed, by the Contractor which would have the effect described in the preceding sentence. The final terms and conditions of any Governmental Approval shall be subject to the KRRC's and the Contractor's approval, which approval shall not be unreasonably conditioned, withheld or delayed. The Contractor shall deliver to the KRRC, promptly after the Contractor's receipt, a copy of each Contractor Governmental Approval, and shall provide a listing of the status of all Contractor Governmental Approvals in its monthly progress report.

(D) KRRC Responsibilities in Connection with the KRRC Governmental Approvals. The KRRC shall:

(1) Be responsible for applying for and obtaining the KRRC Governmental Approvals, subject to the Contractor's obligations under subsection (E) (Contractor Responsibilities in Connection with KRRC Contractor Governmental Approvals) of this Section;

(2) Perform all activities that are the responsibility of the KRRC as set forth in Appendix 5 (Role of the KRRC, Contractor and Project Company in Obtaining the Governmental Approvals);

(3) Cooperate with and, upon the reasonable request of the Contractor, provide reasonable assistance to, the Contractor in obtaining from Governmental Bodies the Contractor Governmental Approvals (including any modifications, renewals and extensions of existing Contractor Governmental Approvals from Governmental Bodies);

(4) Where necessary to obtain, renew, replace, extend the validity of, or arrange necessary amendments to any Contractor Governmental Approval and within a reasonable period of time after being requested to do so by the Contractor:

(a) Execute Contractor Governmental Approval applications and related documents, either in its own name or jointly with the Contractor, as and to the extent required under Applicable Law or the administrative practices of the applicable Governmental Body;

(b) Provide for attendance by appropriate KRRC staff at public hearings and meetings of applicable Governmental Bodies; and

(c) Provide the Contractor with existing relevant data and documents that are within the KRRC's custody or control or are reasonably obtainable by the KRRC and which are reasonably required for such purpose.

To the extent Applicable Law or the administrative practice of the applicable Governmental Body requires that Contractor Governmental Approvals that are required to be obtained by the Contractor pursuant to this Section be applied for or issued in the KRRC's name or that the KRRC directly coordinate with such Governmental Bodies, the Contractor shall provide all necessary support and efforts to apply for and obtain such Contractor Governmental Approvals, including preparing all applications and related documents for execution by the KRRC. The KRRC's obligation to assist and cooperate pursuant to this Section shall be subject to the Contractor's obligations under this Section and shall not require the KRRC to:

(i) Staff the Contractor's permitting or development efforts, undertake any new studies or investigations with respect to the Habitat Restoration Work, or lead efforts to obtain the issuance of the Contractor Governmental Approvals required to be obtained by the Contractor hereunder;

(ii) Take a position which it reasonably believes to be inconsistent with the Contract Documents, the Contract Standards, or KRRC policy (except policies that are incompatible with the contracting methodology associated with this Agreement or are inconsistent with the express obligations of the KRRC hereunder); or

(iii) Refrain from concurring with a position taken by a Governmental Body if the KRRC believes that position to be correct.

(E) Contractor Responsibilities in Connection with KRRC Governmental Approvals. In connection with the KRRC Governmental Approvals, the Contractor shall cooperate with and reasonably assist the KRRC in carrying out any of the KRRC's responsibilities hereunder with respect to the KRRC Governmental Approvals, including:

(1) Reasonably assisting the KRRC in preparing and completing all required filings, applications and reports, as further described in Appendix 5 (Role of the KRRC, Contractor and Project Company in Obtaining the Governmental Approvals);

(2) Developing and furnishing all necessary data, information, plans, documentation and supporting material, as further described in Appendix 5 (Role of the KRRC, Contractor and Project Company in Obtaining the Governmental Approvals);

(3) Familiarizing itself with all applicable terms and conditions;

(4) Attending all required meetings and hearings;

(5) Taking all other actions reasonably necessary to assist the KRRC in obtaining, maintaining, renewing, and extending all KRRC Governmental Approvals; and

(6) As provided in subsection 11.3(A) (Fines, Penalties, Indemnification and Remediation), comply with Contractor Regulatory Compliance Terms and all Applicable

Laws, and indemnify, defend and hold harmless the Contractor Indemnitees from and against all Loss-and-Expense resulting from any failure of such compliance.

(F) Delays in the Issuance of Contractor Governmental Approvals in General.

To the extent any Contractor Governmental Approval has not been obtained as of the Habitat Project Work Implementation Contract Amendment Date because it was not required in order to commence the Habitat Project Work, the Contractor shall bear the risk of any delays in obtaining such remaining Contractor Governmental Approval and of complying with any of the terms and conditions contained in such Contractor Governmental Approval, irrespective of the cause of any such delay or of the imposition of any such term or condition. No such delay or term or condition shall constitute an Uncontrollable Circumstance, or entitle the Contractor to any price, schedule or performance relief hereunder.

(G) Delays in the Issuance of KRRC Governmental Approvals. The Parties acknowledge and agree that all KRRC Governmental Approvals must be obtained and in full force and effect on or prior to, and as a condition to the occurrence of, the Habitat Project Work Implementation Contract Amendment Date. Accordingly, delays in the issuance of any KRRC Governmental Approval shall operate to delay the occurrence of the Habitat Project Work Implementation Contract Amendment Date but, once the Habitat Project Work Implementation Contract Amendment Date occurs, shall not constitute an Uncontrollable Circumstance or operate to provide the Contractor any schedule relief.

SECTION 5.9. HABITAT PROJECT WORK IMPLEMENTATION CONTRACT AMENDMENT.

(A) Agreement Pricing as of the Contract Date. Subject to the terms of this Section, the Base Habitat Restoration Work Price shall be \$48,097,244 and the Base Habitat Maintenance Services Fee shall be \$29,861,270, each payable in the manner described respectively in Article 7 (Compensation for Habitat Restoration Work) and Article 9 (Compensation for Habitat Maintenance Services), assuming the Habitat Project Work Implementation Contract Amendment Date occurs in the Contract Year ending on June 30, 2021. Such elements of the Contract Compensation shall have no force or effect unless and until the Parties negotiate and enter into the Habitat Project Work Implementation Contract Amendment as provided in and subject to the terms and conditions of subsection (B) of this Section.

(B) Habitat Project Work Implementation Contract Amendment Generally. The KRRC and the Contractor acknowledge and agree that each intends (without obligation) to negotiate and enter into a Contract Amendment (the “**Habitat Project Work Implementation Contract Amendment**”) at the conclusion of the Preliminary Services Period, concurrently with execution of the Project Implementation Contract Amendment by the KRRC and the Project Company under the Project Agreement. The Habitat Project Work Implementation Contract Amendment is expected to be entered into for the purpose of amending, if and to the extent required, the Contract Compensation and any other provision of this Agreement that may be materially affected by (1) the terms and conditions of the Contractor Regulatory Compliance Terms as finally issued and established, (2) the length of the Preliminary Services Period, or (3) any other material fact or circumstance occurring during the Preliminary Services Period and not previously known by the Parties. In particular, the Parties acknowledge and agree that the Base Habitat Restoration Work Price and the Base Habitat Maintenance Services Fee set forth in subsection (A) of this Section as of the Contract Date have been established based on certain assumed terms and conditions of the Contractor Regulatory Compliance Terms that are set forth in Appendix 7 (Assumed Contractor Regulatory Compliance Terms); and that any material change in such assumed terms and conditions may be the basis for a negotiated change in such

pricing. The date on which the Habitat Project Work Implementation Contract Amendment is executed and delivered by the Parties shall constitute the “**Habitat Project Work Implementation Contract Amendment Date**”.

(C) Habitat Project Work Implementation Contract Amendment Submittal. The Contractor shall, in connection with any potential Habitat Project Work Implementation Contract Amendment and at the request of the KRRC, make a submittal to the KRRC with facts and analysis supporting its position with respect to any proposed term or condition for the Habitat Project Work Implementation Contract Amendment that would amend or revise the terms and conditions of this Agreement as executed on the Contract Date. In negotiating the Habitat Project Work Implementation Contract Amendment, the KRRC does not intend to agree to any modification of the Contract Compensation or other terms and conditions hereof in the absence of any change in material facts or circumstances occurring between the Contract Date and the Habitat Project Work Implementation Contract Amendment Date.

(D) Expected Conditions to the Execution of the Habitat Project Work Implementation Contract Amendment. Subject to a future waiver by either of the Parties, the Parties do not expect to enter into a Habitat Project Work Implementation Contract Amendment unless, on or before the Habitat Project Work Implementation Contract Amendment Date:

(1) Environmental Impact Report. A final Environmental Impact Report has been prepared, issued and certified.

(2) NEPA Compliance Document. A final NEPA Compliance Document has been prepared with respect to the FERC License Surrender Order by FERC.

(3) FERC License Orders. The FERC License Orders have been issued and are in full force and effect.

(4) Adjacent and Related Lands. The KRRC has acquired easements or other interests in real property with respect to the Adjacent and Related Lands sufficient for the purposes of performing the Habitat Maintenance Services.

(5) Insurance. The KRRC, Project Company and Contractor have each obtained all insurance, including any project-specific insurance that the KRRC has agreed to compensate the Project Company or Contractor for, that is required by this Agreement and the Project Agreement for the commencement of Habitat Project Work and Project Implementation Work.

(6) KRRC Governmental Approvals. The KRRC Governmental Approvals have been obtained, are in full force and effect, and provide all authority required under Applicable Law for the Contactor to commence, carry out and continue to completion the Habitat Project Work.

(7) Contractor Governmental Approvals. The Contractor Governmental Approvals have been obtained, as required, are in full force and effect, and provide all authority required under Applicable Law for the Contactor to commence, carry out and continue to completion the Habitat Project Work.

(8) Project Company Governmental Approvals. The Project Company Governmental Approvals have been obtained, as required, are in full force and effect, and provide all authority required under Applicable Law for the Project Company to commence, carry out and continue to completion the Project Implementation Work.

(9) Project Implementation Contract Amendment. The Project Implementation Contract Amendment has been executed and delivered and is in full force and effect under the Project Agreement.

(10) County MOA's. The County MOA's have been executed and delivered, and are in full force and effect.

(11) PacifiCorp Property Transfer Agreement. An agreement between PacifiCorp and the KRRC providing for the transfer of all property required for the Project has been executed and delivered.

(12) KHSA Requirements. A determination by the States and PacifiCorp, pursuant to the KHSA Section 7.1.4, that the KRRC has demonstrated to PacifiCorp's and the States' reasonable satisfaction that the KRRC has met the obligations set forth in Appendix L of the KHSA and other required obligations.

(13) Local Impact Mitigation Fund and Facilities Removal Defense Fund. The Local Impact Mitigation Fund and Facilities Removal Defense Fund each have been established and funded.

(14) Funding Assurances. The KRRC and the Contractor have established a process which assures the Contractor that the Funders are funding the KRRC in a manner consistent with the KRRC's payment obligations to the Contractor pursuant to this Agreement.

(15) Legal Proceedings. There is no Legal Proceeding pending or threatened that could reasonably be expected to enjoin the performance of the Contract Obligations or in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the validity or enforceability of the FERC License Orders, the Governmental Approvals, the Funding Agreements, the EIR, the NEPA Compliance Document or any other action taken by any person required to commence and carry out the performance of the Contract Obligations.

(E) No Obligation to Enter into the Habitat Project Work Implementation Contract Amendment. The KRRC and the Contractor shall have the obligation to negotiate in good faith to enter into the Habitat Project Work Implementation Contract Amendment, as provided in this Agreement. Neither the KRRC nor the Contractor, however, shall have any obligation to enter into the Habitat Project Work Implementation Contract Amendment.

(F) Security for Performance. On and as a condition to the occurrence of the Habitat Project Work Implementation Contract Amendment Date, the Contractor shall provide the KRRC with the Guaranty Agreement, the Performance Bond and the Payment Bond concurrently with the execution of the Habitat Project Work Implementation Contract Amendment, as required by and in accordance with Article 17 (Security for Performance).

ARTICLE 6

HABITAT RESTORATION WORK

SECTION 6.1. SCOPE OF THE HABITAT RESTORATION WORK.

The Habitat Restoration Work shall commence on the Habitat Project Work Commencement Date and be performed in accordance with and subject to the terms and conditions of this Agreement. The Contractor shall be paid the Habitat Restoration Work Price pursuant to Article 7 (Compensation for Habitat Restoration Work) for the Habitat Restoration Work.

SECTION 6.2. HABITAT RESTORATION WORK GENERALLY.

(A) Sequencing and Staging of Habitat Restoration Work. The Contractor shall not be limited in the sequencing or staging of the Habitat Restoration Work, except to the extent that the Contractor Regulatory Compliance Terms expressly impose such limitations. The KRRC understands and acknowledges that the Contractor intends to complete the Habitat Restoration Work in stages, whereby particular segments of the Habitat Restoration Work will be designed and implemented prior to the completion of the design and implementation of the Habitat Restoration Work as a whole. Although this Agreement does not require the Contractor to fully complete the entire design of the Habitat Restoration Work prior to proceeding with particular segments of the Habitat Restoration Work, the Contractor shall comply with all requirements of Applicable Law in performing the Habitat Restoration Work and shall further comply with the design submittal requirements set forth in subsection Section 6.4(C) (KRRC Review and Comment on Design Documents).

(B) Laydown Areas. Laydown and staging areas for habitat restoration materials and supplies required for the Habitat Restoration Work shall be located on the Habitat Project Work Area.

(C) Habitat Restoration Work Schedule and Reports. An initial Habitat Restoration Work schedule shall be prepared during performance of the Preliminary Services, and shall be negotiated and agreed upon by the Parties and updated as part of the Habitat Project Work Implementation Contract Amendment. The Contractor shall submit monthly progress reports as to the status of completion of the Habitat Restoration Work. The Contractor acknowledges and agrees that it has a material obligation to provide the KRRC with, and to update, maintain and revise, the Habitat Restoration Work schedule in such monthly progress reports.

(D) On-Site Meetings and Design and Habitat Restoration Work Review. The Contractor, the KRRC and the Program Manager shall conduct regular progress and management meetings as set forth in Appendix 8 (General Habitat Restoration Work Requirements). Such meetings shall take place at the Habitat Project Work Area in a field office in accordance with Appendix 8 (General Habitat Restoration Work Requirements) or as otherwise directed by the KRRC. The monthly progress report shall be prepared by the Contractor and provided to the KRRC and the Program Manager at least five days prior to each monthly meeting

(E) Utilities. The Contractor shall provide, make all arrangements necessary to secure the availability of, and construct all connections for, all Utilities necessary for the performance of the Habitat Restoration Work and shall be responsible for modifying all existing Utilities at the Habitat Project Work Area in order to support the Habitat Restoration Work.

(F) Quality Assurance and Quality Control. The Contractor shall have full responsibility for quality assurance and quality control for the Habitat Restoration Work, including compliance with the Habitat Restoration Work Quality Management Plan. Without limiting any other requirement hereunder, the Contractor shall perform quality control inspection and testing services to ensure compliance with the Contract Standards

(G) Sales Tax. The Contractor shall pay all sales, consumer, use, and similar taxes required by the law of the place where the Habitat Restoration Work is performed. Without limiting any of the foregoing, in the event the KRRC seeks to obtain any available exemption under Applicable Law from sales, consumer, use and similar taxes for the Habitat Restoration Work, the Contractor will cooperate with the KRRC in seeking such an exemption, and will utilize (and cause its Subcontractors to utilize) any such exemption to the extent available in performance of the Habitat Restoration Work. In such circumstances, the KRRC will provide the Contractor with an appropriate certification, letter or other reasonably required materials setting forth any such exemption that is obtained by the KRRC for the Habitat Restoration Work.

(H) Title and Risk of Loss. Except to the extent provided in subsection 6.12(E) (Payment for Restoration Work and Uninsured Costs) the Contractor shall bear all risk of loss for the Habitat Restoration Work until completed. The procedures set forth in Section 6.12 (Property Damage) shall be applicable in the event of any damage to, loss or the destruction of, the Habitat Restoration Work at the Habitat Project Work Area.

(I) Encumbrances. The Contractor shall not directly or indirectly create or permit to be created or to remain, and shall promptly discharge or bond any Encumbrance or Lien (other than Permitted Encumbrances) arising in relation to the Habitat Restoration Work or the Habitat Restoration Work. The Contractor's Subcontracts with all materialmen, suppliers and Subcontractors shall provide that the sole recourse for such materialmen, suppliers and Subcontractors for non-payment shall be against the Payment Bond.

(J) Notice of Default. The Contractor shall provide to the KRRC, promptly following the receipt thereof, copies of any notice of default, breach or non-compliance received under or in connection with any Contractor Regulatory Compliance Terms, Subcontract, Security Instrument or other transaction agreement pertaining to the Contract Obligations.

(K) Temporary Habitat Project Work Area Facilities. The Contractor shall be responsible for ensuring that adequate temporary facilities are provided as necessary to enable all personnel, including all Subcontractor personnel, to perform their work and that provisions have been made for all Habitat Project Work Area facilities necessary for the Contractor to manage, inspect and supervise the Habitat Restoration Work.

SECTION 6.3. HABITAT PROJECT WORK COMMENCEMENT DATE.

(A) Habitat Project Work Commencement Date Generally. In no event shall the Contractor commence or be obligated to commence the Habitat Restoration Work prior to the "**Habitat Project Work Commencement Date**" established pursuant to this Section. The Habitat Project Work Commencement Date shall not occur prior to the satisfaction of the following "**Habitat Project Work Commencement Date Conditions**", each of which must be and remain satisfied as of the Habitat Project Work Commencement Date:

(1) The Habitat Project Work Implementation Contract Amendment Date shall have occurred;

(2) All KRRC Governmental Approvals and Contractor Governmental Approvals required to commence the Habitat Restoration Work shall have been issued and be in full force and effect, and copies thereof shall have been provided to the KRRC;

(3) The Contractor shall have provided the KRRC with certificates for all Required Insurance which is to be provided by the Contractor in accordance with Section 15.1 (Contractor-Provided Insurance) and certified that all such policies are in full force and effect and in compliance with the requirements of Section 15.1 (Contractor-Provided Insurance) and Appendix 11 (Insurance Requirements);

(4) The KRRC shall have provided the Contractor with certificates for all Required Insurance which is to be provided by the KRRC in accordance with Section 15.2 (KRRC-Provided Insurance) and certified that all such policies are in full force and effect and in compliance with the requirements of Section 15.2 (KRRC-Provided Insurance); and

(5) The KRRC, in consultation with the Project Company, shall have notified the Contractor that the Project Site is ready for the Contractor to begin its Habitat Project Work.

The foregoing requirements are in addition to any other preconditions to the commencement of Habitat Project Work established by the Contract Documents.

(B) Establishment of the Habitat Project Work Commencement Date. In no event shall the Habitat Project Work Commencement Date be established prior to the satisfaction by the Contractor and the KRRC of the Habitat Project Work Commencement Date Conditions. The Contractor shall provide 10 days' written notice to the KRRC as to the satisfaction of its Habitat Project Work Commencement Date Conditions and the date it proposes to establish as the Habitat Project Work Commencement Date hereunder. The KRRC shall issue a notice to proceed with Habitat Project Work on the Habitat Project Work Commencement Date proposed by the Contractor upon satisfaction of the Habitat Project Work Commencement Date Conditions, which shall not be unreasonably conditioned, delayed or withheld. In the event the KRRC determines that the Contractor has not satisfied the Habitat Project Work Commencement Date Conditions, notwithstanding the Contractor's notice pursuant to this Section, the KRRC Contract Representative, by written notice to the Contractor delivered not later than three days prior to the Habitat Project Work Commencement Date proposed by the Contractor, shall notify the Contractor of the KRRC's determination and state which conditions the Contractor has failed to satisfy. The Contractor shall satisfy all such conditions prior to the establishment of the Habitat Project Work Commencement Date.

(C) Effect of the Establishment of the Habitat Project Work Commencement Date. Upon the issuance by the KRRC of the notice to proceed establishing the Habitat Project Work Commencement Date, the Contractor shall have the right and the obligation to proceed with the Habitat Project Work. Absent the occurrence of Uncontrollable Circumstances as and to the extent provided in this Agreement, no delay in the establishment of the Habitat Project Work Commencement Date shall entitle the Contractor to any price, schedule or performance relief hereunder.

SECTION 6.4. FINAL DESIGN RESPONSIBILITIES AND RISK ASSUMPTION.

(A) Performance of the Design Work. Following the issuance of the notice to proceed with the Habitat Project Work pursuant to Section 6.3 (Habitat Project Work Commencement Date), the Contractor agrees to undertake, perform and complete the designs and plans for the Habitat Project Work in accordance with the Contract Standards and to prepare all design documents necessary or appropriate to carry out and complete the Habitat Restoration

Work. The Contractor shall be responsible for the professional quality, technical accuracy, timely completion and coordination of all Habitat Restoration Work design documents and shall, without additional compensation, correct or revise any negligent errors, omissions or other deficiencies in the Habitat Restoration Work design documents.

(B) Sole Design Responsibility and Liability. The Contractor shall have the sole and exclusive responsibility and liability for the design of the Habitat Project Work and the execution and completion of the Habitat Project Work hereunder in accordance with the Contract Standards, notwithstanding the KRRC's role in defining the nature and extent of the Preliminary Services under this Agreement or the Project Agreement and negotiating and agreeing upon the Habitat Project Work Implementation Contract Amendment.

(C) KRRC Review and Comment on Design Documents. The KRRC shall have the right, at its request and acting reasonably, to review and comment on all Habitat Restoration Work design documents. The Contractor shall reasonably consider and, as appropriate, provide written responses to any comments delivered by the KRRC or its representatives as to the Contractor's design within a reasonable timeframe. Neither review and comment by the KRRC or the Program Manager on any design document, nor any failure by the KRRC or the Program Manager to comment on any design document shall in any way relieve the Contractor of full responsibility for design and completion of the Habitat Restoration Work in accordance with the Contract Standards. Without limiting the KRRC's review and comment rights under this Section, the KRRC's review of any design document shall not be required in order for the Contractor to proceed with the performance of the Habitat Restoration Work.

SECTION 6.5. INTERFACE AND COORDINATION.

(A) Related Projects Generally. The Contractor acknowledges that the KRRC will be undertaking several other projects at and in the vicinity of the Habitat Project Work Area and, without limiting any other obligation under this Agreement, agrees to reasonably coordinate the Habitat Restoration Work (including making reasonable adjustments to its Habitat Restoration Work schedule and activities) to minimize conflicts with the work associated with such other projects in accordance with the Contract Standards. Any other project the KRRC may undertake at or in the vicinity of the Habitat Project Work Area are referred to herein as the **"Related Projects"**. As part of the Preliminary Services, the Contractor shall provide, for the KRRC's review and comment, a protocol (the **"Related Projects Coordination Protocol"**), prepared in accordance with the Contract Standards and providing for the coordination of work between the Contractor, the Project Company, and any other contractor for any other Related Projects. Nothing in this Agreement shall be interpreted as granting the Contractor exclusive occupancy of the Habitat Project Work Area. The Contractor must ascertain to its own satisfaction the scope of the Habitat Restoration Work and the nature of any other contracts that have been or may be awarded by the KRRC in relation to the Project. The Contractor shall cause the Habitat Restoration Work to be performed without damaging the work or property of any Separate Contractor and, to the maximum reasonable extent, so as not to cause any unnecessary hindrance or delay to any Separate Contractors working at the Habitat Project Work Area. The Contractor agrees to reasonably cooperate and coordinate its activities with those of the KRRC and all Separate Contractors so that the Habitat Restoration Work and any Related Project can be completed in an orderly and coordinated manner without unreasonable disruption. Without limiting any of the foregoing, the Contractor shall comply with the Related Projects Coordination Protocol, which is intended to establish a management framework for creating a cooperative and collaborative project environment among the Contractor and the Separate Contractors. Notwithstanding anything to the contrary in the Related Projects Coordination Protocol or this Agreement, the Contractor's agreement to comply with the Related Projects Coordination Protocol shall not (and shall not be construed to): (1) confer upon the Contractor any liability for the acts or omissions of the Separate Contractors; (2) impose upon the Contractor joint or several liability

for the acts or omissions of the Separate Contractors; (3) create a partnership, consortium or joint venture relationship among the Contractor and any Separate Contractor; or (4) expand the Contractor's liabilities beyond those set forth in this Agreement. Subject to subsection (E) of this Section, the Contractor agrees that it shall not be entitled to any price, performance or other Uncontrollable Circumstance relief hereunder due to any delay or hindrance to the extent caused by a failure of any Contractor Person to reasonably cooperate or coordinate its work with the work of any Separate Contractor in accordance with this Section.

(B) Coordination Meetings. The KRRC intends to have coordination meetings among the KRRC, the Contractor and the various Separate Contractors in an effort to manage the overall program associated with the work being performed at or in the vicinity of the Habitat Project Work Area and to avoid or mitigate cost and time impacts to the Project. The Contractor agrees that it will attend and participate in these logistics meetings and shall cooperate with the KRRC and the Separate Contractors to the extent reasonably necessary for the performance by such Separate Contractors of their work.

(C) Equipment and Materials Storage at Habitat Project Work Area. Subject to subsection 6.2(B) (Laydown Areas), the Contractor shall coordinate with the KRRC and any Separate Contractors to store apparatus, materials, supplies and equipment in such orderly fashion at the Habitat Project Work Area as will not unduly interfere with the progress of the Habitat Project Work or the work of the KRRC or any Separate Contractor.

(D) Interrelated Work. If part of the Habitat Restoration Work depends on proper execution of construction or operations by the KRRC, the Project Company or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Habitat Restoration Work, inspect the other work and promptly report to the KRRC Contract Representative any apparent discrepancies or defects in the other construction that would render it unsuitable for the proper execution of the Habitat Project Work. The Contractor shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in Article 12 (Uncontrollable Circumstances) in the event that defects in the work of the KRRC, the Project Company or any Separate Contractor render the work unsuitable for the proper execution or result of any part of the Habitat Project Work. However, failure of the Contractor to report discrepancies or defects in the other construction and actually known by the Contractor shall constitute acknowledgment that the KRRC's or the Separate Contractor's completed or partially completed construction is fit and proper to receive the Habitat Project Work.

(E) Disputes Associated with Separate Work. If the performance of any work by the KRRC, the Project Company or a Separate Contractor is reasonably expected to be interfered with by the concurrent performance of some other contract or contracts, the KRRC shall decide which contractor shall cease work temporarily and which contractor shall continue or whether the work under the contracts can be coordinated so that the contractors may proceed concurrently. Any decision by the KRRC to halt or delay the performance of the Habitat Restoration Work by the Contractor pursuant to this Section shall be made in accordance with Section 6.6 (Suspension of Work), and the Contractor shall be entitled to Uncontrollable Circumstance relief as and to the extent provided therein.

SECTION 6.6. SUSPENSION OF WORK.

(A) KRRC Right to Suspend Work. The KRRC may, through a written notice executed by the KRRC Contract Representative, order the Contractor to suspend, delay or interrupt all or any part of the Habitat Restoration Work for such period of time as the KRRC Contract Representative may reasonably determine to be appropriate for the coordination of the Related Projects or otherwise for the convenience of the KRRC, so long as such suspension does not contravene the requirements of any Governmental Approval.

(B) Uncontrollable Circumstance Relief. In the event the KRRC exercises its right to suspend, delay or interrupt all or any part of the Habitat Restoration Work pursuant to this Section, the Contractor shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in Article 12 (Uncontrollable Circumstances). No adjustment will be made pursuant to this Section or Article 12 (Uncontrollable Circumstances), however, for any suspension, delay or interruption to the extent caused by Contractor Fault, including any suspension under subsection 6.8(E) (Health and Safety Compliance Requirements). Any adjustment under this subsection shall be subject to the terms and conditions of Article 12 (Uncontrollable Circumstances).

SECTION 6.7. HABITAT RESTORATION PRACTICE.

(A) Exclusive Responsibility of Contractor. The Contractor shall have exclusive responsibility for all habitat restoration means, methods, techniques, sequences and procedures necessary or desirable for the correct, prompt and orderly performance and completion of the Habitat Restoration Work as required under this Agreement.

(B) Habitat Project Work Area Debris, Trash and Waste. The Contractor shall keep the Habitat Project Work Area reasonably free from Contractor-generated debris, trash and habitat restoration wastes to permit the Contractor to perform its Habitat Restoration Work efficiently, safely and without interfering with the use of adjacent land areas and without causing complaints from Separate Contractors, adjacent property owners, local public officials or members of the public. The Contractor shall remove all Contractor-generated debris, trash and habitat restoration wastes, materials, equipment, machinery and tools arising from the Habitat Restoration Work or applicable portions thereof (and not otherwise incorporated into the Habitat Restoration Work in accordance with the Contract Documents) to permit the KRRC to occupy the Habitat Project Work Area for its intended use.

SECTION 6.8. RESPONSIBILITY FOR HEALTH AND SAFETY.

(A) Health and Safety Representative. The Contractor assumes responsibility for implementing and monitoring all health and safety precautions and programs related to the performance of the Habitat Restoration Work. The Contractor shall, prior to commencing Habitat Restoration Work, designate an individual with the requisite qualifications and experience necessary to supervise the implementation and monitoring of all health and safety precautions and programs related to the Habitat Restoration Work (the “**Health and Safety Representative**”). The Health and Safety Representative shall be an individual stationed at the Habitat Project Work Area who shall have no other responsibilities with respect to the Habitat Restoration Work other than supervising the implementation and monitoring of all health and safety precautions and programs related to the Habitat Restoration Work.

(B) Precautions and Protection. The Contractor shall take all reasonable precautions for the health and safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

(1) All employees on the Habitat Project Work Area and all other persons who may be affected thereby;

(2) All the Habitat Restoration Work, whether in storage on or off the Habitat Project Work Area, under the care, custody or control of Contractor or any of its Subcontractors. Machinery and equipment shall have proper guards in place and all hazards shall be eliminated in accordance with the latest health and safety provisions of the OSHA Construction Industry Regulations 29 CFR Parts 1910 and 1926; and

(3) Other property at the Habitat Project Work Area or adjacent thereto.

(C) Health and Safety Inspections and Meetings. The Contractor is solely responsible to inspect, survey, and assess the Habitat Project Work Area and identify the existence of all permit-required confined spaces and non-permit confined spaces and comply with applicable OSHA regulations and standards. The Contractor shall comply with all health and safety requirements imposed by Applicable Law in the performance of the Habitat Restoration Work. The Health and Safety Representative shall make routine daily inspections of the Habitat Project Work Area and shall hold weekly health and safety meetings with the Contractor's personnel, Subcontractors and others, as applicable. The Contractor shall provide minutes of each health and safety meeting to the KRRC within five days of such meeting.

(D) Health and Safety Plan. The Contractor shall, as part of the Preliminary Services, provide, for the KRRC's review and comment, a Health and Safety Plan, prepared in accordance with the Contract Standards. The Health and Safety Plan shall include, but not be limited to, electrical safety, lock-out/tag-out, arc flash safety personal protection equipment while working in vicinity of energized electrical equipment, hazard communication, fire protection plan, emergency access plan, health and safety inspections of mechanized equipment, machinery, hoists, cranes, scaffolding, excavations, shoring, and related items. The Contractor shall not perform any Habitat Restoration Work-related activity until the KRRC has had an opportunity to review and comment on the Health and Safety Plan. The Contractor shall provide a final Health and Safety Plan, having addressed any comments provided by the KRRC, as a pre-condition to the establishment of the Habitat Project Work Commencement Date under Section 6.3 (Habitat Project Work Commencement Date).

(E) Health and Safety Compliance Requirements. The Contractor shall, and shall cause all Subcontractors to, comply with: (1) all Applicable Law relating to safety; (2) the Health and Safety Plan; and (3) any KRRC-specific health and safety requirements provided to the Contractor. The Contractor shall immediately report (no later than within 12 hours after its occurrence), in writing, any health and safety-related injury, loss, damage, accident or near miss arising from the Habitat Restoration Work to the KRRC and, to the extent mandated by Applicable Law, to all Governmental Bodies having jurisdiction over health and safety-related matters involving the Habitat Restoration Work. The KRRC, through the KRRC Contract Representative, shall have the right to suspend any or all Habitat Restoration Work if the Contractor fails to comply with its obligations hereunder without any requirements of providing the Contractor with Uncontrollable Circumstance relief hereunder.

(F) Emergencies. The Contractor shall develop an emergency response plan in accordance with the requirements set forth in Appendix 8 (General Habitat Restoration Work Requirements). The emergency response plan shall be subject to the approval of the KRRC and shall establish the protocols for the Contractor in dealing with emergencies impacting the performance of the Habitat Restoration Work. In case of an emergency which threatens immediate loss or damage to property or health and safety of life, the Contractor shall act immediately to prevent threatened loss, damage, injury or death. The Contractor shall notify the KRRC of the situation and all actions taken immediately thereafter. If, in the opinion of the Contractor, immediate action is not required, the Contractor shall notify the KRRC of the emergency situation and proceed in accordance with the KRRC's instructions. However, if any loss, damage, injury or death occurs that could have been prevented by the Contractor's prompt and immediate action, the Contractor shall be fully liable for all costs, damages, claims, actions, suits, attorneys' fees and all other expenses arising therefrom or relating thereto. Prior to commencing its Habitat Restoration Work and at all times during the performance of the Habitat Restoration Work, the Contractor shall provide the KRRC with two 24-hour emergency phone numbers where its representatives can be contacted. When the KRRC has been notified of emergency situations requiring, in the KRRC Contract Representative's reasonable opinion,

immediate attention and rectification, the KRRC Contract Representative will so notify the Contractor. In the event the Contractor fails to commence actions to prevent threatened loss, damage, injury or death within one hour after notification from the KRRC Contract Representative, the KRRC may take all appropriate rectification actions and deduct the costs thereof from monies owed to the Contractor.

SECTION 6.9. SECURITY.

(A) Security Generally. The Contractor, in accordance with the Contract Standards, shall be responsible for the security and protection of the Habitat Restoration Work at the Habitat Project Work Area, including any requirements set forth in Appendix 8 (General Habitat Restoration Work Requirements). The Contractor shall guard against all damage or injury to such properties caused by trespass, negligence, vandalism or malicious mischief of third parties, and shall operate, maintain, repair and replace all surveillance and other security equipment and assets constituting fixtures of the Habitat Restoration Work in accordance with the Contract Standards.

(B) Security Plan. The Contractor shall, as part of the Preliminary Services, provide, for the KRRC's review and comment, a Security Plan, prepared in accordance with the Contract Standards. The Contractor shall not perform any Habitat Restoration Work-related activity (including any activity that disturbs the Habitat Project Work Area) until the KRRC has had an opportunity to review and comment on the Security Plan. The Contractor shall provide a final Security Plan, having addressed any comments provided by the KRRC, as a pre-condition to the establishment of the Habitat Project Work Commencement Date under Section 6.3 (Habitat Project Work Commencement Date).

SECTION 6.10. MONITORING, OBSERVATIONS, TESTING AND UNCOVERING OF HABITAT RESTORATION WORK.

(A) Observations and Habitat Restoration Work Review Protocol. The Contractor shall at all times during normal working hours afford the KRRC, any Governmental Body and Utility (including PacifiCorp) having lawful jurisdiction, and any of their authorized representatives, including the Program Manager, every reasonable opportunity for observing all Habitat Restoration Work at the Habitat Project Work Area, and shall comply with the Habitat Restoration Work review procedures set forth in Appendix 10 (Habitat Restoration Work Review Procedures). During any such observation and inspection, all representatives of the KRRC, including the Program Manager, shall comply with all health and safety and other rules and regulations applicable to presence in or upon the Habitat Project Work Area, and shall in no material way interfere with the Contractor's performance of any Habitat Restoration Work.

(B) Certificates and Reports. The Contractor shall secure and deliver to the KRRC promptly all required certificates of inspection, test reports, work logs, or approvals with respect to the Habitat Restoration Work as and when required by the Contract Standards.

(C) KRRC Tests, Observations and Inspections. The KRRC, its employees, agents, representatives and contractors (which may be selected in the KRRC's discretion), and all Governmental Bodies and Utilities (including PacifiCorp) having lawful jurisdiction, may at any reasonable time and with reasonable notice conduct such on-site observations and inspections, and such civil, structural, mechanical, electrical or other tests as the KRRC deems necessary or desirable to ascertain whether the Habitat Restoration Work complies with the Contract Standards. The Contractor's costs, subject Cost Substantiation, paid in connection with any such test, observation or inspection shall result in additional compensation payable to the Contractor unless such test, observation or inspection reveals a material failure of the Habitat Restoration Work to comply with the Contractor Regulatory Compliance Terms, in which

event the costs and expenses of such observation, inspection or test shall be borne solely by the Contractor. The Contractor shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in Article 12 (Uncontrollable Circumstances) in the event that any requested test, observation or inspection causes an additional material cost (subject to Cost Substantiation), but only if such testing, observation or inspection does not reveal any material failure or non-compliance as set forth herein. The Contractor acknowledges and agrees that any test, observation or inspection by the KRRC or its representatives is for the sole benefit of the KRRC and shall not relieve the Contractor from its obligations to perform the Habitat Restoration Work in accordance with the requirements of the Contract Documents.

SECTION 6.11. CORRECTION OF WORK. The Contractor shall complete, repair, replace, restore, re-perform, rebuild and correct promptly any Habitat Restoration Work that does not materially conform with the Contract Standards. The Contractor shall be solely responsible for the removal of defective work. In the event of a failure of the Contractor to take action to correct any such non-conforming Habitat Restoration Work in a timely manner, the KRRC, upon 10 days' written notice, shall have the right, but not the obligation, to correct or provide for the correction of such non-conforming Habitat Restoration Work and the costs and expenses reasonably incurred by the KRRC in connection therewith shall be reimbursed by the Contractor to the KRRC, subject to Cost Substantiation. The KRRC shall provide the Contractor with seven days' advance written notice prior to exercising its right to correct or provide for the correction of any non-conforming Habitat Restoration Work pursuant to this Section.

SECTION 6.12. PROPERTY DAMAGE.

(A) Damage Prevention. In performing the Habitat Project Work, the Contractor shall comply with the Contract Standards to protect the Habitat Project Work from loss, damage or destruction, as applicable.

(B) Restoration. In case of damage to the Habitat Restoration Work, to the extent required by the Contractor Regulatory Compliance Terms, the Contractor shall promptly undertake and complete restoration of the damage to the Habitat Restoration Work to the character and condition existing immediately prior to the damage or to the condition deemed acceptable by the Governmental Body with jurisdiction over such Habitat Restoration Work.

(C) Notice and Reports. In addition to the notification requirements set forth in subsection 6.8(E) (Health and Safety Compliance Requirements), the Contractor shall notify the KRRC and the insurers under any applicable policy of Required Insurance of any incident causing property damage to the Habitat Restoration Work in excess of \$5,000 or of any OSHA recordable injury accident on the Habitat Project Work Area related to the Habitat Restoration Work, as promptly as reasonably possible after the Contractor learns of any such damage or accident. As soon as practicable after learning of any such incident or accident (but in no event later than 72 hours), the Contractor shall submit a written report to the KRRC. Such report shall be updated on a weekly basis and upon culmination of all tests, analysis and reviews, a final report incorporating all of the tests, analysis and reviews and the findings thereof shall be submitted to the KRRC. The Contractor shall also submit to the KRRC copies of all accident and other reports filed with (or given to the Contractor by) any insurance company, adjuster, or Governmental Body or otherwise prepared or filed in connection with the damage or accident.

(D) Insurance and Other Third-Party Payments. To the extent that any repair, replacement or restoration costs incurred pursuant to this Section can be recovered from any insurer or from another third party, each Party shall assist each other in exercising such rights as it may have to effectuate such recovery. Each Party shall provide the other with copies of all relevant documentation, and shall cooperate with and assist the other Party upon request by participating in conferences, negotiations and litigation regarding insurance claims; provided,

however, that neither Party shall be obligated pursuant to this Section to provide the other Party with documents subject to the attorney-client privilege under the laws of the States. The parties acknowledge that the Insurance Requirements do not obligate the Contractor to obtain builder's risk insurance.

(E) Payment for Habitat Restoration Work. The Contractor shall pay all costs and expenses incurred in performing any work necessary to repair or replace the Habitat Project Work to the condition deemed acceptable by the Governmental Body with jurisdiction over such Habitat Restoration Work; provided, however, that to the extent any such costs or expenses are incurred in performing restoration work required due to the occurrence of an Uncontrollable Circumstance, the KRRC shall pay such costs and expenses.

(F) Repair of KRRC Property and Private Property Damaged Due to Contractor Fault. The Contractor shall promptly repair or replace all KRRC Property and all private property (including Separate Contractor work or property) damaged by any Contractor Person as a result of Contractor Fault. The repair and replacement work shall restore the damaged property, to the maximum extent reasonably practicable, to its character and condition existing immediately prior to the damage to the condition deemed acceptable by the Governmental Body with jurisdiction over such Habitat Restoration Work. Costs incurred in connection therewith shall be borne solely by the Contractor to the extent the damage was caused by Contractor Fault and to the extent insurance proceeds are not available due to a failure of the Contractor to obtain or maintain any applicable policy of Required Insurance. To the extent that any such costs incurred pursuant to this Section can be recovered from any insurer or from another third party (including the Project Company or any Subcontractor), the Contractor and the KRRC shall each exercise its commercially reasonable efforts to obtain recovery from the appropriate source and provide a credit to the KRRC if recovery is obtained. Nothing in this Section is intended to waive any rights of recovery under applicable policies of insurance.

ARTICLE 7

COMPENSATION FOR HABITAT RESTORATION WORK

SECTION 7.1. HABITAT RESTORATION WORK PRICE.

(A) Habitat Restoration Work Price Generally. The KRRC shall pay the Contractor the Habitat Restoration Work Price for the Habitat Restoration Work in accordance with this Article. The **“Habitat Restoration Work Price”** shall be the sum of the Base Habitat Restoration Work Price and any Base Habitat Restoration Work Price Adjustments provided for under subsection (C) (Base Habitat Restoration Work Price Adjustments) of this Section.

(B) Base Habitat Restoration Work Price. The **“Base Habitat Restoration Work Price”** is \$[_____]. Except as provided in subsection (C) (Base Habitat Restoration Work Price Adjustments) of this Section, the Base Habitat Restoration Work Price shall not be subject to adjustment in any manner whatsoever.

(C) Base Habitat Restoration Work Price Adjustments. The adjustments to the Base Habitat Restoration Work Price provided for in this subsection shall be deemed the **“Base Habitat Restoration Work Price Adjustments”** and shall be reflected in a Contract Amendment. The Base Habitat Restoration Work Price shall be adjusted only to account for the cost resulting from Uncontrollable Circumstances, as and to the extent provided in Article 12 (Uncontrollable Circumstances).

SECTION 7.2. HABITAT RESTORATION WORK PRICE PAYMENT PROCEDURE.

(A) Scheduled Payments. The Contractor shall be paid Habitat Restoration Work Price upon completion of the applicable milestones, and in the amounts, set forth in [_____].

(B) Payment Requests. The Contractor shall, upon achievement of each applicable milestone set forth in [_____] be entitled to submit a Payment Request to the KRRC and the KRRC Representative with respect to the Habitat Restoration Work Price on a monthly basis and to receive from the KRRC the corresponding scheduled payment. Each Payment Request shall be in a form reasonably acceptable to the KRRC and must be accompanied by a monthly requisition report, which shall include:

(1) A reasonably detailed description of all Habitat Restoration Work actually completed to date;

(2) Updates to the Project Schedule in accordance with Appendix 8 (General Habitat Restoration Work Requirements), which shall reflect changes in the Contractor's critical path schedule since the date of the last Payment Request;

(3) A certificate of the Contractor Contract Representative certifying (1) the portion of the Habitat Restoration Work Price payable to the Contractor for completed Habitat Restoration Work; and (2) that, to their knowledge after reasonable inquiry, the Contractor is neither in default under this Agreement nor in breach of any material provision of this Agreement such that the breach would, with the giving of notice or passage of time, constitute a Contractor Event of Default;

(4) A verified statement setting forth the information required under any Applicable Law pertaining to prevailing wages; and

(5) Notice of any Encumbrances which have been filed together with evidence that the Contractor has discharged any such Encumbrances or made timely notification to the Surety that issued the Payment Bond regarding such Encumbrances; and

(6) Any other specific documents or information relating to the Habitat Restoration Work or this Agreement as may be required by Applicable Law or this Agreement.

(C) Review and Payment. Prior to submitting a Payment Request for the Habitat Restoration Work Price to the KRRC, the Contractor shall submit a draft Payment Request to the KRRC and the KRRC Representative, including all information required pursuant to this Section. The KRRC and the KRRC Representative shall have 15 days to review each draft Payment Request. Within such 15-day period, the KRRC shall verify or dispute in writing (or by telecommunication promptly confirmed in writing) the Contractor's certification that the Contractor has achieved the level of progress indicated and is entitled to payment. If the KRRC determines that the Habitat Restoration Work has progressed as indicated in the draft Payment Request, the KRRC shall notify the Contractor, and the Contractor shall submit a final, certified Payment Request to the KRRC, which may not contain any material change from the draft Payment Request reviewed by the KRRC. The KRRC shall pay the Contractor the requisitioned amount included in the final, certified Payment Request within 30 days following receipt, subject to the KRRC's rights to withhold payments under Section 7.3 (Permissible Withholdings). Disputes regarding payments of the Habitat Restoration Work Price shall be resolved in accordance with subsection (D) (Payment Dispute Procedures) of this Section. Any undisputed amounts of the Habitat Restoration Work Price shall be paid within 30 days after receipt of the Contractor's final, certified Payment Request.

(D) Payment Dispute Procedures. If the KRRC determines that the Habitat Restoration Work required for any payment has not progressed as indicated by the Contractor in the draft Payment Request, or otherwise disputes any draft Payment Request, the KRRC shall provide prompt written notice to the Contractor as to the KRRC's reasons, in reasonable detail, for such determination or the basis for such dispute. After receiving such determination notice, the Contractor may make the necessary corrections and resubmit a draft Payment Request to the KRRC and the KRRC Representative, or the KRRC may agree on a revised amount or draft Payment Request, as applicable, in which case the Contractor shall promptly notify the KRRC of such agreement and submit a final, certified Payment Request to the KRRC as to any undisputed amount. If the Contractor is unable to reach agreement with the KRRC as to the progress of the Habitat Restoration Work and the draft Payment Request, the Contractor may exercise its right to contest the KRRC's determination in accordance with the dispute resolution procedures set forth in Article 13 (Dispute Resolution). Any proceedings undertaken to resolve a dispute arising under this subsection shall immediately terminate if (1) the Contractor demonstrates to the KRRC that the Habitat Restoration Work has progressed as indicated in the draft Payment Request giving rise to the dispute and that the disputed draft Payment Request is correct, and (2) the KRRC concurs with such demonstration. The Contractor shall not be entitled to payment of the amount so requisitioned and disputed except upon resolution of the dispute in accordance with this subsection; provided, however, that the KRRC shall pay all requisitioned amounts which are not in dispute. In the event that upon resolution of any such dispute, it is determined that the Contractor was properly entitled to the disputed amount as of a date earlier than the date on which payment is actually made, the Contractor shall be entitled to receive, promptly following such resolution, such disputed amount plus interest on such disputed amount at the Overdue Rate.

(E) Payment of the Base Habitat Restoration Work Price Adjustments. The Base Habitat Restoration Work Price Adjustments shall be payable by the KRRC in a manner

and upon a schedule negotiated by the Parties that reasonably reflects the manner and schedule for payment that would apply if such Base Habitat Restoration Work Price Adjustments were to have constituted the Base Habitat Restoration Work Price.

SECTION 7.3. PERMISSIBLE WITHHOLDINGS.

The KRRC may disapprove and withhold and retain all or any portion of any payment requested in any Payment Request for Habitat Restoration Work in an amount equal to the sum of:

- (1) Any indemnification amounts which are due and owing to the KRRC hereunder and with respect to which a claim has been filed against a Contractor Indemnitee by a third party in accordance with Applicable Law;
- (2) Any amount determined pursuant to subsection 15.1(E) (Maintenance of Insurance Coverage) and Appendix 11 (Insurance Requirements);
- (3) Any other deductions or withholdings which are required by Applicable Law;
- (4) Any payments with respect to which the Habitat Restoration Work covered by such Payment Request (or any previous Payment Request) does not materially comply with this Agreement;
- (5) Damage to the work of a Separate Contractor to the extent caused by the Contractor or any Subcontractor;
- (6) Any payments with respect to which any person has filed a Lien resulting from the acts or omissions of the Contractor in failing to perform the Habitat Restoration Work and such Lien remains unreleased or unbonded;
- (7) Any Payment Request, if an Event of Default by the Contractor has occurred under Section 14.2 (Events of Default by the Contractor); and
- (8) In the event the Contractor fails to pay any Taxes, assessments, penalties or fees imposed by any Governmental Body, then the Contractor authorizes the KRRC to deduct and withhold or pay over to the appropriate Governmental Body those unpaid amounts upon demand by the Governmental Body if the failure to pay such amounts would reasonably be expected to result in a lien on the KRRC Property.

In the event of any permissible withholding under this Section, the KRRC shall notify the Contractor in writing at least seven days prior to the date payment is otherwise due. The notice shall indicate the specific amounts the KRRC intends to withhold, the reasons and contractual basis for the withholding, and the specific measures the Contractor must take to rectify the KRRC's concerns. Any dispute associated with any such withholding shall be handled in accordance with subsection 7.2(C) (Payment Dispute Procedures).

SECTION 7.4. FINAL HABITAT RESTORATION WORK PRICE PAYMENT.

The final Payment Request relating to the Habitat Restoration Work Price shall include:

- (1) A certified statement that all Subcontractors, vendors, and other persons or firms who have furnished or performed labor or furnished materials for the Habitat Restoration Work have been fully paid or satisfactorily secured;
- (2) A certificate of the Surety for both the Performance Bond and the Payment Bond certifying that the Surety consents to payment for Habitat Restoration Work Completion and agrees that such payment shall not relieve the Surety of any of its obligations under the Performance Bond or the Payment Bond;
- (3) A list of all pending property damage and personal injury or death insurance claims against the Contractor and arising out of or resulting from the Habitat Restoration Work, identifying the claimant and the nature of the claim; and
- (4) Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of this Agreement.

Final payment does not constitute a waiver by the KRRC of any rights relating to the Contractor's obligations under this Agreement. Final payment constitutes a waiver of all claims by the Contractor against the KRRC relating to the Habitat Restoration Work, the payment of the Habitat Restoration Work Price or otherwise in connection with the Habitat Restoration Work Period.

SECTION 7.5. NO ACCEPTANCE, WAIVER OR RELEASE.

Unless other provisions of this Agreement specifically provide to the contrary, none of the following shall be construed as (i) the KRRC's acceptance of any Habitat Restoration Work which is defective, incomplete, or otherwise not in compliance with this Agreement, (ii) the KRRC's release of the Contractor from any obligation under this Agreement, (iii) the KRRC's extension of the Contractor's time for performance, (iv) an estoppel against the KRRC, or (v) the KRRC's acceptance of any claim by the Contractor:

- (1) The KRRC's payment to the Contractor or any other person with respect to performance of the Habitat Restoration Work;
- (2) The review, consent, approval or acceptance, as applicable, of any submissions, permit applications, punch lists, other documents, certifications, or Habitat Restoration Work of the Contractor or any Subcontractor by the KRRC, the KRRC Representative or any other person;
- (3) The review of (or failure to prohibit) any habitat restoration applications, means, methods, techniques, sequences, or procedures for the Habitat Restoration Work by the KRRC, the KRRC Representative or any other person;
- (4) The entry at any time on the Project Site or the Habitat Project Work Area (including any area in which the Habitat Restoration Work is being performed) by the KRRC, the KRRC Representative or any other person;
- (5) Any observation, inspection or testing of (or failure to observe, inspect or test) any Habitat Restoration Work (whether finished or in progress) by the KRRC, the KRRC Representative or any other person;
- (6) The failure of the KRRC, the KRRC Representative or any other person to respond in writing to any notice or other written communication of the Contractor within

fifteen (15) days (or such other period as expressly provided herein) of such notice or other written communication; provided, however, that immediately following such 15-day (or other period), the KRRC's failure to respond shall automatically constitute a waiver of such underlying right; or

(7) Any other exercise of rights or failure to exercise rights by the KRRC hereunder.

ARTICLE 8

HABITAT MAINTENANCE SERVICES

SECTION 8.1. CONTRACTOR OBLIGATIONS GENERALLY.

(A) Commencement of Performance. Commencing immediately following the completion of the any aspect of the Habitat Restoration Work, and throughout the remainder of Term, the Contractor shall perform the Habitat Maintenance Services in compliance with the Contract Standards. The Habitat Maintenance Services consist primarily of compliance with the applicable Contractor Regulatory Compliance Terms.

(B) All Required Related Work. In performing the Habitat Maintenance Services, the Contractor shall provide and furnish everything required to carry out such services, including the employment and furnishing of all labor, materials, equipment, supplies, tools, transportation, Utilities, insurance, temporary facilities and other things and services of every kind whatsoever necessary for the full performance and completion of the Habitat Maintenance Services, and all administrative, accounting, recordkeeping, notification and similar responsibilities of every kind whatsoever under the Contract Documents pertaining to such obligations. A reference to Habitat Maintenance Services shall mean any part and all of the Habitat Maintenance Services unless the context otherwise requires, and shall include all Habitat Maintenance Services authorized by Contract Amendment.

(C) Encumbrances. At all following the Habitat Project Work Implementation Contract Amendment Date, the Contractor shall keep the Habitat Project Work Area free from any and all Encumbrances (other than Permitted Encumbrances) arising out of or in connection with (1) the Habitat Maintenance Services, or (2) any acts, omissions, errors or debts of the Contractor, the Guarantor, their Affiliates and their Subcontractors.

SECTION 8.2. SERVICE COORDINATION.

(A) Communications and Meetings. On or before the Contract Date, the Contractor shall inform the KRRC of the telephone, e-mail address and other means by which the Habitat Project Work Manager and Senior Supervisors may be contacted, and shall promptly notify the other Party of any changes in such contact information. The KRRC shall furnish to the Contractor comparable communications information with respect to the KRRC Representative, appropriate KRRC staff and the Program Manager. The Contractor shall meet with the KRRC each month (or less frequently if agreed to by the KRRC) to review the contents of the Monthly Maintenance Service Reports required to be prepared pursuant to subsection 8.3(A) (Monthly Maintenance Service Reports). The Habitat Project Work Manager and, if requested by the KRRC, the Senior Supervisors each shall personally attend the monthly operations meetings with the KRRC, and all special meetings which the KRRC may reasonably request from time to time, to review management, maintenance, performance and planning matters arising with respect to this Agreement. Any issue in dispute which the Parties are unable to resolve at such monthly and special meetings may be referred to the dispute resolution procedures set forth in Section 13.1 (Dispute Resolution Procedures), and the resolution of any issues resolved at such meetings or through Non-Binding Mediation shall be reflected in a Contract Administration Memorandum or a Contract Amendment, as applicable.

(B) Complaints and Communications. The Contractor shall respond in a timely and effective manner to all complaints and communications received by the Contractor or the KRRC regarding any matter related to the Habitat Maintenance Services. The Contractor shall investigate each such complaint and communication and, if it has a valid basis, the Contractor shall promptly rectify the matter. All such complaints and communications shall be

promptly logged and responded to in writing, emailed to the KRRC on a timely basis and reported to the KRRC as part of the Monthly Maintenance Service Reports delivered pursuant to subsection 8.3(A) (Monthly Maintenance Service Reports). The Contractor shall establish, maintain and make freely known an e-mail address and mailing address to which customer or citizen complaints and communications may be directed.

(C) Relations with States. The Contractor shall cooperate with and assist the KRRC in performing its obligations to the States under the KHSa, including providing all information, data and reports required thereunder.

SECTION 8.3. REPORTS.

(A) Monthly Maintenance Service Reports. The Contractor shall provide the KRRC and the Program Manager with monthly written reports (“**Monthly Maintenance Service Report**”) during the Term prepared in accordance with the Contract Standards, covering the Contract Obligations and addressing work performed during the past month. The Contractor shall describe any issues, problems or concerns that the KRRC should be made aware of and how the Contractor proposes to address them in each Monthly Maintenance Service Report. The Monthly Maintenance Service Report shall include a description of the work planned for the next three months and an update on the Contractor’s progress in meeting the SLTBE Goals. The KRRC’s and the Program Manager’s receipt or acceptance of the Monthly Maintenance Service Report (or any revised Monthly Maintenance Service Report) shall not bind the KRRC in any manner. Thus, the KRRC’s and the Program Manager’s receipt or acceptance of the Monthly Maintenance Service Report (or any revised Monthly Maintenance Service Report) shall not imply KRRC approval or consent to any of the matters set forth therein.

(B) Elements. Monthly Maintenance Service Reports required to be submitted by the Contractor shall include:

- (1) A summary of Habitat Maintenance Services activities during the reporting month;
- (2) A schedule of upcoming Habitat Maintenance Services activities;
- (3) A listing of submittals delivered during the reporting month and their status;
- (4) A listing of submittals scheduled for delivery the following month;
- (5) A listing of any alleged violations of Contractor Regulatory Compliance Terms or Applicable Law and actions taken or to be taken to eliminate any subsequent violations; and
- (6) A listing of issues known to the Contractor needing resolution; and
- (7) A listing of all material complaints received during the reporting month.

(C) Annual Reports. The Contractor shall furnish the KRRC, within 30 days after the end of each Contract Year following the Date, an “**Annual Report**” containing the following information:

- (1) A summary of the information contained in the Monthly Maintenance Service Reports; and

(2) Results of a performance evaluation which will review and analyze the administrative and maintenance practices employed in the management of the Habitat Maintenance Services.

(D) Reporting Efficiency. The Contractor and the KRRC shall review annually the frequency, format and content of all of the regular reports required during the Term to assure that the information and its presentation are necessary and economical; provided, that from time to time the Contractor may request that any such reports be delivered on a less frequent basis if in its good faith determination such request is reasonable under the circumstances, which request shall not be rejected unreasonably by the KRRC.

(E) Default Reports. The Contractor shall provide to the KRRC, promptly after the receipt thereof, copies of any written notice of a material default, breach or non-compliance received or sent under or in connection with any material contract entered into by the Contractor in connection with the Habitat Maintenance Services.

SECTION 8.4. EQUIPMENT AND SYSTEMS MAINTENANCE.

The Contractor shall perform all normal and ordinary maintenance of the machinery, equipment, structures, improvements and all other property installed as part of the Project, shall keep such equipment systems, improvements and property in good working order, condition and repair, in a neat and orderly condition and in accordance with the Contract Standards. The Contractor shall provide or make provisions for all labor, materials, supplies, equipment, spare parts, consumables and services which are necessary for the normal and ordinary maintenance of the Project and shall conduct predictive, preventive and corrective maintenance of such equipment systems, improvements and property in the Project as required by the Contract Standards.

SECTION 8.5. PERIODIC INSPECTIONS.

The KRRC may, upon reasonable written notice, perform an inspection of the Habitat Project Work at any time, and relevant records of the Contractor each Contract Year, to assess compliance with the Contract Standards. The Contractor shall cooperate fully with the inspections, which shall not interfere unreasonably with the Contractor's performance of the Habitat Maintenance Services. The KRRC's inspection may include the inspection of: (1) the Project and the Habitat Project Work Area; (2) all areas where chemicals are stored or used; and (3) all maintenance and repair records kept by the Contractor. KRRC shall promptly, upon request, provide Contractor with a copy of any data, analyses or reports arising from such inspections.

SECTION 8.6. EMERGENCIES.

(A) Emergency Plan. Within 30 days following the Habitat Project Work Implementation Contract Amendment Date, the Contractor shall provide the KRRC with a plan of action to be implemented in the event of an emergency, including fire, weather, environmental, health, safety and other potential emergency conditions. The plan shall: (1) provide for appropriate notifications to the KRRC and all other Governmental Bodies having jurisdiction and for measures which facilitate coordinated emergency response actions by the KRRC and all such other appropriate Governmental Bodies; and (2) assure the timely availability of all personnel required to respond to any emergency (no later than one hour during nights, weekends or holidays). The emergency plan shall be reviewed by the Parties annually as part of the review of the Annual Report and updated when necessary, in accordance with the Habitat Maintenance Protocol.

(B) Emergency Action. Notwithstanding any requirement of this Agreement requiring KRRC approval or consent to reports or submittals, if at any time the Contractor determines in good faith that an emergency situation exists such that action must be taken to protect the safety of the public or its employees, to protect the safety or integrity of the Project or to mitigate the immediate consequences of an emergency event, then the Contractor shall take all such action it deems in good faith to be reasonable, practicable and appropriate under the circumstances. As promptly thereafter as is reasonable, the Contractor shall notify the KRRC of the event at an emergency phone number from a list supplied by the KRRC, and the Contractor's response thereto. Absent the occurrence of Uncontrollable Circumstances, as and to the extent provided in this Agreement, cost of the Contractor's response measures shall be borne by the Contractor.

SECTION 8.7. DEDUCTIONS.

The Contractor shall pay Deductions in accordance with Appendix 14 (Deductions) for failing to perform administrative obligations set forth therein. The Contractor shall have the right to discuss with the KRRC any such Deductions prior to their imposition, and to dispute the obligation to pay any Deduction pursuant to Article 13 (Dispute Resolution).

ARTICLE 9

COMPENSATION FOR HABITAT MAINTENANCE SERVICES

SECTION 9.1. HABITAT MAINTENANCE SERVICES FEE GENERALLY.

From and after the Habitat Project Work Commencement Date, the KRRC shall pay the Habitat Maintenance Services Fee to the Contractor in the manner set forth in this Article as compensation for the Contractor's performing the Habitat Maintenance Services under this Agreement. The Habitat Maintenance Services Fee shall be calculated according to this Article, and paid pursuant to the schedule described below in Section 9.3 (Base Habitat Maintenance Services Fee).

SECTION 9.2. HABITAT MAINTENANCE SERVICES FEE.

The "**Habitat Maintenance Services Fee**" shall be calculated as the Base Habitat Maintenance Services Fee, plus or minus any Extraordinary Items. Each component of the Habitat Maintenance Services Fee shall be determined in accordance with this Article.

SECTION 9.3. BASE HABITAT MAINTENANCE SERVICES FEE.

The "**Base Habitat Maintenance Services Fee**" is payable on the dates and in the amounts set forth in [_____].

SECTION 9.4. EXTRAORDINARY ITEMS.

The Extraordinary Item component of the Habitat Maintenance Services Fee, which may be a charge or a credit, shall be equal to the net of the following items (each an "**Extraordinary Item**" hereunder):

- (1) Any Deductions owed by the Contractor due to non-performance specifically provided for under Section 8.7 (Deductions);
- (2) Any indemnification amounts which are due and owing to the KRRC hereunder and with respect to which a claim has been filed against a Contractor Indemnitee by a third party in accordance with Applicable Law; and
- (3) Any other increase or reduction in the Base Habitat Maintenance Services Fee provided for under any other Article or Appendix of this Agreement.
- (4) If the Parties are unable to agree on how to treat and designate an Extraordinary Item pursuant to this subsection, either Party may elect to initiate dispute resolution procedures in accordance with Article 13 (Dispute Resolution).

SECTION 9.5. PERMISSIBLE WITHHOLDINGS.

The KRRC may withhold and retain all or any portion of any payment requested in any Billing Statement for Habitat Maintenance Services in an amount equal to the sum of:

- (1) Any Deductions owed by the Contractor due to non-performance specifically provided for under Section 8.7 (Deductions);

(2) Any indemnification amounts which are due and owing to the KRRC hereunder and with respect to which a claim has been filed against a Contractor Indemnatee by a third party in accordance with Applicable Law;

(3) Any amount determined pursuant to subsection 15.1(E) (Maintenance of Insurance Coverage);

(4) Any payments with respect to which documents to be delivered in connection therewith are not correct and complete;

(5) Any payments to the extent that the Habitat Maintenance Services covered by such Billing Statement (or any previous Billing Statement) does not comply with this Agreement;

(6) Any payments with respect to which any person has filed a Lien resulting from the acts or omissions of the Contractor in performing the Habitat Maintenance Services and such Lien remains unreleased or unbonded;

(7) All payments, if an Event of Default of the Contractor has occurred under Section 14.2 (Events of Default by the Contractor); and

(8) In the event the Contractor fails to pay any Taxes, assessments, penalties or fees imposed by any Governmental Body, then the Contractor authorizes the KRRC to deduct and withhold or pay over to the appropriate Governmental Body those unpaid amounts upon demand by the Governmental Body if the failure to pay such amounts would reasonably be expected to result in a lien on the KRRC Property.

In the event of any permissible withholding under this Section, the KRRC shall notify the Contractor in writing at least seven days prior to the date payment is otherwise due. The notice shall indicate the specific amounts the KRRC intends to withhold, the reasons and contractual basis for the withholding and the specific measures the Contractor must take to rectify the KRRC's concerns.

SECTION 9.6. BILLING STATEMENT DISPUTES.

If the KRRC disputes any amount billed by the Contractor, the KRRC may either (1) pay the disputed amount when otherwise due, and provide the Contractor with a written objection indicating the amount that is being disputed and providing all reasons then known to the KRRC for its objection to or disagreement with such amount, or (2) pay the undisputed amount when due, and provide the Contractor with written objection as aforesaid within the time when the disputed amount would otherwise have been payable. When any billing dispute is finally resolved, if payment by the KRRC to the Contractor of amounts withheld or reimbursement to the KRRC by the Contractor of amounts paid under protest is required, such payment or reimbursement shall be made within 45 days of the date of resolution, with interest at the Overdue Rate calculated from the date on which the payment was or would have been paid to the date on which the payment is reimbursed or paid.

ARTICLE 10

MANAGEMENT, LABOR AND SUBCONTRACTORS

SECTION 10.1. MANAGEMENT.

(A) Habitat Project Work Manager. The Contractor shall appoint a full-time manager (the “**Habitat Project Work Manager**”) whose sole employment responsibility shall be managing the Contractor’s performance of the Habitat Project Work; provided, however, that the Contractor may, acting reasonably, transition the Habitat Project Work Manager to a part-time basis based on the scope of remaining Habitat Project Work. The Habitat Project Work Manager shall be licensed, trained, experienced and proficient in the provision of management services comparable to the Habitat Project Work. The Habitat Project Work Manager shall at all times during the Term remain appropriately licensed and certified as required under Applicable Law. The Contractor acknowledges that the performance of the individual serving from time to time as the Habitat Project Work Manager will have a material bearing on the quality of service provided hereunder, and that effective cooperation between the KRRC and the Habitat Project Work Manager will be essential to effectuating the intent and purposes of this Agreement. Accordingly, not fewer than 30 days prior to the date on which any candidate for Habitat Project Work Manager from time to time during the Term is proposed by the Contractor to assume managerial responsibility for the Habitat Project Work, the Contractor shall: (1) provide the KRRC with a comprehensive resume of the candidate’s licenses, training, experience, skills and approach to management and customer relations; and (2) afford the KRRC an opportunity to interview the candidate with respect to such matters. The KRRC shall have the right within 30 days following such interview to disapprove the hiring of the proposed candidate, which right of disapproval shall not be exercised unreasonably. The initial Habitat Project Work Manager, as identified in Appendix 12 (Key Personnel and Approved Subcontractors), shall not be replaced, unless otherwise approved by the KRRC acting reasonably, for a period of three years from the Habitat Project Work Implementation Contract Amendment Date, absent death, disability, retirement, resignation or cessation of employment with the Contractor. The Contractor shall replace the Habitat Project Work Manager at the request of the KRRC, after notice and a reasonable opportunity for corrective action, in the event the KRRC determines, acting reasonably, that an unworkable relationship has developed between the Habitat Project Work Manager and the KRRC.

(B) KRRC Rights with Respect to Key Personnel. The Contractor acknowledges that the identity of the Habitat Project Work Manager and the other key management and supervisory personnel proposed by the Contractor and its Subcontractors in its submittals to the KRRC was a material factor in the selection of the Contractor to perform this Agreement. Such personnel, their affiliations and their anticipated roles in the performance of the Contract Obligations are set forth in Appendix 12 (Key Personnel and Approved Subcontractors). The Contractor shall utilize such personnel to perform such services unless such personnel are unavailable for good cause shown. “Good cause shown” shall not include performing services on other projects for the Contractor or any of its Affiliates, but shall include termination for cause, employee death, disability, retirement, resignation or any job protected leave available under Applicable Law. In the event of any such permissible unavailability, the Contractor shall utilize replacement key management and supervisory personnel of equivalent skill, experience and reputation. Any on-site personnel change shall be proposed to the KRRC with reasonable advance notice for its review. The Contractor shall remove or replace, or have removed or replaced, any personnel performing the Contract Obligations if the KRRC, acting reasonably, determines that an unworkable relationship has developed between the KRRC and the individual.

SECTION 10.2. LABOR.

(A) Staffing Generally. The Contractor shall staff the Habitat Project Work during the Term in accordance with the Contract Standards with qualified personnel who meet the licensing and certification requirements of the State. The Contractor shall discipline or replace, as appropriate, any employee of the Contractor or any Subcontractor engaging in unlawful, unruly or objectionable conduct. The Contractor shall replace any Contractor or Subcontractor employee at the request of the KRRC, after notice and a reasonable opportunity for corrective action, in the event the KRRC determines, acting reasonably, that such employee does not have the requisite skills for the tasks assigned or has engaged in unlawful, unruly or objectionable conduct.

(B) Labor and Wage Requirements. The Contractor acknowledges that the prevailing wage and related requirements of the California Labor Code apply to “maintenance work” as defined at California Code of Regulations title 8, section 19000 and that the Habitat Maintenance Services include or may include such maintenance work. Therefore, the Contractor shall comply with the Labor Code provisions concerning payment of prevailing wage rates, penalties, keeping and retention of payroll records, and related requirements with regard to any employees performing maintenance work as may be required by Labor Code section 1771 and California Code of Regulations title 8, chapter 8, subchapter 3.

(C) Personnel Performance. The Contractor shall enforce discipline and good order at all times among the Contractor’s employees and all Subcontractor employees. All persons engaged by the Contractor for performance of the Contract Obligations shall have requisite skills for the tasks assigned. The Contractor shall employ or engage and compensate engineers and other consultants to perform all engineering and other services required for the Contract Obligations. The Contractor shall ensure that all persons performing Contract Obligations, including all Subcontractors, comply with all registration, licensing and certification requirements imposed by any Governmental Body or otherwise under Applicable Law, including Contractor and Subcontractor employees.

(D) Labor Relations. The Contractor shall furnish labor that can work in harmony with all other elements of labor employed for the performance of the Habitat Project Work. The Contractor shall have exclusive responsibility for disputes or jurisdictional issues among unions or trade organizations representing employees of the Contractor or its Subcontractors, whether pertaining to organization of the Habitat Project Work, employee hiring or any other matters. The KRRC shall have no responsibility whatsoever for any such disputes or issues and the Contractor shall indemnify, defend and hold harmless the KRRC and the Contractor Indemnitees in accordance with and to the extent provided in Section 16.1 (Contractor’s Obligation to Indemnify) from and against all Loss-and-Expense resulting from any such labor dispute.

(E) Notice of Labor Disputes. If the Contractor has knowledge of an actual or potential labor dispute that may affect any of the Contract Obligations, the Contractor shall promptly:

(1) Give notice thereof to the KRRC, including all relevant information related to the dispute of which the Contractor has knowledge; and

(2) Take all reasonable steps to ensure that such labor dispute does not affect the performance of any of the Contract Obligations including by applying for relief to appropriate forums or courts.

(F) Non-Discrimination Policy. Discrimination in any manner against any employee or applicant for employment by the Contractor or a Subcontractor on the basis of sex, race, creed, color, age, mental or physical disability, sexual orientation, religion, marital status, gender identity or national origin is prohibited. The Contractor shall include a similar nondiscrimination clause in all Subcontracts. If the Contractor fails to include a nondiscrimination clause in a Subcontract, the KRRC shall provide a reasonable opportunity to cure the defect. If the Contractor fails to cure the defect within the time period granted, the KRRC may declare this Agreement void and the Contractor shall be entitled to the reasonable value of the Contract Obligations that have been performed and materials that have been provided to date. If the Contractor cures the defect, this Agreement shall remain in force. If the Contractor willfully fails to comply with the requirements of the nondiscrimination clause, the KRRC may compel the Contractor to continue to perform under this Agreement as provided in California Public Utilities Code Section 20-106(b).

(G) Sexual Harassment. Sexual harassment by the Contractor, a Subcontractor, or any of their employees while on the Project Site or the Habitat Project Work Area or while actively representing or performing Contract Obligations for the KRRC is prohibited. It shall be the responsibility of the Contractor to prevent any such acts and to remove any employee who conducts such acts. Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment. Basic criteria for determining unlawful behavior includes conduct that has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

(H) Abuse, Use, Sale or Possession of Drugs or Intoxicants. The use, possession, sale or distribution of illegal drugs or intoxicants by the Contractor, a Subcontractor or any of their employees while performing Contract Obligations for the KRRC is prohibited. It shall be the responsibility of the Contractor to prevent such activities and to remove any employee or Subcontractor employee whose ability to perform appears to be affected by the use of drugs or intoxicants.

SECTION 10.3. SUBCONTRACTING GENERALLY.

(A) Right to Subcontract. The Contractor may carry out the Habitat Project Work and other Contract Obligations by contracting such obligations to one or more Subcontractors in accordance with the requirements of this Article. The Contractor shall retain full responsibility to the KRRC under this Agreement for the required performance of the Contract Obligations, notwithstanding the execution of, or the terms and conditions contained in, any Subcontract. Subcontracts entered into by the Contractor for the performance of the Contract Obligations shall neither supersede nor abrogate any of the terms or provisions of this Agreement.

(B) Approval Required. The Subcontractors identified in Appendix 12 (Key Personnel and Approved Subcontractors), which includes SLTBE Firms, are approved by the KRRC for the performance of the specific Contract Obligations identified therein, subject to the rights of the KRRC under this Section. All other Subcontractors shall be subject to the approval of the KRRC, which approval shall not be unreasonably conditioned, withheld or delayed. The Contractor shall replace any Subcontractor at the request of the KRRC, after notice and a reasonable opportunity for corrective action, in the event that the KRRC determines, acting reasonably, that an unworkable relationship has developed between the KRRC or the Contractor and the Subcontractor.

(C) Performance Failure. No failure of any Subcontractor used by the Contractor in connection with the provision of the Contract Obligations shall relieve the Contractor from its obligations hereunder to perform the Contract Obligations. The Contractor shall be responsible for settling and resolving with all Subcontractors all claims including those:

(1) Arising out of delay, disruption, interference, hindrance or schedule extension caused by the Contractor;

(2) Arising from the actions or inactions of the Contractor or a Subcontractor;
or

(3) Inflicted on the Contractor or a Subcontractor by the actions of another Subcontractor.

The Contractor shall provide to the KRRC, promptly following the receipt thereof, copies of any notice of default, breach or non-compliance received under or in connection with any Subcontract that may have a material and adverse effect on performance by the Contractor of its obligations under the Contract Documents.

(D) Restricted Persons. In providing the Contract Obligations, the Contractor shall not contract with, or allow any of its Subcontractors to contract with, any person that, in the reasonable opinion of the KRRC, is a Restricted Person.

(E) Subcontractor Licensing. All trade Subcontractors shall possess a valid contractor license as required by Applicable Law for the classification required for the work to be performed by the Subcontractor at the time of the Subcontract and throughout the duration of the Subcontract.

(F) Availability of Material Subcontractors and Key Personnel. At the request of the KRRC, the Contractor shall make the key representatives of material Subcontractors requested by the KRRC available for meetings between the KRRC and the Contractor concerning design review, Habitat Project Work progress or any other matter relating to the performance of the Habitat Project Work.

(G) Assignability. All Subcontracts entered into by the Contractor with respect to the Project shall contain provisions providing for assignment to the KRRC, solely at the KRRC's election and without cost or penalty, upon any early termination in accordance with this Agreement.

(H) SLTBE Goals. The Contractor acknowledges the KRRC has established (1) a non-mandatory goal for 5% of the Contract Compensation to be subcontracted to SLBE Firms, and (2) a non-mandatory goal for 10% of the Contract Compensation to be subcontracted to TBE Firms (the "**SLTBE Goals**"). The Contractor further acknowledges that a Subcontractor that qualifies as both an SLBE Firm and an TBE Firm shall only be counted under one such category for the purposes of the SLTBE Goals. The Contractor shall use commercially reasonable efforts to comply with the SLTBE Goals by utilizing practices consistent with industry standards, including the use of outreach programs, creation of small work packages, and engagement of the KRRC in a KRRC-supervised subcontracting process. The Contractor shall report its progress in meeting the SLTBE Goals, as reasonably requested, but not more than quarterly.

(I) Subcontractor Claims. The Contractor shall pay or cause to be paid to all Subcontractors all amounts due in accordance with their respective Subcontracts and the requirements of this Article. No Subcontractor shall have any right or claim against the KRRC

for labor, services, materials or equipment furnished for the Contract Obligations. The Contractor acknowledges that its indemnity obligations under Article 16 (Indemnification) shall extend to all claims for payment or damages by any Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the Habitat Project Work. The Contractor shall, at the KRRC Representative's request, furnish satisfactory evidence that all obligations of the nature designated above in this Section have been paid, discharged or waived. If the Contractor fails to do so the KRRC may, after having notified the Contractor, either pay unpaid bills or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor will be resumed in accordance with the terms of this Agreement, but in no event shall the provisions of this sentence be construed to impose any obligations upon the KRRC to either the Contractor, the Surety or any third party. In paying any unpaid bills of the Contractor, any payment so made by the KRRC will be considered as a payment made under this Agreement by the KRRC to the Contractor and the KRRC will not be liable to the Contractor for any such payments made in good faith.

(J) Removal of Subcontractors and Personnel. If at any time during the Term, the KRRC reasonably determines that the performance of any Subcontractor or any member of Subcontractor's staff performing Contract Obligations is unsatisfactory, based on serial, material non-performance issues (without reasonable cure thereof), the KRRC may require the Contractor to remove such Subcontractor or staff member immediately and replace the Subcontractor or staff member at no cost or penalty to the KRRC.

ARTICLE 11

COMPLIANCE WITH APPLICABLE LAW AND CONTRACTOR REGULATORY COMPLIANCE TERMS

SECTION 11.1. COMPLIANCE WITH APPLICABLE LAW GENERALLY.

The Contractor shall, and shall cause all of its Subcontractors to, perform the Contract Obligations in accordance with Applicable Law, including the Contractor Regulatory Compliance Terms, and all other applicable Contract Standards. The incorporation, reference or citation of specific statutes or other parts of Applicable Law in the Contract Documents is not intended, nor shall it be construed, to limit the generality of the Contractor's and all Subcontractors' obligations to comply with Applicable Law (whether or not specifically incorporated or referenced in the Contract Documents) in performing the Contract Obligations.

SECTION 11.2. COMPLIANCE WITH THE CONTRACTOR REGULATORY COMPLIANCE TERMS.

(A) Development and Finalization of the Contractor Regulatory Compliance Terms. The Contractor Regulatory Compliance Terms consist of (1) the terms of the Contractor Governmental Approvals, and (2) the Contractor-Allocated KRRC Regulatory Terms. As provided in Section 5.8 (Permitting Responsibilities and Schedule), during the Preliminary Services Period, the Contractor is obligated to apply for and seek to obtain, as permittee, all of the Contractor Governmental Approvals required to commence performance of the Habitat Project Work. As further provided in Section 5.8 (Permitting Responsibilities and Schedule), during the Preliminary Services Period the Contractor also is obligated to assist the KRRC in applying for and seeking to obtain the KRRC Governmental Approvals and, once obtained, in allocating responsibility for compliance between the Contractor and the Project Company.

(B) Compliance with the Contractor Regulatory Compliance Terms. The Contractor shall comply with all terms, conditions and requirements of all Contractor Regulatory Compliance Terms required to be complied with in connection with the performance of the Contract Obligations. The Contractor shall report to the KRRC, promptly upon obtaining knowledge thereof, all violations of the terms and conditions of any Contractor Regulatory Compliance Terms. Any Contractor violations of or noncompliance with any Contractor Regulatory Compliance Terms, shall be at the sole risk, liability and expense of the Contractor. The Contractor Regulatory Compliance Terms are the only Governmental Approvals, or particular terms and conditions of the Governmental Approvals, that the Contractor is obligated to comply with hereunder. Compliance with all other Governmental Approvals is the responsibility of the Project Company under the Project Agreement.

(C) KRRC Assistance. The Parties acknowledge and agree that the KRRC is the permittee under the KRRC Governmental Approvals, and notwithstanding its contracting hereunder for the Contractor to perform the Contractor-Allocated KRRC Regulatory Terms, the KRRC has not delegated any of its obligations as permittee under the KRRC Governmental Approvals. The KRRC shall cooperate in good faith and take all reasonable action requested by the Contractor from time to time, including engaging with and making requests to Governmental Bodies and other third parties (whether via formal filings, informal outreach or both, as applicable) to the extent such actions (1) may, in the Contractor's reasonable belief, help the Contractor perform its obligations hereunder, including complying with the Contractor Regulatory Compliance Terms and mitigating the circumstances relating to Uncontrollable Circumstances, (2) does not in the KRRC's reasonable belief interfere with any other right or obligation the KRRC may have pursuant to the KHSA; or (3) to the extent such actions do not involve incremental additional material cost or expense to the KRRC.

(D) Summary and Overview of Contractor Regulatory Compliance Terms Generally. The Contractor Regulatory Compliance Terms consist generally of monitoring native plant establishment; re-seeding difficult and underperforming areas; continuing to install pole cuttings and seed plantings; adaptively replacing pole cuttings, acorns, and container plants; maintaining existing and previously planted vegetation; invasive exotic vegetation control and inspections; herbivore control; maintaining the irrigation systems; field-based monitoring throughout reservoir areas where restoration features were installed; modification, adaptive improvement and augmentation of installed habitat features as needed; constructing in-stream habitat features based on engineered designs that are appropriate for the system; constructing off-channel wetlands, side channels and alcoves where appropriate; enhancing mid-channel gravel bars; conducting field monitoring of the mainstream and tributaries; fish passage monitoring; removing all non-natural fish passage barriers; and monitoring and report preparation. This subsection is provided for summary and overview purposes only, is not binding on the Parties in any respect, and shall not be used in the application or interpretation of this Agreement.

SECTION 11.3. OBLIGATIONS OF THE CONTRACTOR UPON NON-COMPLIANCE.

(A) Fines, Penalties, Indemnification and Remediation. In the event that the Contractor or any Subcontractor fails, or is alleged to have failed by a Governmental Body, at any time to comply with Applicable Law (including the FERC License Orders and all other Contractor Regulatory Compliance Terms) with respect to the Contract Obligations, the Contractor shall: (1) promptly respond to any notice of non-compliance, warning letter, notice of violation or other enforcement action and seek amicable resolution of the issues; (2) promptly correct such failure and resume compliance with Applicable Law; (3) pay any resulting fines, assessments, levies, impositions, penalties or other charges; (4) indemnify, defend and hold harmless the Contractor Indemnitees in accordance with and to the extent provided in Article 16 (Indemnification) from and against all Loss-and-Expense resulting therefrom; (5) make all changes in performing the Contract Obligations which are necessary to ensure that the failure of compliance with Applicable Law will not recur; and (6) comply with any corrective action plan filed with or mandated by any Governmental Body in order to remedy any such failure of the Contractor to comply with Applicable Law.

(B) Failure of Enforcement by Governmental Bodies. In the event the KRRC determines, acting reasonably, that any Governmental Body has failed to enforce or waived any of the Contractor Regulatory Compliance Terms and that such failure or waiver materially and adversely affects the rights and interests of the KRRC hereunder, the KRRC may notify the Contractor of its determination and the basis therefor. Promptly following any such determination and notification, the Contractor shall meet and confer with the KRRC regarding the alleged failure of enforcement or waiver and the appropriateness of potential remedial measures. Any agreement reached between the Parties as to appropriate remedial steps shall be reflected in a Contract Administration Memorandum.

ARTICLE 12

UNCONTROLLABLE CIRCUMSTANCES

SECTION 12.1. UNCONTROLLABLE CIRCUMSTANCES GENERALLY.

(A) Extent of Relief Available to the Contractor. Notwithstanding any other provision of this Agreement, if an Uncontrollable Circumstance occurs in the performance of the Habitat Project Work, the Contractor shall be entitled to relief from its obligations, extensions of time and compensation, as and to the extent provided in this Article. Such relief shall be available irrespective of whether an obligation of this Agreement expressly states that it is excused by Uncontrollable Circumstances.

(B) Mitigation Given Effect. Any relief to which the Contractor is entitled under this Article on account of Uncontrollable Circumstances shall be adjusted to account for the effect of the mitigation measures which were or should have been taken by the Contractor in compliance with its duty to mitigate under Section 18.7 (General Duty to Mitigate).

(C) Applicable Law Compliance. Nothing in this Article shall be interpreted as relieving the Contractor of its obligation, following any and all Uncontrollable Circumstances, to perform the Contract Obligations in compliance with Applicable Law.

(D) Contract Obligations Not Affected; Resumption of Performance. The occurrence of an Uncontrollable Circumstance shall not excuse the Contractor from performing any obligation hereunder not directly affected by the occurrence of the Uncontrollable Circumstance. Upon the occurrence of an Uncontrollable Circumstance, the Contractor shall promptly use all reasonable efforts to eliminate the cause thereof and resume performance of the affected Contract Obligations.

SECTION 12.2. NO RELIEF FOR ANY CONTRACTOR INDEMNIFICATION ACT, EVENT OR CIRCUMSTANCE NOT CONSTITUTING AN UNCONTROLLABLE CIRCUMSTANCE.

(A) No Contractual Relief. The Contractor understands and agrees that the Contractor Regulatory Compliance Terms (1) include performance standards and measures which may change over time and (2) provide substantial discretion for the applicable Governmental Bodies to require new performance standards. The Contractor shall not be relieved of its obligation to perform the Contract Obligations on account of any act, event, or circumstance whatsoever not constituting an Uncontrollable Circumstance, irrespective of (1) whether or to what extent the act, event or circumstance is within or outside the control of the Contractor, (2) whether the occurrence of the act, event or circumstance was or was not to any extent due to the willful or negligent act, event or omission of the Contractor, (3) the extent to which the act, event or circumstance expands the scope of, interferes with, delays or increases the cost of performing the Contract Obligations, or (4) the timing of the occurrence of such act, event or circumstance, including any of the following acts, events or circumstances:

(1) The adoption, amendment, promulgation, issuance, modification, repeal or written change in administrative or judicial interpretation of any Applicable Law related to the Habitat Project Work, including any such change which results in a modification of any Contractor Regulatory Compliance Term;

(2) The order or judgment of any Governmental Body;

(3) A delay in the renewal or reissuance of any Contractor Governmental Approval;

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- (4) The imposition or establishment of any new or unanticipated terms or conditions in any Contractor Regulatory Compliance Term that do not arise from Legal Proceedings initiated by third parties;
- (5) The “re-opening”, reissuance, revision, or change in interpretation as to the application of the terms and conditions of any Contractor Compliance Term or the imposition of any unanticipated terms and conditions of any Contractor Regulatory Compliance Term;
- (6) A change in the nature or severity of the actions typically taken by a Governmental Body to enforce compliance with Applicable Law related to the Habitat Project Work or any Contractor Regulatory Compliance Term in effect at any time during the Habitat Project Work;
- (7) Any increase in any fines or penalties provided for under Applicable Law; in effect at any time during the Term;
- (8) Any change in Applicable Law relating to Taxes;
- (9) The extension of the stated or effective expiration date of any Governmental Approval of any length;
- (10) Geotechnical or other site conditions, or differing geotechnical or other site conditions, of any kind;
- (11) Naturally occurring events (including unusually severe and abnormal climatic conditions) landslides, underground movement, earthquakes, fires, tornadoes, hurricanes, floods, lightning, epidemics and other acts of God;
- (12) Explosion, terrorism, sabotage or similar occurrence, acts of a declared public enemy, extortion, war, blockade or insurrection, riot or civil disturbance;
- (13) Labor disputes, strikes, slowdowns, stoppages, boycotts or disruptions;
- (14) The failure of any Subcontractor to furnish services, materials or equipment on the dates agreed to; or
- (15) The preemption, confiscation, diversion, destruction or other interference in possession or performance of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any material portion of the Project Site or the Habitat Project Work Area.

In the event of any conflict between the foregoing items described in (1) through (15) and the definition of Uncontrollable Circumstances; the latter shall prevail for all purposes under this Agreement.

(B) Relief Available to the Contractor Under the Contractor Regulatory Compliance Terms. The Contractor is obligated under Section 11.2 (Compliance with the Contractor Regulatory Compliance Terms) to comply with the Contractor Regulatory Compliance Terms. The Parties acknowledge and agree that the Contractor Regulatory Compliance Terms contain terms and conditions that provide various forms of specific potential schedule and performance relief that is available under certain defined circumstances, including circumstances allowing for permissible delay and performance relief; new or additional

measures; and adaptive management measures to attain water quality objectives. Nothing in this Section is intended to prevent the Contractor from availing itself of any performance relief provided for under any such terms and conditions.

SECTION 12.3. UNCONTROLLABLE CIRCUMSTANCE CLAIM PROCEDURES.

(A) Notice and Written Report. In order to assert an entitlement based on the occurrence of an Uncontrollable Circumstance, the Contractor shall give notice of the occurrence of the Uncontrollable Circumstance to the KRRC Contract Representative as soon as practicable, and in any event within 10 Business Days of the date the Contractor has knowledge that the Uncontrollable Circumstance has caused or is likely to cause an entitlement under this Agreement. The Contractor's notice shall include a written report:

- (1) Describing the Uncontrollable Circumstance and the cause thereof, to the extent known;
- (2) Stating the date on which the Uncontrollable Circumstance began and its estimated duration, to the extent known;
- (3) Summarizing the consequences of the Uncontrollable Circumstance and the expected impact on the performance of the Contract Obligations; and
- (4) Indicating the nature and scope of the Contractor's potential entitlement to relief.

(B) Updates. The Contractor shall provide the KRRC Contract Representative with periodic updates, together with further details and supporting documentation, as it receives or develops additional information pertaining to the Uncontrollable Circumstance and the matters described in subsection (A) (Notice and Written Report) of this Section. In particular, the Contractor shall notify the KRRC Contract Representative as soon as the Uncontrollable Circumstance has ceased and of the time when performance of its affected obligations can be resumed.

(C) Submittal of Relief Request. The Contractor shall submit to the KRRC Contract Representative a further notice making its request for specific relief, the basis therefor and the event giving rise to the requested relief (the "**Relief Request Notice**"), promptly after becoming aware of such occurrence, but not more than 30 days after the KRRC's receipt of the notice required under subsection (A) (Notice and Written Report) of this Section. Each Relief Request Notice shall include all information required in this Article with respect to the specific relief being requested.

(D) Delay in Notification. If any Uncontrollable Circumstance notice or any required information is submitted by the Contractor to the KRRC after the dates required under this Section, then the Contractor's entitlement to relief hereunder due to the occurrence of the Uncontrollable Circumstance shall have been reduced to the extent the KRRC is prejudiced by the delay of such notice or required information.

(E) Multiple and Overlapping Claims. The Contractor may make multiple but not duplicative claims with respect to an Uncontrollable Circumstance.

(F) Burden of Proof and Mitigation. The Contractor shall bear the burden of proof in establishing the occurrence of an Uncontrollable Circumstance and the entitlement to

relief based thereon, and shall demonstrate that the Contractor complied with its mitigation obligations under Section 18.7 (General Duty to Mitigate).

(G) KRRC Response. The KRRC may, but shall have no obligation to, respond to the Contractor's initial notice concerning the occurrence of an Uncontrollable Circumstance under subsection (A) (Notice and Written Report) of this Section. Within 30 days after receipt of a Relief Request Notice pursuant to subsection (C) (Submittal of Relief Request) of this Section, the KRRC shall issue a written determination as to the extent, if any, to which it agrees with or dispute the Contractor's request, and the reasons therefor.

(H) Agreement or Dispute. The agreement of the Parties as to the specific relief to be given the Contractor on account of an Uncontrollable Circumstance shall be evidenced by a Contract Administration Memorandum or a Contract Amendment. Either Party may refer any dispute for resolution in accordance with Section 13.1 (Dispute Resolution Procedures).

(I) Certifications. Each submittal made under this Section by the Contractor shall be accompanied by a certification of the Contractor Contract Representative that the submittal is made in good faith; that the supporting data are complete and accurate at the time of the submittal to the best knowledge of the Contractor; and that the requested relief accurately reflects the relief to which the Contractor reasonably believes it is entitled hereunder. The Contractor shall have no entitlement to relief for uncertified claims.

SECTION 12.4. UNCONTROLLABLE CIRCUMSTANCES RELIEF.

If and to the extent that an Uncontrollable Circumstance materially interferes with, delays or increases the cost to the Contractor performing the Project Implementation Work in accordance herewith, the Contractor shall be entitled to:

(1) Relief from its performance obligations; or

(2) An adjustment to the Contract Compensation for such costs (including the costs reasonably incurred in connection with mitigation measures undertaken by the Contractor pursuant to Section 18.7 (General Duty to Mitigate)), except as and to the extent provided in Article 16 (Indemnification));

or any combination thereof, each of which properly reflects the interference with performance, the time lost as a result thereof, or the amount of the increased cost, in each case only to the minimum extent necessary to compensate the Contractor or provide performance relief and only to the extent attributable to the Uncontrollable Circumstance. Any cost reduction achieved, or which should have been achieved, through the mitigation measures undertaken by the Contractor pursuant to Section 18.7 (General Duty to Mitigate) shall be reflected in a reduction of the amount of the additional Contract Compensation or Base Habitat Restoration Work Price Adjustment as appropriate to reflect such mitigation measures. The Contractor shall not be entitled to any price relief on account of any costs incurred as the result of Contractor Fault or an act, event or circumstance that the Contractor is obligated to insure against under Article 15 (Insurance), irrespective of any limits of coverage and of any deductible applicable under any policy of insurance maintained or required to be maintained thereunder.

SECTION 12.5. RELEASE.

The Contractor's acceptance of any performance, price or schedule adjustment under this Article shall be construed as a release of the KRRC (but in no event, any other third party, including the Project Company or any Subcontractors) by the Contractor (and all persons

claiming by, through or under the Contractor) from any and all losses or expenses resulting from, or otherwise attributable to, the event giving rise to the adjustment claimed.

ARTICLE 13

DISPUTE RESOLUTION

SECTION 13.1. DISPUTE RESOLUTION PROCEDURES.

(A) Generally. Except as provided in subsection 13.2(D) (Relation to Judicial Legal Proceedings), each Party shall follow the dispute resolution procedures set forth in this Section to attempt to resolve and settle disputes between themselves concerning the rights, obligations and liabilities of the Parties. The dispute resolution procedures set forth in this Section are intended to encourage a negotiated resolution of disputes in a prompt and efficient manner without resort to litigation, which should be a last resort.

(B) Informal Negotiations. Representatives of the KRRC and the Contractor with day-to-day involvement in the administration of this Agreement and the performance of the Contract Obligations shall initially and promptly enter into negotiations to attempt to address and resolve any disputes that may arise concerning this Agreement. In connection with such negotiations, the Party asserting the dispute shall provide the other with a written description of the nature of the dispute, along with reasonable supporting documentation. The Parties shall consider involving senior representatives and other upper management personnel of each Party in the informal negotiation process, as well as other representatives of the Parties not actively involved in the day-to-day activities associated with the dispute who might be able to take a broader look at the dispute in the context of the overall objectives of the Project and this Agreement. Following the exercise of reasonable efforts towards resolution of a dispute through such informal negotiations without reaching agreement, a Party may declare that the informal negotiations have been exhausted, and such Party may request Non-Binding Mediation.

SECTION 13.2. NON-BINDING MEDIATION.

(A) Rights to Request and Decline Non-Binding Mediation. Subject to the requirements of subsection 13.1(B) (Informal Negotiations), either Party may request Non-Binding Mediation of any dispute arising under this Agreement, whether technical or otherwise. Non-Binding Mediation is voluntary and will not be a condition precedent to initiating the institution of Legal Proceedings by either Party. The non-requesting Party may decline the request in its discretion. If there is concurrence that any particular matter shall be mediated, the provisions of this Section shall apply. The costs of such Non-Binding Mediation shall be divided equally between the KRRC and the Contractor.

(B) Procedure. The mediator shall be a professional engineer, attorney or other professional mutually acceptable to the Parties who has no current or on-going relationship to either Party. The mediator shall have full discretion as to the conduct of the mediation. Each Party shall participate in the mediator's program to resolve the dispute until and unless the Parties reach agreement with respect to the disputed matter or one Party determines in its discretion that its interests are not being served by the mediation.

(C) Non-Binding Effect. Mediation is intended to assist the Parties in resolving disputes over the correct interpretation of this Agreement. No mediator shall be empowered to render a binding decision.

(D) Relation to Judicial Legal Proceedings. Nothing in this Section shall operate to limit, interfere with or delay the right of either Party under this Article to commence judicial Legal Proceedings upon a breach of this Agreement by the other Party, whether in lieu of, concurrently with, or at the conclusion of any Non-Binding Mediation.

SECTION 13.3. FORUM FOR DISPUTE RESOLUTION.

It is the express intention of the Parties that all Legal Proceedings related to this Agreement or to the Project or to any rights or any relationship between the Parties arising therefrom shall be solely and exclusively initiated and maintained in state or federal courts located in the City and County of San Francisco, California. The Contractor and the KRRC each irrevocably consents to the jurisdiction of such courts in any such Legal Proceeding and waives any objection it may have to the laying of the jurisdiction of any such Legal Proceeding.

SECTION 13.4. CONTINUANCE OF PERFORMANCE DURING DISPUTE.

Unless otherwise directed in writing by the KRRC, at all times during the course of any dispute resolution procedure or Legal Proceeding, the Contractor shall continue with the performance of the Contract Obligations in a diligent manner and in accordance with the applicable provisions of this Agreement. The KRRC shall continue to satisfy its obligations under this Agreement, including its uncontested payment obligations to the Contractor during the pendency of any such dispute, subject to the terms and conditions of this Agreement. Records of the Contract Obligations performed during such time shall be kept in accordance with the applicable provisions of this Agreement.

ARTICLE 14

BREACH, DEFAULT, REMEDIES AND TERMINATION

SECTION 14.1. REMEDIES FOR BREACH.

(A) Generally. The Parties agree that, except as otherwise provided in this Section, in the event that either Party breaches this Agreement, the other Party may exercise any legal rights it may have under this Agreement and under Applicable Law, subject to Section 13.1 (Dispute Resolution Procedures). Neither Party shall have the right to terminate this Agreement except as expressly provided in this Article.

(B) No Effect On Contract Obligations. The exercise by the KRRC of any of its rights under this Article shall not reduce or affect in any way the Contractor's responsibility hereunder to perform the Contract Obligations.

(C) No Duplicative Recovery. Every right to claim compensation, indemnification or reimbursement under this Agreement shall be construed so that the recovery is without duplication to any other amount recoverable under this Agreement.

SECTION 14.2. EVENTS OF DEFAULT BY THE CONTRACTOR.

(A) Events of Default Not Requiring Previous Notice or Cure Opportunity for Termination. Each of the following shall constitute an Event of Default by the Contractor upon which the KRRC, by notice to the Contractor, may terminate this Agreement without any requirement of having given notice previously or of providing any further cure opportunity:

(1) Assignment or Transfer Without Consent. The assignment or transfer by the Contractor of this Agreement or any right or interest therein without the KRRC's prior written consent; provided that the Contractor may assign or transfer its rights and interests in this Agreement to its Affiliate without obtaining the consent of the KRRC, so long as reasonable notice is provided;

(2) Insolvency. The insolvency of the Contractor as determined under the Bankruptcy Law;

(3) Voluntary Bankruptcy. The filing by the Contractor or the Guarantor of a petition of voluntary bankruptcy under the Bankruptcy Law; the consenting of the Contractor or the Guarantor to the filing of any bankruptcy or reorganization petition against the Contractor or the Guarantor under the Bankruptcy Law; or the filing by the Contractor or the Guarantor of a petition to reorganize the Contractor or the Guarantor pursuant to the Bankruptcy Law; or

(4) Involuntary Bankruptcy. The issuance of an order of a court of competent jurisdiction appointing a receiver, liquidator, custodian or trustee of the Contractor or the Guarantor or of a major part of the property of the Contractor or the Guarantor, or the filing against the Contractor or the Guarantor of a petition to reorganize the Contractor or the Guarantor pursuant to the Bankruptcy Law, which order shall not have been discharged or which filing shall not have been dismissed within 90 days after such issuance or filing.

(B) Events of Default Requiring Previous Notice and Cure Opportunity for Termination. It shall be an Event of Default by the Contractor upon which the KRRC may

terminate this Agreement by notice to the Contractor and subject to the Contractor's cure rights set forth in subsection (C) (Notice and Cure Opportunity) of this Section, if:

(1) Any representation or warranty of the Contractor hereunder was false or inaccurate in any material respect when made, and the legality of this Agreement or the ability of the Contractor to carry out its obligations hereunder is thereby materially and adversely affected;

(2) The Contractor fails, refuses or otherwise defaults in its duty to pay any undisputed or uncontested amount required to be paid to the KRRC under this Agreement within 60 days following the due date for such payment;

(3) The Contractor suspends, ceases, stops or abandons the Contract Obligations or fails to continuously and diligently perform the Contract Obligations;

(4) The failure of the Contractor to obtain and maintain in full force and effect in accordance with the requirements of this Agreement any Security Instrument required by Article 17 (Security for Performance) as security for the performance of this Agreement;

(5) The failure of the Contractor to renew the Performance Bond or Payment Bond at least 90 days prior to the expiration of such Performance Bond or Payment Bond;

(6) The Contractor fails to resume performance of the Contract Obligations which has been suspended or stopped within a reasonable time after receipt of notice from the KRRC to do so or (if applicable) after cessation of the event preventing performance;

(7) The Contractor fails materially to comply with any Applicable Law or materially fails unreasonably to comply with the instructions of the KRRC consistent with this Agreement; or

(8) The Contractor fails to perform any other material obligation under this Agreement.

(C) Notice and Cure Opportunity. The Contractor acknowledges that the KRRC has an immediate termination right upon the occurrence of any of the defaults listed in subsection (A) (Events of Default Not Requiring Previous Notice or Cure Opportunity for Termination) of this Section and that the Contractor has no further right of notice or cure in such circumstances of default. Conversely, no default listed in subsection (B) (Events of Default Requiring Previous Notice and Cure Opportunity for Termination) of this Section shall constitute an Event of Default giving the KRRC the right to terminate this Agreement for cause under this Section unless:

(1) The KRRC has given prior written notice to the Contractor stating that a specified default has occurred which gives the KRRC a right to terminate this Agreement for cause under this Section, and describing the default in reasonable detail; and

(2) The Contractor has not initiated within a reasonable time (in any event not more than 15 days from the initial default notice) and continued with due diligence to carry out to completion all actions reasonably necessary to correct the default and prevent its recurrence.

If the Contractor shall have initiated and continued with due diligence to carry out to completion all actions required under item (2) of this subsection, the default shall not constitute an Event of Default during such period of time as the Contractor shall continue with due diligence to carry out to completion all such actions.

(D) Other Remedies upon Contractor Event of Default. The right of termination provided under this Section upon an Event of Default by the Contractor is not exclusive. If this Agreement is terminated by the KRRC for an Event of Default by the Contractor, the KRRC shall have the right to pursue a cause of action for actual damages and to exercise all other remedies which are available to it under this Agreement, under the Security Instruments and under Applicable Law. The Contractor shall not be entitled to any compensation for services provided subsequent to receiving any notice of termination for an Event of Default under this Section.

SECTION 14.3. EVENTS OF DEFAULT BY THE KRRC.

(A) Events of Default Permitting Termination. The failure, refusal or other default by the KRRC in its duty to pay any undisputed amount required to be paid to the Contractor under this Agreement within 30 days following the due date for such payment shall constitute an Event of Default by the KRRC upon which the Contractor, by notice to the KRRC, may terminate this Agreement, subject to the terms and conditions of this Section.

(B) Notice and Cure Opportunity. No such default described in subsection (A) (Events of Default Permitting Termination) of this Section shall constitute an Event of Default giving the Contractor the right to terminate this Agreement for cause under this Section unless:

(1) The Contractor has given prior written notice to the KRRC stating that a specified default has occurred which gives the Contractor a right to terminate this Agreement for cause under this Section, and describing the default in reasonable detail; and

(2) The KRRC has neither challenged in an appropriate forum the Contractor's conclusion that such default has occurred or constitutes a material breach of this Agreement nor initiated within a reasonable time (in any event not more than 30 days from the initial default notice) and continued with due diligence to carry out to completion all actions reasonably necessary to correct the default and prevent its recurrence.

If the KRRC shall have initiated and continued with due diligence to carry out to completion all actions required under item (2) of this subsection, the default shall not constitute an Event of Default during such period of time (in any event not more than 60 days from the initial default notice) as the KRRC shall continue with due diligence to carry out to completion all such actions.

(C) Effect of Termination. If this Agreement is terminated by the Contractor for cause as a result of an Event of Default by the KRRC, the KRRC shall pay the Contractor the same amount which would be payable under Section 14.4 (KRRC Convenience Termination Rights) if this Agreement were terminated at the election of the KRRC for convenience and without cause based on the date of termination. The KRRC shall have no further liability to the Contractor for any Event of Default or termination under this Section.

(D) Payment of Amounts Owed Through the Termination Date. Without duplicating any amount required to be paid pursuant to subsection (C) (Effect of Termination) of this Section, upon any termination pursuant to this Section, the Contractor shall be paid all

amounts due for the Contract Obligations performed prior to the Termination Date to be paid as part of the Contract Compensation but not yet paid as of the Termination Date.

SECTION 14.4. KRRC CONVENIENCE TERMINATION RIGHTS.

(A) Convenience Termination Right and Payment. Notwithstanding any other provision of this Agreement, the KRRC shall have the right at any time following the Contract Date until the final payment due date for the Habitat Restoration Work Price, exercisable in its discretion for any reason upon 60 days' written notice to the Contractor, to terminate this Agreement (the "**Convenience Termination Notice Period**"). During the Termination Notice Period, the KRRC and the Contractor will negotiate a transition plan with the Governmental Bodies for the Contractor to complete any Habitat Restoration Work that may still be in progress. At the request of the applicable Governmental Bodies, the Termination Notice Period shall be reasonably extended.

(B) Convenience Termination Payment for Contract Obligations. In the event of a convenience termination of the Contract Obligations pursuant to this subsection, the Contractor shall be entitled to a convenience termination payment in an amount equal to the sum of:

(1) The difference between (a) the value of all Habitat Project Work performed up to the Termination Date, and (b) all payments already made to the Contractor pursuant to this Agreement; and

(2) Subject to subsection (C) (Settlement of Subcontracts Generally) of this Section, the reasonable costs incurred by the Contractor in connection with the termination, including all actual and reasonable demobilization costs and amounts due in settlement of terminated Subcontracts.

In the event of a termination for convenience under this subsection, the Contractor acknowledges and agrees that it shall not be entitled to any compensation in excess of the value of the Habitat Project Work performed plus its settlement and closeout costs. Under no circumstances shall the Contractor or any Subcontractor be entitled to anticipatory or unearned profits, unabsorbed overhead, opportunity costs, or consequential or other damages as a result of a termination for convenience under this subsection.

(C) Settlement of Subcontracts Generally. The obligation of the KRRC to pay amounts due in settlement of Subcontracts under subsection (B) (Convenience Termination Payment for Contract Obligations) of this Section shall be limited to the reasonable costs incurred by the Contractor in settling and closing out Subcontracts and shall be subject to Cost Substantiation. Any convenience termination settlement payment under any Subcontract shall be calculated in the same manner as provided in subsection (B) (Convenience Termination Payment for Contract Obligations) of this Section with respect to the convenience termination settlement payment to the Contractor. In no event shall the KRRC be responsible for anticipatory or unearned profits, unabsorbed overhead, opportunity costs, or consequential or other damages payable to any Subcontractor as a result of the termination of any Subcontract.

(D) Payment of Amounts Due as a Result of Convenience Termination. The Contractor shall submit a termination for convenience claim, in the form and with the certification prescribed by the KRRC, promptly following the Termination Date but in any event not later than 60 days following the Termination Date. In the event of a failure of the Contractor to submit a termination for convenience claim within the time allowed pursuant to this Section, the KRRC may determine, on the basis of information available to the KRRC, the amount, if any,

due to the Contractor by reason of the convenience termination and shall thereupon pay to the Contractor the amount so determined, if any. In no event shall the amount payable to the Contractor pursuant to this Section exceed the Contract Compensation as reduced by the amount of payments otherwise made. In addition, any amount payable to the Contractor pursuant to this Section shall be reduced in the amount of any undisputed claim the KRRC may have against the Contractor under this Agreement. Any payment required to be made to the Contractor pursuant to this Section shall be made within 120 days following the Termination Date, subject to compliance by the Contractor with its obligations under Section 14.5 (Obligations of the Contractor upon Termination). Any payment required to be made by the Contractor to the KRRC pursuant to this Section shall be made within 120 days following the later of the Termination Date or the KRRC's resolution of the Contractor's termination for convenience claim. In the event of a dispute between the Parties as to the amount of any payment required to be made pursuant to this Section, either Party may elect to initiate dispute resolution procedures in accordance with Section 13.1 (Dispute Resolution Procedures).

(E) Completion or Continuance by the KRRC. Without limiting any other KRRC right or remedy provided for under this Agreement, after the date of any termination under this Section, the KRRC may at any time (but without any obligation to do so) take any and all actions necessary or desirable to continue and complete the Contract Obligations so terminated, including entering into contracts with other contractors.

(F) Convenience Termination Rights as Consideration. The right of the KRRC to terminate this Agreement for its convenience and in its discretion in accordance with this Section constitutes an essential part of the overall consideration for this Agreement, and, except with respect to the determination as to the amount due the Contractor pursuant to this Section, the Contractor hereby waives any right it may have under Applicable Law to assert that the KRRC owes the Contractor a duty of good faith dealing in the exercise of such right. The only compensation payable by the KRRC upon the exercise of its convenience termination option shall be any amounts specified herein in connection therewith.

SECTION 14.5. OBLIGATIONS OF THE CONTRACTOR UPON TERMINATION.

Upon any termination of this Agreement by the KRRC, the Contractor shall, as applicable and subject to any written directions provided by the KRRC:

- (1) Stop any further Contract Obligations at the Project Site and the Habitat Project Work Area or otherwise in connection with the Project;
- (2) Cease incurring any further obligations or liabilities pertaining to the Contract Obligations;
- (3) Promptly take all action as necessary to protect and preserve all materials, equipment, tools, facilities, and other property pertaining to the Project;
- (4) Clean up and remove all debris and trash from the Project Site and the Habitat Project Work Area;
- (5) Promptly remove from the Project Site and the Habitat Project Work Area all equipment, tools, or material owned by the Contractor, or its Subcontractors, agents or representatives;
- (6) Promptly deliver a list of all Suppliers, materials, machinery, equipment, property or other pending items being fabricated or on order for delivery to the Project

but not yet delivered to the Project Site or the Habitat Project Work Area or incorporated into the Contract Obligations, and comply with the written instructions of the KRRC with respect to such matters;

(7) Deliver a complete copy of all books, notes, and records of the Contractor pertaining to this Agreement's performance or planned Contract Obligations activities;

(8) Promptly provide a list of (and make available to the KRRC for review or copying) all files pertaining to the Contract Obligations, including any and all access and security codes, and including instructions and demonstrations that show how to open and modify such codes;

(9) Promptly deliver complete copies of all Subcontracts to the KRRC, together with a detailed report on the status of such Subcontracts (status of orders and work performed and not performed or delivered under each Subcontract); a record of proposals made and balances due under each Subcontract; any cancellation penalties pertaining thereto; and any further information required by the KRRC, and furthermore assist the KRRC in contacting such Subcontractors to verify such information or answer any questions of the KRRC;

(10) Use commercially reasonable effort to assign to the KRRC any Subcontract that the KRRC elects in writing, in its discretion, to have assigned to it, with the KRRC assuming, and the Contractor being relieved of, all obligations under the Subcontract from the date of the assignment;

(11) Promptly assign and transfer to the KRRC all right, title, and interest of Contractor to any items ordered for the Contract Obligations (but not yet delivered to the Project Site or the Habitat Project Work Area or incorporated into the Project) as requested by the KRRC in its discretion; provided the KRRC (or Surety) assumes responsibility for payment thereof;

(12) Promptly deliver and assign to the KRRC all warranties or guarantees by any vendor, supplier, manufacturer, or Subcontractor pertaining to the Project;

(13) Promptly notify the KRRC, in writing, of any pending or threatened Legal Proceedings against the Contractor relating to this Agreement or the Contract Obligations; and

(14) Promptly take such other action and execute such documents as requested by the KRRC, and assist in the transition of the Contract Obligations to the Surety or the KRRC, or as reasonably deemed necessary or appropriate by the KRRC, and avoid any action or conduct that would increase any expense or cost that would become an obligation or liability to the KRRC unless requested or directed by the KRRC Representative in writing.

With respect to any of the foregoing obligations that cannot reasonably be completed by the Termination Date, the Contractor shall complete such obligations as promptly as is practicable, but in no event later than 30 days following the Termination Date; provided, however, that the KRRC shall pay for the Contractor's costs incurred beyond the Termination Date as a result of the obligations described in this Article.

SECTION 14.6. NO WAIVERS.

No action of the KRRC or the Contractor pursuant to this Agreement (including any investigation or payment), and no failure to act, shall constitute a waiver by either Party of the other Party's compliance with any term or provision of this Agreement. No course of dealing, failure or delay by the KRRC or the Contractor in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof or otherwise prejudice such Party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of the KRRC or the Contractor under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

SECTION 14.7. WAIVER OF CONSEQUENTIAL AND PUNITIVE DAMAGES.

In no event shall either Party hereto be liable to the other or obligated in any manner to pay to the other any special, incidental, consequential, punitive or similar losses or damages (including loss of profits, loss of production, loss of business opportunity or other consequential or indirect loss) based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Agreement, or the material inaccuracy of any representation made in this Agreement, whether such claims are based upon contract, tort, negligence, warranty or other legal theory. The Parties further acknowledge and agree that nothing in this Section shall serve as a limitation or defense with respect to any obligation of the Contractor to pay any Deductions specifically provided for under this Agreement.

ARTICLE 15

INSURANCE

SECTION 15.1. CONTRACTOR-PROVIDED INSURANCE.

(A) Required Insurance. At all times during the Term, the Contractor shall obtain, maintain and comply with the insurance requirements set forth in this Article and Appendix 11 (Insurance Requirements) hereto and shall pay all premiums with respect thereto as the same become due and payable. The Required Insurance shall be provided on or before the Contract Date (or as otherwise specified in Appendix 11 (Insurance Requirements)) and remain in effect for the periods specified in Appendix 11 (Insurance Requirements). Proof of Required Insurance shall be furnished as provided in Appendix 11 (Insurance Requirements).

(B) No Builder's Risk Insurance Required. The Insurance Requirements do not obligate the Contractor to obtain builder's risk insurance. As provided in Section 6.12 (Property Damage), the Contractor shall bear the risk of any damage to the Habitat Restoration Work and the cost of any required repair or replacements, whether or not any policy of builder's risk insurance is in effect.

(C) Subcontractors. The Contractor shall ensure that all eligible Subcontractors secure and maintain all insurance coverage and other financial sureties pursuant to and as required by Appendix 11 (Insurance Requirements) and by Applicable Law in connection with their presence and the performance of their duties at or concerning the Project; provided, however, that the KRRC may, at its discretion, waive or modify any insurance requirement, taking into account the nature and extent of the work required under the applicable Subcontract for such Subcontractor.

(D) Compliance with Insurer Requirements. The Contractor shall comply promptly with the requirements of all insurers providing the Required Insurance pertaining to the Project. The Contractor shall not knowingly do or permit anything to be done that results in the cancellation or the reduction of coverage under any policy of Required Insurance.

(E) Maintenance of Insurance Coverage. If the Contractor fails to pay or cause to be paid any premium for Required Insurance, or if any insurer cancels any Required Insurance policy and the Contractor fails to obtain replacement coverage so that the Required Insurance is maintained on a continuous basis, then the KRRC at its election (but without any obligation to do so), following notice to the Contractor, may pay such premium or procure similar insurance coverage from another insurer, and upon such payment by the KRRC, the amount thereof shall be immediately reimbursed to the KRRC by the Contractor. The Contractor shall not perform Habitat Maintenance Services during any period when any policy of Required Insurance is not in effect. The Contractor shall comply with all Insurance Requirements and take all steps necessary to ensure that the Project remains continuously insured in accordance with the requirements of this Agreement. The failure of the Contractor to obtain and maintain any Required Insurance shall not relieve the Contractor of its liability for any losses intended to be insured thereby. Should any failure to provide continuous insurance coverage occur, the Contractor shall indemnify, defend and hold harmless the Contractor Indemnitees in accordance with and to the extent provided in Article 16 (Indemnification) from and against all Loss-and-Expense arising out of such failure. The purchase of the Required Insurance to satisfy the Contractor's obligations under this Section shall not be a satisfaction of any Contractor liability under this Agreement or in any way limit, modify or satisfy the Contractor Indemnity.

(F) Reductions for Insurance Proceeds. Whenever this Agreement obligates one Party to pay any amount to the other Party in respect of an event or circumstance for which,

or with respect to the consequences of which, an insurance claim may be made under the Required Insurance, the amount which any Party is obligated to pay will be reduced by the amount of insurance proceeds which the other Party actually recovers or would have been entitled to recover if it had complied with the requirements of this Agreement or any policy of Required Insurance.

SECTION 15.2. KRRC-PROVIDED INSURANCE.

The KRRC shall, on or prior to the Habitat Project Implementation Contract Amendment Date, acquire both a contractor's pollution liability insurance policy and a pollution legal liability insurance policy, each to be written on occurrence and claims made forms, respectively, with limits of not less than \$100 million for each pollution condition and a \$100 million project aggregate limit, covering liability due to pollution caused by or exacerbated by Project Implementation Work or the Habitat Project Work. Such policies shall include coverage for clean-up, removal, transportation and disposal and for any sudden and accidental pollution. The policies shall not exclude from coverage claims relating to injuries arising from the presence of lead or asbestos. The policies shall continue such coverage, either through policy renewals or purchase of an extended discovery period, if such coverage is available, through the statute of repose. The KRRC covenants to maintain the insurance described in this Section through the statute of repose following the Termination Date, to ensure that the Contractor is identified as an additional insured on such policies and to periodically provide the Contractor with evidence of such insurance during the Habitat Project Work. The Parties shall also determine which party will bear responsibilities for deductibles under the KRRC policies described in this Section as part of the Habitat Project Work Implementation Contract Amendment.

ARTICLE 16

INDEMNIFICATION

SECTION 16.1. CONTRACTOR'S OBLIGATION TO INDEMNIFY.

(A) Indemnity. The Contractor shall indemnify, defend and hold harmless the Contractor Indemnitees from and against (and pay the full amount of) any and all Loss-and-Expense that any Contractor Indemnitee may sustain in connection with any claim made by any third party arising by reason of (or alleged to result from or in connection with) any Contractor Indemnification Act, Event or Circumstance.

(B) Indemnification-Related Defined Terms. As used in this Article and in this Agreement,

(1) **"Contractor Indemnitee"** means the KRRC, PacifiCorp, the States, the CPUC, the OPUC and their respective elected officials, trustees, board members, officers, employees, representatives and agents.

(2) **"Contractor Indemnity"** means the obligations of the Contractor under this Article.

(3) **"Contractor Indemnification Act, Event or Circumstance"** means any:

(a) Contractor Fault;

(b) Failure to comply with any Contract Obligations, including any Contractor Regulatory Compliance Obligations; or

(c) Any express obligation of the Contractor to provide any indemnity hereunder, including those described in:

(i) Section 4.6 (Regulated Site Conditions);

(ii) Subsection 4.7(C) (Access to the Project Site and Habitat Project Work Area);

(iii) Subsection 10.2(D) (Labor Relations);

(iv) Subsection 10.3(I) (Subcontractor Claims);

(v) Subsection 11.3(A) (Fines, Penalties, Indemnification and Remediation); or

(vi) Subsection 15.1(E) (Maintenance of Insurance Coverage).

(4) **"Loss-and-Expense"** means, except as may be limited by the express terms of this Section, any and all (1) loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, assessment, tax, cost or expense directly arising from any Contractor Indemnification Act, Event or Circumstance, and (2) reasonable fees, costs and expenses of expert witnesses, contractors, and other persons incurred in connection with investigating, preparing for, defending or responding to any action, suit, litigation, arbitration, administrative proceeding or other legal or equitable proceeding relating to the Contractor Indemnity, and all appeals therefrom.

(C) Exceptions to and Limitations on the Contractor Indemnity. The Contractor Indemnity shall not operate to indemnify any Contractor Indemnitee:

(1) To the extent the Contractor Indemnification Act, Event or Circumstance was caused by or arose from KRRC Fault;

(2) To the extent the Contractor's obligation to indemnify is limited by Applicable Law, including anti-indemnity statutes;

(3) For any Loss-and-Expense that arises from a claim for a decline in the value of real or personal property, business interruptions, loss of profit or revenue, or similar economic loss; or

(4) To the extent relating to any Regulated Substances (including arsenic) that first existed at the Project Site as of the Contract Date, except as otherwise expressly provided for in Section 4.6 (Regulated Site Conditions).

(D) No Insurance Limitation. The Contractor Indemnity shall not be limited by the Required Insurance or by any coverage exclusions or other provisions in any policy of Required Insurance or other insurance maintained by the Contractor which is intended to respond to such events.

(E) Reductions. The Contractor Indemnitees' right to indemnification pursuant to this Article shall be reduced by all proceeds actually received by the Contractor Indemnitees from, under or pursuant to:

(1) Any insurance policy;

(2) Article 15 (Indemnification) of the Project Agreement;

(3) Any settlement agreement;

(4) Any other third-party indemnification agreement;

(5) The Local Impact Mitigation Fund or the Facilities Removal Defense Fund.

The Contractor shall indemnify the Contractor Indemnitees in a timely manner. The Contractor Indemnitees, however, shall reimburse the Contractor for any proceeds subsequently received from the sources described in this subsection, to the extent that the Contractor would not have otherwise owed the Contractor Indemnitees if such proceeds were available when the Contractor originally indemnified the Contractor Indemnitees.

(F) Reliance by Contractor Indemnitees. This Section may be relied upon by the Contractor Indemnitees and may be enforced directly by any of them against the Contractor in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and the Contractor.

SECTION 16.2. INDEMNIFICATION PROCEDURES.

(A) Notice. If a Contractor Indemnitee receives any notice, demand, letter or other document concerning any claim for which it appears that the Contractor Indemnitee is, or may become entitled to, indemnification for a Loss-and-Expense under this Agreement in respect of the entire claim, the Contractor Indemnitee shall give notice in writing to the Contractor as soon as reasonably practicable. A delay by the Contractor Indemnitee in providing such notice

beyond such period shall not waive any right to indemnification except to the extent that the Contractor demonstrates, bearing the burden of proof, that it is prejudiced, suffers loss, or incurs expense because of the delay.

(B) Consolidation of Claims. If a notice of claim is given pursuant to subsection (A) (Notice) of this Section by more than one Contractor Indemnatee relating to the same facts or circumstances, the Contractor may, acting reasonably and in consultation with the Contractor Indemnitees named in the claims, require the consolidated administration and coordination of all such noticed claims by common counsel.

(C) Contractor Right to Dispute Claim. If notice is given as provided in subsection (A) (Notice) of this Section, the Contractor shall be entitled, acting reasonably and in consultation with the Contractor Indemnitees named in the claim, to dispute the claim in the name of the Contractor Indemnatee at the Contractor's own expense and take conduct of any defense, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Contractor Indemnatee will give the Contractor all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim.

(D) Rights and Duties of the Parties. With respect to any claim conducted by the Contractor pursuant to subsection (C) (Contractor Right to Dispute Claim) of this Section:

(1) The Contractor shall keep the Contractor Indemnatee fully informed and consult with it about material elements of the conduct of such defense, including any settlement discussions;

(2) The Contractor shall demonstrate to the Contractor Indemnatee, at the reasonable request of the Contractor Indemnatee, that the Contractor has sufficient means to pay all costs and expenses that it may incur by reason of conducting such defense; and

(3) The Contractor shall have full control, acting reasonably and in consultation with the Contractor Indemnitees named in the claim, of such defense and proceedings, including any compromise or settlement thereof; provided, however, that any such compromise or settlement involving non-monetary obligations of Contractor Indemnitees, or otherwise having a direct effect upon such Contractor Indemnatee's continuing operations, shall (1) contain a full release of the applicable Contractor Indemnatee from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement, and (2) be subject to the consent of such Contractor Indemnatee, which consent will be obtained by the KRRC and shall not be unreasonably withheld, conditioned or delayed. If requested by the Contractor, acting reasonably, the Contractor Indemnatee shall at the sole cost and expense of the Contractor, cooperate with the Contractor and its counsel in contesting any claim which the Contractor elects to contest, including the making of any related counterclaim against the person asserting the claim or any cross-complaint against any person.

(E) Contractor Indemnatee Rights to Conduct Defense. A Contractor Indemnatee may take conduct of any defense, dispute, compromise or appeal of the claim and of any incidental negotiations, if:

(1) The Contractor fails to notify the Contractor Indemnatee of its intention to take conduct of the relevant claim within 10 Business Days of the notice from the Contractor Indemnatee under subsection (A) (Notice) of this Section or notifies the Contractor Indemnatee that it does not intend to take conduct of the claim;

(2) The Contractor Indemnatee reasonably determines that a conflict exists between it and the Contractor or another Contractor Indemnatee which prevents or potentially prevents the Contractor from presenting a full and effective defense; or

(3) The Contractor fails to comply in any material respect with subsection (D) (Rights and Duties of the Parties) of this Section.

(F) Transfer of Conduct of Claim to Contractor Indemnatee. A Contractor Indemnatee may at any time, without limiting the Contractor's obligation to defend and indemnify the Contractor Indemnitees under this Article (including the obligation to pay Fees and Costs in connection with such indemnity), give notice to the Contractor that it is retaining or taking over, as the case may be, the conduct of any defense, dispute, compromise, settlement or appeal of any claim, or of any incidental negotiations, to which subsection (E) (Contractor Indemnatee Rights to Conduct Defense) of this Section applies. On receipt of such notice the Contractor will promptly take all steps necessary to transfer the conduct of such claim to the Contractor Indemnatee, and will provide to the Contractor Indemnatee all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim.

(G) Contractor Responsibility for Costs. If a Contractor Indemnatee is entitled and elects to conduct its own defense pursuant to subsection (E) (Contractor Indemnatee Rights to Conduct Defense) of this Section, all Fees and Costs incurred by the Contractor Indemnatee in investigating, defending and conducting the claim for which it is entitled to indemnification hereunder shall constitute a Loss-and-Expense subject to the Contractor Indemnity.

ARTICLE 17

SECURITY FOR PERFORMANCE

SECTION 17.1. GUARANTOR.

(A) Guaranty Agreement. The Contractor shall cause the Guaranty Agreement to be provided by the Guarantor on or before, the Habitat Project Work Implementation Contract Amendment Date, in substantially the form attached hereto as Transaction Form A (Form of Guaranty Agreement).

(B) Reports and Notifications Concerning the Financial Condition of the Guarantor. The Contractor shall provide to the KRRC, within 180 days after the end of each fiscal year of the Guarantor, the consolidated balance sheet and income statement for the Guarantor attached to the audited year-end financial statements for that fiscal year reported upon by the independent public accountant of the Guarantor. If applicable, the Contractor shall also furnish the KRRC with copies of the quarterly and annual reports and other filings of the Guarantor filed with the Securities and Exchange Commission. If the Guarantor is not required to file quarterly reports with the Securities and Exchange Commission, the Contractor, at the request of the KRRC, shall provide the KRRC with unaudited quarterly financial statements of the Guarantor within 60 days following the end of each quarter based on the fiscal year of the Guarantor. In addition, the Contractor shall provide reasonable notice to the KRRC of any change to the financial condition of the Guarantor that would reasonably be anticipated to impair the ability of the Guarantor to meet its obligations under the Guaranty Agreement.

(C) Material Adverse Change to Financial Condition of Guarantor. If, at any time during the Term, (a) there is a change that results in a 20% decline in the Guarantor's net worth as of the Habitat Project Work Implementation Contract Amendment Date, or (b) there is a material change in the condition of the Guarantor's earnings, net worth, or working capital over the preceding 12 months which would reasonably be anticipated to impair the Guarantor's ability to meet its obligations under the Guaranty Agreement, the Contractor shall, at its sole cost and expense, cause to be provided credit enhancement of its obligations hereunder within 30 days after such occurrence. Such credit enhancement shall be in the form either of (1) an unconditional guarantee of all of the Contractor's obligations hereunder provided by a corporation or financial institution having a credit rating substantially similar to the Guarantor as of such date, or (2) subject to the approval of the KRRC, acting reasonably, a letter of credit or substitute instrument providing security for the performance of the Contractor's obligations hereunder in a form and manner reasonably acceptable to the KRRC. In the event that the Contractor provides credit enhancement in the form of a replacement guarantor, the replacement guarantor shall become the guarantor for purposes of this Agreement and the provisions of this Section shall apply equally to such replacement guarantor. For purposes of this Section, "net worth" means stockholder or shareholder equity, as reported on the Guarantor's balance sheet.

(D) Responsibility for Cost. The cost and expense of obtaining and maintaining the Guaranty Agreement and any credit enhancement required under this Section as security for the performance of the Contractor's obligations hereunder shall be borne by the Contractor without reimbursement from the KRRC.

SECTION 17.2. BONDS.

(A) Performance Bond. The Contractor, on or before, and as a condition to the effectiveness of, the Contract Date, shall provide the Performance Bond as financial security for the faithful performance of the Habitat Project Work, including specifically the Contractor's

correction, replacement, or restoration of any portion of the Habitat Restoration Work which is found to be not in compliance with requirements of this Agreement. The Performance Bond shall remain open until the Termination Date. The penal sum of the Performance Bond shall be an amount equal to \$[_____].

(B) Payment Bond. The Payment Bond shall be security for the payment of all persons supplying labor and material in the performance of the Habitat Project Work and shall remain open until the Termination Date. The penal sum of the Payment Bond shall be an amount equal to \$[_____].

(C) Surety Requirements. The bond required to be provided pursuant to this Section shall be issued by a Surety: (1) approved by the KRRC; (2) having a rating of “A” in the latest revision of the A.M. Best Contractor’s Insurance Report; (3) listed in the United States Treasury Department’s Circular 570, “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies”; and (4) holding a certificate of authority to transact surety business in the State. The Performance Bond and the Payment Bond shall comply with and shall be subject to the California Bond and Undertaking Law (California Code of Civil Procedure Section 994.0101 *et seq.*).

(D) Monitoring of Surety. The Contractor shall be responsible throughout the Term for monitoring the financial condition of any Surety issuing the bonds required by this Agreement and for making inquiries no less often than annually to confirm that each such Surety complies with the qualification requirements and maintains at least the minimum rating level specified in this Section. In the event the rating of any issuing Surety falls below such minimum level, or if any Surety is declared bankrupt or becomes insolvent or has the rights to do business in the State terminated, the Contractor shall promptly notify the KRRC of such event and shall promptly take steps to ensure continued compliance with this Section by furnishing or arranging for the furnishing of a substitute or additional bond of a Surety whose rating and other qualifications satisfy all above requirements, unless the KRRC agrees to accept the Surety that no longer satisfies the minimum rating level specified above, or agrees to an alternative method of assurance. Upon such notice by the Contractor of such an event, the KRRC shall not unreasonably withhold its approval of such assurance.

(E) Completion of Work. If this Agreement is terminated by the KRRC for an Event of Default and the Surety fails to pursue completion of the Contract Obligations with reasonable speed, the KRRC may arrange for completion of the Contract Obligations and deduct the cost thereof from any amount otherwise due to the Contractor under this Agreement, including the cost of additional KRRC administration and consultant services made necessary by such default or neglect. In such event, no further payment shall then be made by the KRRC until all costs of completing the Contract Obligations shall have been paid.

SECTION 17.3. COSTS OF PROVIDING SECURITY INSTRUMENTS.

The cost and expense of obtaining and maintaining the Security Instruments required under this Article as security for the performance of the Contractor’s obligations hereunder shall be borne by the Contractor without additional reimbursement from the KRRC.

ARTICLE 18

MISCELLANEOUS PROVISIONS

SECTION 18.1. NO CONTRACTOR OWNERSHIP IN THE PROJECT.

The Contractor shall perform the Contract Obligations provided for herein as an independent contractor and shall not have any legal, equitable, tax beneficial or other ownership or leasehold interest in the KRRC Property, the Project Site or the Habitat Project Work Area. The Contractor shall not perform the Contract Obligations for any purpose other than the purposes contemplated by this Agreement or to serve or benefit any person other than the KRRC and the Contractor Indemnitees.

SECTION 18.2. RELATIONSHIP OF THE PARTIES.

The Contractor is an independent contractor of the KRRC and the relationship between the Parties shall be limited to performance of this Agreement in accordance with its terms. Neither Party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by the other Party. Nothing in this Agreement shall be deemed to constitute either Party a partner, agent or legal representative of the other Party. No liability or benefits, such as workers' compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to any Party's agent or employee as a result of this Agreement or the performance thereof.

SECTION 18.3. AFFILIATE TRANSACTIONS.

If any costs to be reimbursed by the KRRC to the Contractor under this Agreement arise from a transaction between the Contractor and any Affiliate of the Contractor, the Contractor shall notify the KRRC of the specific nature of the contemplated transaction, including the identity of the Affiliate, the nature of the work to be performed by the Affiliate and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. The Contractor shall not enter into any such transaction, nor incur any such cost, absent the written approval of the KRRC in its discretion.

SECTION 18.4. CONTRACT ADMINISTRATION.

(A) Administrative Communications. The Parties recognize that a variety of contract administrative matters will routinely arise throughout the performance of this Agreement. These matters will by their nature involve requests, notices, questions, assertions, responses, objections, reports, claims, and other communications made personally, in meetings, by phone, by mail and by electronic and computer communications. The purpose of this Section is to set forth a process by which the resolution of the matters at issue in such communications, once resolution is reached, can be formally reflected in the common records of the Parties so as to permit the orderly and effective administration of this Agreement.

(B) Contract Administration Memoranda. The principal formal tool for the administration of routine matters arising under this Agreement between the Parties that do not require a Contract Amendment shall be a "**Contract Administration Memorandum**". A Contract Administration Memorandum shall be prepared, once all preliminary communications have been concluded, to evidence the resolution reached by the KRRC and the Contractor as to matters of interpretation and application arising during the course of the performance of their obligations hereunder. Such matters may include, for example: (1) issues as to the meaning, interpretation or application of this Agreement in particular circumstances or conditions;

(2) calculations required to be made; (3) notices, waivers, releases, satisfactions, confirmations, further assurances, consents and approvals given hereunder; and (4) other similar routine contract administration matters.

(C) Procedure. Either Party may request the execution of a Contract Administration Memorandum. When resolution of the matter is reached, a Contract Administration Memorandum shall be prepared by or at the direction of the KRRC reflecting the resolution. Contract Administration Memoranda shall be serially numbered, dated, signed by the Contract Representative of each Party, and, at the request of the KRRC, co-signed by a Senior Supervisor for the Contractor. The KRRC and the Contractor each shall maintain a parallel, identical file of all Contract Administration Memoranda, separate and distinct from the Contract Amendments and all other documents relating to the administration and performance of this Agreement.

(D) Effect. Executed Contract Administration Memoranda shall serve to guide the ongoing interpretation and application of the terms and conditions of this Agreement. Any material change, alteration, revision or modification of this Agreement, however, shall be effectuated only through a formal Contract Amendment in accordance with Section 18.5 (Contract Amendments).

SECTION 18.5. CONTRACT AMENDMENTS.

(A) Amendments Generally. Notwithstanding the provisions of Section 18.4 (Contract Administration), no material change, alteration, revision or modification of the terms and conditions of this Agreement shall be made except through a written amendment to this Agreement, duly authorized, approved or ratified by each of the Parties (a “**Contract Amendment**”).

(B) Procedure. Contract Amendments shall be serially numbered, dated and signed by a Senior Supervisor for the Contractor and by the KRRC Representative, as determined in accordance with subsection 18.6(B) (KRRC Representative). The KRRC and the Contractor each shall maintain a parallel, identical file of all Contract Amendments, separate and distinct from the Contract Administration Memoranda and all other documents relating to the administration and performance of this Agreement.

SECTION 18.6. CONTRACT REPRESENTATIVES.

(A) Contractor Representative and Senior Supervisors. The Contractor shall appoint and inform the KRRC in writing from time to time of the identity of (1) the individual with the responsibility and power from time to time to administer this Agreement and to bind the Contractor with respect to any Contract Administration Memorandum or Contract Amendment (the “**Contractor Representative**”), and (2) the corporate officials of the Contractor with senior supervisory responsibility for the Project and the performance of this Agreement (the “**Senior Supervisors**”). The Contractor shall promptly notify the KRRC in writing of the appointment of any successor Senior Supervisors. The Senior Supervisors shall cooperate with the KRRC in any reviews of the performance of the Habitat Project Work Manager and the Contractor Representative which the KRRC may undertake from time to time, and shall give full consideration to any issues raised by the KRRC in conducting such performance reviews.

(B) KRRC Representative. The KRRC shall appoint an individual or individuals to act as the “**KRRC Representative**” for this Agreement. The KRRC Representative shall have the authority to administer this Agreement, subject to the Board of Directors’ delegation of authority. The Contractor understands and agrees that any delegation of authority to the KRRC Representative may provide only limited authority with respect to the

implementation of this Agreement, which may include the authority to bind the KRRC with respect to any Contract Amendment. Within such limitations, the Contractor shall be entitled to rely on the written directions of the KRRC Representative. The KRRC Representative shall have the right at any time to issue the Contractor a written request for information relating to this Agreement. Any written request designated as a “priority request” shall be responded to by the Contractor within three Business Days.

(C) KRRC Approvals and Consents. When this Agreement requires any approval or consent by the KRRC to a Contractor submission, request or report, the approval or consent shall, within the limits of the authority of subsection (B) (KRRC Representative) of this Section, be given by the KRRC Representative in writing and such writing shall be conclusive evidence of such approval or consent, subject only to compliance by the KRRC with the Applicable Law that generally governs its affairs. Unless expressly stated otherwise in this Agreement, and except for requests, reports and submittals made by the Contractor that do not, by their terms or the terms of this Agreement, require a response or action, if the KRRC does not find a request, report or submittal acceptable, it shall provide written response to the Contractor describing its objections and the reasons therefor within 30 days of the KRRC’s receipt thereof. If no response is received, the request, report or submittal shall be deemed rejected unless the KRRC’s approval or consent may not be unreasonably delayed by the express terms hereof, and the Contractor may resubmit the same, with or without modification. Requests, reports and submittals that do not require a response or other action by the KRRC pursuant to some specific term of this Agreement shall be deemed acceptable to the KRRC if the KRRC shall not have objected thereto within 30 days of the receipt thereof.

SECTION 18.7. GENERAL DUTY TO MITIGATE.

(A) Mitigation by the Contractor. In all cases where the Contractor is entitled to receive any relief from the KRRC or exercise any rights, including the right to receive any payments, costs, damages or extensions of time, the Contractor shall use all reasonable efforts to mitigate such amount required to be paid by the KRRC to the Contractor under this Agreement, or the length of the extension of time. Upon request from the KRRC, the Contractor shall promptly submit a detailed description, supported by all such documentation as the KRRC may reasonably require, of the measures and steps taken by the Contractor to mitigate and meet its obligations under this Section.

(B) Mitigation by the KRRC. In all cases where the KRRC is entitled to receive from the Contractor any compensation, costs or damages, but not in any other cases, the KRRC shall use all reasonable efforts to mitigate such amount required to be paid by the Contractor to the KRRC under this Agreement, provided that such obligation shall not require the KRRC to:

- (1) Take any action which is contrary to the public interest of the States, as determined by the KRRC in its discretion; or
- (2) Alter the amount of Deductions it is entitled to receive hereunder.

The KRRC shall have no obligation to mitigate, implied or otherwise, except as set forth in this Section or as expressly provided in this Agreement. Upon request by the Contractor, the KRRC shall promptly submit a detailed description, supported by all such documentation as the Contractor may reasonably require, of the measures and steps taken by the KRRC to mitigate and meet its obligations under this Section.

SECTION 18.8. INTEREST ON OVERDUE OBLIGATIONS.

Except as otherwise provided for herein, all amounts due hereunder, whether as damages, credits, revenue, charges or reimbursements, that are not paid when due shall bear interest at the Overdue Rate.

SECTION 18.9. TAXES.

The Contractor shall pay all Taxes imposed on or in connection with the performance of the Contract Obligations, including (1) sales and use Taxes, and (2) any county “business tax”, without reimbursement from the KRRC. The Contractor acknowledges that any such Taxes have been priced into the Habitat Maintenance Services Fee.

SECTION 18.10. COST SUBSTANTIATION.

(A) Required Substantiation and Competitive Practices. The Contractor shall substantiate any other costs for which it claims compensation hereunder other than (1) the Base Habitat Restoration Work Price and the Base Habitat Maintenance Services Fee, which were proposed and negotiated on a fixed price basis, or (2) any other costs that are part of a negotiated fixed price. In incurring any other costs which are subject to Cost Substantiation, the Contractor shall utilize competitive practices to the maximum reasonable extent (including, where practicable, obtaining three competing bids, quotes, proposals or estimates for costs expected to be in excess of \$100,000), and shall enter into Subcontracts on commercially reasonable terms and prices in light of the work to be performed and the KRRC’s potential obligation to pay for it.

(B) Cost Substantiation Certificate. Any Payment Request or Billing Statement for compensation relating to costs requiring Cost Substantiation under subsection (A) (Required Substantiation and Competitive Practices) of this Agreement shall be accompanied by a certificate stating that the costs being invoiced (1) are properly payable under this Agreement and specifying the provisions of this Agreement under which compensation is due, and (2) are equal to amounts paid by the Contractor for Contract Obligations that have been properly performed. The Cost Substantiation certificate shall describe the competitive or other process utilized by the Contractor to obtain the commercially reasonable price in accordance with subsection (A) (Required Substantiation and Competitive Practices) of this Section, and shall state that such services and materials are reasonably required pursuant to this Agreement. Each Cost Substantiation certificate shall be accompanied by copies of all documentation reasonably necessary to demonstrate that the costs have been paid and are reasonable. Such documentation shall be in a format and level of detail reasonably acceptable to the KRRC. To the extent reasonably necessary to confirm the payment of costs that are subject to Cost Substantiation under subsection (A) (Required Substantiation and Competitive Practices) of this Section, copies of timesheets, invoices, canceled checks, expense reports, receipts and other documents, as appropriate, shall be provided.

SECTION 18.11. RETENTION AND AUDIT OF BOOKS AND RECORDS.

(A) Books and Records. The Contractor shall prepare and maintain proper, accurate and complete books and records regarding the Contract Obligations and all transactions related thereto, including all books of account, bills, vouchers, invoices, personnel rate sheets, cost estimates and bid computations and analyses, Subcontracts, time books, daily job diaries and reports, correspondence, and any other documents showing all acts and transactions in connection with or relating to or arising by reason of the Contract Obligations, any Subcontract or any operations or transactions in which the KRRC has or may have a financial or other material interest hereunder (collectively, “**Books and Records**”). The Contractor and its Subcontractors shall produce such Books and Records for inspection, audit

and reproduction for all such purposes within 15 days of request by the KRRC. All financial records of the Contractor and its Subcontractors shall be maintained in accordance with generally accepted accounting principles and generally accepted auditing standards. The Contractor and its Subcontractors shall maintain such Books and Records in accordance with subsection (E) (Preservation of Books and Records) of this Section.

(B) KRRC Rights to Audit and Examine Payments Other than Lump Sum Payments. All payments whatsoever by the KRRC to the Contractor (other than the underlying costs that comprise any lump sum payments, including the Base Habitat Restoration Work Price and any mutually agreed lump sum Base Habitat Restoration Work Price Adjustment, and any other mutually agreed fixed rates, fees, multipliers, percentages or unit prices) and all Contract Obligations shall be subject to audit at any time by the KRRC, the State, any other Governmental Body having an interest in the performance of services under this Agreement (or any Subcontract) and any of their authorized representatives. The Contractor shall provide all evidence necessary to support Cost Substantiation as required under this Agreement, and allow the KRRC access to the Contractor's Books and Records. The Contractor shall require all Subcontractors to comply with the provisions of this Section and include the requirements hereof in the written contract between the Contractor and the Subcontractor. The Contractor shall also require all Subcontractors to include the requirements of this Section in any lower tier Subcontracts relating to the Project. In the event that the Contractor is a joint venture, such right to examine, copy and audit shall apply collaterally and to the same extent to the Books and Records of the joint venture sponsor, and those of each individual joint venture member.

(C) Notice and Process. Upon written notice by the KRRC, the Contractor and its Subcontractors shall promptly (in no event later than 15 days following the notice) make available at its office at all reasonable times the Books and Records for examination, audit, or reproduction. Notice shall be in writing, delivered by hand or by certified mail, and shall provide not fewer than five days' prior notice of the examination or audit. The KRRC may take possession of such Books and Records by reproducing such Books and Records for off-site review or audit. When requested in the KRRC's written notice of examination or audit, the Contractor shall provide the KRRC with copies of electronic and electronically stored Books and Records in a reasonably usable format that allows the KRRC to access and analyze all such Books and Records. For Books and Records that require proprietary software to access and analyze, the Contractor shall provide the KRRC with two licenses with maintenance agreements authorizing the KRRC to access and analyze all such Books and Records. If the Contractor is unable to provide the licenses, the Contractor shall provide the KRRC with access to the Contractor's accounting system whereby the KRRC can obtain applicable Books and Records, including job cost reports, material distribution reports, labor cost reports, labor productivity reports, standard time/overtime analysis reports, man hour reports, and the like.

(D) Selection of Auditor or Examiner and Determination of Scope. The KRRC has discretion as to the selection of an examiner or auditor and the scope of the examination or audit.

(E) Preservation of Books and Records. The Contractor shall preserve all of its Books and Records, and the KRRC may examine, audit, or reproduce Books and Records, from the Habitat Project Work Contract Amendment Date until the later of six years after: (1) final payment under this Agreement; (2) final settlement of a termination for convenience under Section 14.4 (KRRC Convenience Termination Rights); or (3) the final resolution of any dispute. The failure by the Contractor to make available to the KRRC Books and Records in accordance with this Section or the Contractor's refusal to cooperate with a notice of audit or examination shall be deemed a material breach of this Agreement and grounds for termination.

(F) Overpayment. In the event an audit by the KRRC determines that the Contractor cannot document a cost or expense for which payment has been made, or that the KRRC has overpaid the Contractor, the Contractor, upon demand, shall refund to the KRRC the amounts overpaid or undocumented. If the overpayment exceeds 1% of the total amount that should have been properly paid by the KRRC during the period audited, then the Contractor shall, in addition, reimburse the KRRC for any and all Fees and Costs incurred in connection with the inspection or audit. Payments to the Contractor, or approval by the KRRC of any requisition for payment submitted by the Contractor, shall in no way affect the Contractor's obligation hereunder or the right of the KRRC to obtain a refund of any payment to the Contractor which is in excess of that to which it was lawfully entitled.

SECTION 18.12. ASSIGNMENT.

(A) By the Contractor. The Contractor shall not assign, transfer, convey, lease, encumber or otherwise dispose of this Agreement, its right to execute the same, or its right, title or interest in all or any part of this Agreement or any monies due hereunder whatsoever prior to their payment to the Contractor, whether legally or equitably, by power of attorney or otherwise, without the prior written consent of the KRRC. Any such approval given in one instance shall not relieve the Contractor of its obligation to obtain the prior written approval of the KRRC to any further assignment. Any such assignment of this Agreement which is approved by the KRRC, shall require the assignee of the Contractor to assume the performance of and observe all obligations, representations and warranties of the Contractor under this Agreement which shall remain in full force and effect during this Agreement. The approval of any assignment, transfer or conveyance shall not operate to release the Contractor in any way from any of its obligations under this Agreement unless such approval specifically provides otherwise. In the event the Contractor violates this Section, the KRRC may, in addition to any other remedy provided herein, withhold any further payment of Contract Compensation.

(B) By the KRRC. The KRRC may not assign its rights or obligations under this Agreement without the prior written consent of the Contractor, which may be given or withheld by the Contractor acting reasonably.

SECTION 18.13. COMPLIANCE WITH MATERIAL AGREEMENTS.

The Contractor shall comply with its obligations under agreements of the Contractor, which are material to the performance of its obligations under this Agreement. The KRRC shall comply with its obligations under agreements of the KRRC, which are material to the performance of its obligations hereunder.

SECTION 18.14. BINDING EFFECT.

This Agreement shall inure to the benefit of and shall be binding upon the KRRC and the Contractor and any assignee acquiring an interest hereunder consistent with Section 18.12 (Assignment).

SECTION 18.15. WAIVER.

Any of the terms, covenants, and conditions of this Agreement may be waived at any time by the Party entitled to the benefit of such term, covenant or condition if such waiver is in writing and executed by the Party against whom such waiver is asserted. Neither Party shall be deemed, by any act, delay, indulgence, omission, or otherwise to have waived any right or remedy hereunder or to have acquiesced in any breach of any of the terms and conditions hereof, absent a signed written waiver.

SECTION 18.16. ASSIGNMENT OF ANTI-TRUST CLAIMS. In accordance with California Public Contract Code Section 7103.5, in entering into this Agreement, the Contractor offers and agrees to assign to the KRRC all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the California Business and Professions Code), arising from purchases of goods, services or materials pursuant to this Agreement. The assignment shall be made and become effective at the time the KRRC tenders final payment to the Contractor for the Habitat Restoration Work, without further acknowledgment by the Parties.

SECTION 18.17. NOTICES.

(A) Procedure. All notices, consents or approvals or written communications given pursuant to the terms of this Agreement shall be:

- (1) In writing and delivered in person;
- (2) Transmitted by certified mail, return, receipt requested, postage prepaid or by overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or
- (3) Given by email transmission, if a signed original of the emailed notice or other communication is deposited in the United States Mail within two days after transmission.

Notices shall be deemed given only when actually received at the address first given below with respect to each Party; provided, however, that email transmissions shall be deemed given only when the signed original of the emailed notice or other communication is received at such address. Either Party may, by like notice, designate further or different addresses to which subsequent notices shall be sent.

(B) KRRC Notice Address. Notices required to be given to the KRRC shall be addressed as follows:

The Klamath River Renewal Corporation
2001 Addison St., #317
Berkeley, CA 94704
Attn: Laura Hazlett
Telephone No.: (415) 820-4441
Email Address: lhazlett@klamathrenewal.org

with a copy to:

The Klamath River Renewal Corporation
2140 Shattuck Avenue, Suite 801
Berkeley, CA 94704
Attn: Richard Roos-Collins
Telephone No.: (510) 296-5589
Email Address: rrcollins@waterpowerlaw.com

Hawkins Delafield & Wood LLP
7 World Trade Center, 41st Floor
250 Greenwich Street
New York, NY 10007

Attn: Eric Petersen
Telephone No.: 212-820-9401
Email Address: epetersen@hawkins.com

(C) Program Manager Notice Address. Notices required to be given to the Program Manager shall be addressed as follows:

McMillen Jacobs Associates
1471 Shoreline Dr.
Boise, ID 83702
Attn: Morton D. McMillen
Telephone No.: (208) 342-4214
Email Address: mortmcmillen@mcmjac.com

with copies to the KRRC at the addresses provided in subsection (B) (KRRC Notice Address) of this Section.

(D) Contractor Notice Address. Notices required to be given to the Contractor shall be addressed as follows:

Resource Environmental Solutions, LLC
6575 West Loop South, Suite 300
Bellaire, TX 77401
Attn: Sam Burley
Telephone No.: (346) 310-6212
Email Address: sburley@res.com

with a copy to:

Bracewell LLP
2001 M St. NW, Suite 900
Washington, DC 20036
Attn: Jason Hutt; Hans Dyke
Telephone No.: (202) 828-8500
Email Address: jason.hutt@bracewell.com; hans.dyke@bracewell.com

SECTION 18.18. NOTICE OF LITIGATION.

In the event the Contractor or the KRRC receives written notice of or undertakes the defense or the prosecution of any Legal Proceedings in connection with the Project, the Party receiving such notice or undertaking such defense or prosecution shall give the other Party timely notice of such proceedings. For purposes of this Section only, “timely notice” shall be deemed given if the receiving Party has a reasonable opportunity to provide objections or comments or to proffer to assume the defense or prosecution of the matter in question, given the deadlines for response established by the relevant rules of procedure.

SECTION 18.19. FURTHER ASSURANCES.

The KRRC and Contractor each agree to execute and deliver such further instruments and to perform any acts that may be necessary or reasonably requested in order to give full effect to this Agreement. The KRRC and the Contractor, in order to carry out this Agreement, each shall use all commercially reasonable efforts to provide such information, execute such further instruments and documents and take such actions as may be reasonably requested by the other and not inconsistent with the provisions of this Agreement and not

involving the assumption of obligations or liabilities different from, in excess of or in addition to those expressly provided for herein.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

KLAMATH RIVER RENEWAL CORPORATION

HGS, LLC

By: _____

By: _____

Laura Hazlett

Printed Name: _____

Chief Operating Officer

Title: _____

TRANSACTION FORMS

TO THE
AGREEMENT

ENTERED INTO
IN CONNECTION WITH
THE REMOVAL OF THE LOWER KLAMATH RIVER DAMS

between

THE KLAMATH RIVER RENEWAL CORPORATION

and

HGS, LLC

Dated

[____], 2020

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TRANSACTION FORM A
FORM OF GUARANTY AGREEMENT

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GUARANTY AGREEMENT

from

RESOURCE ENVIRONMENTAL SOLUTIONS. LLC

to

THE KLAMATH RIVER RENEWAL CORPORATION

Dated as of

[_____], 2020

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GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT is made and dated as of [____], 2020, between the Klamath River Renewal Corporation (the "KRRC") and Resource Environmental Solutions, LLC, a limited liability company organized and existing under the laws of the State of Louisiana (together with any permitted successors and assigns hereunder, the "Guarantor").

RECITALS

The KRRC and HGS, LLC, a limited liability company organized and existing under the laws of the State of California and authorized to do business in the State of California (the "Contractor"), have entered into the Habitat Restoration, Maintenance and Liability Transfer Agreement in connection with the Removal of the Lower Klamath River Dams, dated as of [____], 2020, as amended from time to time (the "Agreement"), whereby the Contractor has agreed to perform the design, construction, demolition and habitat restoration services work necessary to carry out and complete the Project, all as more particularly described therein.

The Contractor is a subsidiary of the Guarantor.

Performance by the KRRC and the Contractor of their obligations under the Agreement will result in a direct and substantial benefit to the Guarantor.

The KRRC will enter into the Agreement only if, concurrently with its execution and delivery by the Contractor, the Guarantor guarantees the performance by the Contractor of all of the Contractor's Obligations under the Agreement as set forth in this Guaranty Agreement.

In order to induce the execution and delivery of the Agreement by the KRRC and in consideration thereof, the Guarantor agrees as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS. For the purposes of this Guaranty, the following words and terms shall have the respective meanings set forth as follows. Any other capitalized word or term used but not defined herein is used as defined in the Agreement.

“Obligations” means the amounts payable by, and the covenants and agreements of, the Contractor pursuant to the terms of the Agreement.

“Transaction Agreement” means any agreement entered into by the Contractor or the KRRC in connection with the transactions contemplated by the Agreement, including the Agreement, and any supplements thereto.

SECTION 1.2. INTERPRETATION. In this Guaranty, unless the context otherwise requires:

(A) References Hereto. The terms “hereby”, “hereof”, “herein”, “hereunder” and any similar terms refer to this Guaranty, and the term “hereafter” means after, and the term “heretofore” means before, the date of execution and delivery of this Guaranty.

(B) Plurality. Words importing the singular number mean and include the plural number and vice versa.

(C) Persons. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(D) Headings. The Table of Contents and any headings preceding the text of the Articles, Sections and subsections of this Guaranty shall be solely for convenience of reference and shall not constitute a part of this Guaranty, nor shall they affect its meaning, construction or effect.

(E) Entire Agreement. This Guaranty constitutes the entire agreement between the parties hereto with respect to the transactions contemplated by this Guaranty. Nothing in this Guaranty is intended to confer on any person other than the Guarantor, the KRRC and their permitted successors and assigns hereunder any rights or remedies under or by reason of this Guaranty.

(F) Counterparts. This Guaranty may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Guaranty.

(G) Applicable Law. This Guaranty shall be governed by and construed in accordance with the applicable laws of the State of California.

(H) Severability. If any clause, provision, subsection, Section or Article of this Guaranty shall be ruled invalid by any court of competent jurisdiction, the invalidity of any such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Guaranty shall be construed and enforced as if such invalid portion did not exist provided that such construction and enforcement shall not increase the Guarantor’s liability beyond that expressly set forth herein.

(I) Approvals. All approvals, consents and acceptances required to be given or made by any party hereto shall be at the sole discretion of the party whose approval, consent or acceptance is required.

(J) Payments. All payments required to be made by the Guarantor hereunder shall be made in lawful money of the United States of America.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR.

The Guarantor hereby represents and warrants that:

(1) Existence and Powers. The Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of Louisiana, with the full legal right, power and authority to enter into and perform its obligations under this Guaranty.

(2) Due Authorization and Binding Obligation. This Guaranty has been duly authorized, executed and delivered by all necessary corporate action of the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

(3) No Conflict. To the best of its knowledge, neither the execution nor delivery by the Guarantor of this Guaranty nor the performance by the Guarantor of its obligations in connection with the transaction contemplated hereby or the fulfillment by the Guarantor of the terms and conditions hereof: (a) conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Guarantor; (b) conflicts with, violates or results in a breach of any term or condition of the Guarantor's corporate charter or by-laws or any order, judgment or decree, or any contract, agreement or instrument to which the Guarantor is a party or by which the Guarantor or any of its properties or assets are bound, or constitutes a default under any of the foregoing; or (c) will result in the creation or imposition of any material encumbrance of any nature whatsoever upon any of the properties or assets of the Guarantor except as permitted hereby.

(4) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Guaranty by the Guarantor or the performance of its payment or other obligations hereunder, except as such shall have been duly obtained or made.

(5) No Litigation. Except as disclosed in writing to the KRRC, there is no Legal Proceeding, at law or in equity, before or by any Governmental Body pending or, to the best of the Guarantor's knowledge, overtly threatened or publicly announced against the Guarantor, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the validity, legality or enforceability of this Guaranty against the Guarantor, or on the ability of the Guarantor to perform its obligations hereunder.

(6) No Legal Prohibition. The Guarantor has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by the Guarantor of this Guaranty and the transactions contemplated by this Guaranty.

(7) Consent to Agreements. The Guarantor is fully aware of and consents to the terms and conditions of the Agreement.

(8) Consideration. This Guaranty is made in furtherance of the purposes for which the Guarantor has been organized, and the assumption by the Guarantor of its obligations hereunder will result in a material benefit to the Guarantor.

(9) Applicable Law Compliance. Except as disclosed in writing to the KRRC, the Guarantor does not have knowledge of any material violation of any law, order, rule or regulation with respect to any facilities designed or constructed by the Guarantor, Contractor or any of their Affiliates.

ARTICLE III

GUARANTY COVENANTS

SECTION 3.1. GUARANTY TO THE KRRC. The Guarantor hereby absolutely, presently, irrevocably and unconditionally guarantees to the KRRC for the benefit of the KRRC (1) the full and prompt payment when due of each and all of the payments required to be credited or made by the Contractor under the Agreement (including all amendments and supplements thereto) to, or for the account of, the KRRC, when the same shall become due and payable pursuant to this Guaranty, and (2) the full and prompt performance and observance of each and all of the Obligations. Notwithstanding the unconditional nature of the Guarantor's obligations as set forth herein, the Guarantor shall have the right to assert the defenses provided in Section 3.4 (Defenses, Set-Offs and Counterclaims) hereof against claims made under this Guaranty.

SECTION 3.2. RIGHT OF THE KRRC TO PROCEED AGAINST GUARANTOR. This Guaranty shall constitute a guaranty of payment and of performance and not of collection, and the Guarantor specifically agrees that in the event of a failure by the Contractor to pay or perform any Obligation guaranteed hereunder, the KRRC shall have the right to proceed first and directly against the Guarantor under this Guaranty and without proceeding against the Contractor or exhausting any other remedies against the Contractor which the KRRC may have. Without limiting the foregoing, the Guarantor agrees that it shall not be necessary, and that the Guarantor shall not be entitled to require, as a condition of enforcing the liability of the Guarantor hereunder, that the KRRC: (1) file suit or proceed to obtain a personal judgment against the Contractor or any other person that may be liable for the Obligations or any part of the Obligations; (2) make any other effort to obtain payment or performance of the Obligations from the Contractor other than providing the Contractor with any notice of such payment or performance as may be required by the terms of the Agreement or required to be given to the Contractor under Applicable Law; (3) foreclose against or seek to realize upon any security for the Obligations; or (4) exercise any other right or remedy to which the KRRC is or may be entitled in connection with the Obligations or any security therefor or any other guarantee thereof, except to the extent that any such exercise of such other right or remedy may be a condition to the Obligations of the Contractor or to the enforcement of remedies under the Agreement. Upon any unexcused failure by the Contractor in the payment or performance of any Obligation and the giving of such notice or demand, if any, to the Contractor and the Guarantor as may be required in connection with such Obligation and this Guaranty, the liability of the Guarantor shall be effective and shall immediately be paid or performed. Notwithstanding the KRRC's right to proceed directly against the Guarantor, the KRRC (or any successor) shall not be entitled to more than a single full performance of the Obligations in regard to any breach or non-performance thereof.

SECTION 3.3. GUARANTY ABSOLUTE AND UNCONDITIONAL. The obligations of the Guarantor hereunder are absolute, present, irrevocable and unconditional and shall remain in full force and effect until the Contractor shall have fully discharged the Obligations in accordance with their respective terms and conditions, and, except as provided in Section 3.4 (Defenses, Set-Offs and Counterclaims), shall not be subject to any counterclaim, set-off, deduction or defense (other than full and strict compliance with, or release, discharge or satisfaction of, such Obligations) based on any claim that the Guarantor may have against the Contractor, the KRRC or any other person. Without limiting the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged or in any way modified by reason of any of the following (whether with or without notice to, knowledge by, or further consent, of the Guarantor), except as provided in Section 3.4 (Defenses, Set-Offs and Counterclaims):

- (1) the extension or renewal of this Guaranty or the Agreement up to the specified Terms of each agreement;

- (2) any exercise or failure, omission or delay by the KRRC in the exercise of any right, power or remedy conferred on the KRRC with respect to this Guaranty or the Agreement except to the extent such failure, omission or delay gives rise to an applicable statute of limitations defense with respect to a specific claim;
- (3) any permitted transfer or assignment of rights or obligations under the Agreement or under any other Transaction Agreement by any party thereto, or any permitted assignment, conveyance or other transfer of any of their respective interests in the Project or in, to or under any of the Transaction Agreements;
- (4) any permitted assignment for the purpose of creating a security interest or mortgage of all or any part of the respective interests of the KRRC or any other person in any Transaction Agreement or in the Project;
- (5) any renewal, amendment, change or modification in respect of any of the Obligations or terms or conditions of any Transaction Agreement;
- (6) any failure of title with respect to all or any part of the respective interests of any person in the Project Site, the Habitat Project Work Area or the Project;
- (7) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, moratorium, arrangement, composition with creditors or readjustment of, or other similar proceedings against the Contractor or the Guarantor, or any of the property of either of them, or any allegation or contest of the validity of this Guaranty or any other Transaction Agreement in any such proceeding (it is specifically understood, consented and agreed to that, to the extent permitted by law, this Guaranty shall remain and continue in full force and effect and shall be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted and as if no rejection, stay, termination, assumption or modification has occurred as a result thereof, it being the intent and purpose of this Guaranty that the Guarantor shall and does hereby waive all rights and benefits which might accrue to it by reason of any such proceeding);
- (8) except as permitted by Section 4.1 (Maintenance of Corporate Existence) or 4.2 (Assignment) hereof, any sale or other transfer by the Guarantor or any Affiliate of any of the capital stock or other interest of the Guarantor or any Affiliate in the Contractor now or hereafter owned, directly or indirectly, by the Guarantor or any Affiliate, or any change in composition of the interests in the Contractor;
- (9) any failure on the part of the Contractor for any reason to perform or comply with any agreement with the Guarantor;
- (10) the failure on the part of the KRRC to provide any notice to the Guarantor which is not required to be given to the Guarantor pursuant to this Guaranty and to the Contractor as a condition to the enforcement of Obligations pursuant to the Agreement;
- (11) any failure of any party to the Transaction Agreements to mitigate damages resulting from any default by the Contractor or the Guarantor under any Transaction Agreement;

(12) the merger or consolidation of any party to the Transaction Agreements into or with any other person, or any sale, lease, transfer, abandonment or other disposition of any or all of the property of any of the foregoing to any person;

(13) any legal disability or incapacity of any party to the Transaction Agreements; or

(14) the fact that entering into any Transaction Agreement by the Contractor or the Guarantor was invalid or in excess of the powers of such party.

Should any money due or owing under this Guaranty not be recoverable from the Guarantor due to any of the matters specified in subparagraphs (1) through (14) of this Section, then, in any such case, such money, together with all additional sums due hereunder, shall nevertheless be recoverable from the Guarantor as though the Guarantor were principal obligor in place of the Contractor pursuant to the terms of the Agreement and not merely a guarantor and shall be paid by the Guarantor forthwith subject to the terms of this Guaranty. Notwithstanding anything to the contrary expressed in this Guaranty, nothing in this Guaranty shall be deemed to amend, modify, clarify, expand or reduce the Contractor's rights, benefits, duties or obligations under the Agreement. To the extent that any of the matters specified in subparagraphs (1) through (6) and (8) through (14) would provide a defense to, release, discharge or otherwise affect the Contractor's Obligations, the Guarantor's obligations under this Guaranty shall be treated the same.

SECTION 3.4. DEFENSES, SET-OFFS AND COUNTERCLAIMS. Notwithstanding any provision contained herein to the contrary, the Guarantor shall be entitled to exercise or assert any and all legal or equitable rights or defenses which the Contractor may have under the Agreement or under Applicable Law (other than bankruptcy or insolvency of the Contractor and other than any defense which the Contractor has expressly waived in the Agreement or the Guarantor has expressly waived in Section 3.5 (Waivers by the Guarantor) hereof or elsewhere hereunder), and the obligations of the Guarantor hereunder are subject to such counterclaims, set-offs or deductions which the Contractor is permitted to assert pursuant to the Agreement, if any.

SECTION 3.5. WAIVERS BY THE GUARANTOR. The Guarantor hereby unconditionally and irrevocably waives:

(1) notice from the KRRC of its acceptance of this Guaranty;

(2) notice of any of the events referred to in Section 3.3 (Guaranty Absolute and Unconditional) hereof, except to the extent that notice is required to be given as a condition to the enforcement of the Obligations;

(3) to the fullest extent lawfully possible, all notices which may be required by statute, rule of law or otherwise to preserve intact any rights against the Guarantor, except any notice to the Contractor required pursuant to the Agreement or Applicable Law as a condition to the performance of any Obligation;

(4) to the fullest extent lawfully possible, any statute of limitations defense based on a statute of limitations period which may be applicable to guarantors (or parties in similar relationships) which would be shorter than the applicable statute of limitations period for the underlying claim;

(5) any right to require a proceeding first against the Contractor;

(6) any right to require a proceeding first against any person or the security provided by or under any Transaction Agreement except to the extent such Transaction Agreement specifically requires a proceeding first against any person (except the Contractor) or security;

(7) any requirement that the Contractor be joined as a party to any proceeding for the enforcement of any term of any Transaction Agreement;

(8) the requirement of, or the notice of, the filing of claims by the KRRC in the event of the receivership or bankruptcy of the Contractor; and

(9) all demands upon the Contractor or any other person and all other formalities the omission of any of which, or delay in performance of which, might, but for the provisions of this Section, by rule of law or otherwise, constitute grounds for relieving or discharging the Guarantor in whole or in part from its absolute, present, irrevocable, unconditional and continuing obligations hereunder.

SECTION 3.6. PAYMENT OF COSTS AND EXPENSES. The Guarantor agrees to pay the KRRC on demand all Fees and Costs, incurred by or on behalf of the KRRC in successfully enforcing by Legal Proceeding observance of the covenants, agreements and obligations contained in this Guaranty against the Guarantor, other than the Fees and Costs that the KRRC incurs in performing any of its obligations under the Agreement, or other applicable Transaction Agreement where such obligations are a condition to performance by the Contractor of its Obligations.

SECTION 3.7. SUBORDINATION OF RIGHTS. The Guarantor agrees that any right of subrogation or contribution which it may have against the Contractor as a result of any payment or performance hereunder is hereby fully subordinated to the rights of the KRRC hereunder and under the Transaction Agreements and that the Guarantor shall not recover or seek to recover any payment made by it hereunder from the Contractor until the Contractor and the Guarantor shall have fully and satisfactorily paid or performed and discharged the Obligations giving rise to a claim under this Guaranty.

SECTION 3.8. SEPARATE OBLIGATIONS; REINSTATEMENT. The obligations of the Guarantor to make any payment or to perform and discharge any other duties, agreements, covenants, undertakings or obligations hereunder shall: (1) to the extent permitted by applicable law, constitute separate and independent obligations of the Guarantor from its other obligations under this Guaranty; (2) give rise to separate and independent causes of action against the Guarantor; and (3) apply irrespective of any indulgence granted from time to time by the KRRC. The Guarantor agrees that this Guaranty shall be automatically reinstated if and to the extent that for any reason any payment or performance by or on behalf of the Contractor is rescinded or must be otherwise restored by the KRRC, whether as a result of any proceedings in bankruptcy, reorganization or similar proceeding, unless such rescission or restoration is pursuant to the terms of the Agreement, or any applicable Transaction Agreement or the Contractor's enforcement of such terms under Applicable Law.

SECTION 3.9. TERM. This Guaranty shall remain in full force and effect from the date of execution and delivery hereof until all of the Obligations of the Contractor have been fully paid and performed.

ARTICLE IV

GENERAL COVENANTS

SECTION 4.1. MAINTENANCE OF CORPORATE EXISTENCE.

(A) Consolidation, Merger, Sale or Transfer. The Guarantor covenants that during the term of this Guaranty it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it unless the successor is the Guarantor; provided, however, that the Guarantor may consolidate with or merge into another entity, or permit one or more other entities to consolidate with or merge into it, or sell or otherwise transfer to another entity all or substantially all of its assets as an entirety and thereafter dissolve if the successor entity (if other than the Guarantor): (a) assumes in writing all the obligations of the Guarantor hereunder and, if required by law, is duly qualified to do business in the States of California and Oregon; (b) delivers to the KRRC an opinion of counsel to the effect that its obligations under this Guaranty are legal, valid, binding and enforceable subject to applicable bankruptcy and similar insolvency or moratorium laws; and (c) has a net worth at the time of any such transaction at least equal to the net worth of the Guarantor immediately prior to such time.

(B) Continuance of Obligations. If a consolidation, merger or sale or other transfer is made as permitted by this Section, the provisions of this Section shall continue in full force and effect and no further consolidation, merger or sale or other transfer shall be made except in compliance with the provisions of this Section. No such consolidation, merger or sale or other transfer shall have the effect of releasing the initial Guarantor from its liability hereunder unless a successor entity has assumed responsibility for this Guaranty as provided in this Section.

SECTION 4.2. ASSIGNMENT. Except as provided in Section 4.1 (Maintenance of Corporate Existence), this Guaranty may not be assigned by the Guarantor without the prior written consent of the KRRC.

SECTION 4.3. QUALIFICATION IN CALIFORNIA. The Guarantor agrees that, so long as this Guaranty is in effect, if required by law, the Guarantor will be duly qualified to do business in the States of California and Oregon.

SECTION 4.4. CONSENT TO JURISDICTION. The Guarantor irrevocably: (1) agrees that any Legal Proceeding related to this Guaranty or to any rights or relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in state or federal courts located in San Francisco County, California, having appropriate jurisdiction therefor; (2) consents to the jurisdiction of such courts in any such Legal Proceeding; and (3) waives any objection which it may have to the laying of the jurisdiction of any such Legal Proceeding in any such court.

SECTION 4.5. BINDING EFFECT. This Guaranty shall inure to the benefit of the KRRC and its permitted successors and assigns and shall be binding upon the Guarantor and its successors and assigns.

SECTION 4.6. AMENDMENTS, CHANGES AND MODIFICATIONS. This Guaranty may not be amended, changed or modified or terminated and none of its provisions may be waived, except with the prior written consent of the KRRC and the Guarantor.

SECTION 4.7. LIABILITY. It is understood and agreed to by the KRRC that nothing contained herein shall create any obligation of, or right to look, to any director, officer, employee or stockholder of the Guarantor (or any Affiliate of the Guarantor) for the satisfaction of any obligations hereunder, and no judgment, order or execution with respect to or in connection with this Guaranty shall be taken against any such director, officer, employee or stockholder.

SECTION 4.8. NOTICES.

(A) Procedure. All notices, demands or written communications given pursuant to the terms of this Guaranty shall be: (1) in writing and delivered in person; (2) transmitted by certified mail, return, receipt requested, postage prepaid or by overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or (3) given by email transmission, if a signed original of the emailed letter or other communication is deposited in the United States mail within two days after transmission. Notices shall be deemed given only when actually received at the address first given below with respect to each party. Either party may, by like notice, designate further or different addresses to which subsequent notices shall be sent.

(B) KRRC Notice Address. Notices required to be given to the KRRC shall be addressed as follows:

The Klamath River Renewal Corporation
2001 Addison St., #317
Berkeley, CA 94704
Attn: Laura Hazlett
Telephone No.: (415) 820-4441
Email Address: lhazlett@klamathrenewal.org

with a copy to:

The Klamath River Renewal Corporation
2140 Shattuck Avenue, Suite 801
Berkeley, CA 94704
Attn: Richard Roos-Collins
Telephone No.: (510) 296-5589
Email Address: rrcollins@waterpowerlaw.com

(C) Guarantor Notice Address. Notices required to be given to the Guarantor shall be addressed as follows:

Resource Environmental Solutions, LLC
[ADDRESS]
Attn: [____]
Telephone No.: [____]
Email Address: [____]

with a copy to:

Resource Environmental Solutions, LLC
[ADDRESS]
Attn: [____]
Telephone No.: [____]
Email Address: [____]

[Signature Page Follows]

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed in its name and on its behalf by its duly authorized officer as of the date first above written.

RESOURCE ENVIRONMENTAL SOLUTIONS,
LLC, as Guarantor

By: _____

Name: _____
Printed

Title: _____

ACCEPTED AND AGREED TO BY:

[Contractor Seal]

KLAMATH RIVER RENEWAL
CORPORATION

By: _____

Name: _____
Printed

Title: _____

TRANSACTION FORM B
FORM OF PERFORMANCE BOND

Bond No.: _____

FORM OF PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

That we, HGS, LLC. as principal (the "Contractor") and [_____] as surety (the "Surety"), are held and firmly bound unto the Klamath River Renewal Corporation (the "KRRC"), in the just and penal sum of _____ dollars (\$_____), lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves, heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that,

WHEREAS, the Contractor was awarded and entered into the annexed Habitat Restoration, Maintenance and Liability Transfer Agreement with the KRRC in connection with the Removal of the Lower Klamath River Dams dated as of [_____] as amended from time to time (the "Agreement"), whereby the Contractor has agreed to perform the design, construction, demolition and habitat restoration services work necessary to carry out and complete the project, all as more particularly described therein, and is required by the KRRC to give this bond on the Contract Date (as defined in the Agreement) pursuant to the Agreement;

NOW, THEREFORE, if the Contractor, its heirs, executors, administrators, successors, and assigns shall well and truly do and perform all of the covenants and obligations of the Agreement and any alteration thereof made as therein provided, on its part to be done and performed at the times and in the manner specified therein, then this obligation shall be null and void, otherwise it shall be and remain in full force and effect inclusive of any period of any guarantees or warranties required under the Agreement.

Any alterations in the work to be done, or the materials to be furnished, which may be made pursuant to the terms of the Agreement, shall not in any way release either the Contractor or the Surety, nor shall any extensions of time granted under the provisions of the Agreement release either the Contractor or the Surety, and notice of such alterations or extensions of the Agreement is hereby waived by the Surety.

The date when this bond first becomes effective is the date first set forth below and immediately following the end of any prior bond issued in respect of the Agreement. Notwithstanding anything contained in the Agreement to the contrary, the liability of the Contractor and Surety under this bond is limited to the term ending the ____ day of ____, 20__, and may be extended by the Surety for additional periods by continuation certificate issued by the Surety ("Bond Term"). This bond shall secure the faithful performance of all of Contractor's obligations under the Agreement whether such performance occurred during the term of any prior bonds issued in respect of the Agreement, or during the Bond Term, provided that, for the avoidance of doubt, this sentence shall not be deemed to modify the penal sum of this bond or allow for any claim against a prior bond which has been terminated or released before the claim was made.

The Surety shall provide written notice to the KRRC not less than ninety (90) days prior to the expiration of the then-current Bond Term if the Surety will not renew this bond after the expiration of the then-current Bond Term. It is understood that if this bond is not renewed or extended by the Surety at least sixty (60) days before the end of the then current Bond Term, the Contractor is obligated under the Agreement to provide the KRRC a substitute bond or alternative

security reasonably acceptable to the KRRC. If the Contractor fails to deliver a substitute bond or alternative security at least forty-five (45) days prior to the end of the then current Bond Term, then it is understood that such failure will represent an event of material default under this bond and a material breach of the Agreement.

The Surety hereby waives the provisions of California Civil Code Sections 2819 (regarding exoneration of sureties in certain circumstances), 2845 (regarding certain limitations on remedies against sureties) and 2849 (regarding a surety's rights as to other security held by the creditor).

In the event suit is brought upon this bond by the KRRC and judgment is recovered, the Surety shall pay all costs incurred by the KRRC in such suit, including, but not limited to, reasonable attorneys' fees and administrative and consultant costs to be fixed by the court. Any proceeding, legal or equitable under this bond shall be instituted in state or federal courts located in San Francisco County, California.

The address or addresses at which the Contractor and Surety may be served with notices, papers and other documents under the California Bond and Undertaking Law (Cal. Civ. Proc. Code § 995.010 *et seq.*) is the following:

WITNESS our hands this _____ day of _____, 20[___].

(Seal)

Contractor

By _____

Title

(Surety's Corporate
Seal)

Surety

By _____

Title

Address of Surety

Approved:

[Title]

Klamath River
Renewal Corporation

Notice: No substitution or revision to this bond form will be accepted.

ACKNOWLEDGMENT BY NOTARY PUBLIC

[Cal. Civ. Code § 1189]

State of California)
County of)

On _____ before me, _____, a notary public,
personally appeared _____, who proved to me on the
basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s),
or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

*[Any acknowledgment taken in another state shall be sufficient if it is taken in accordance with the
laws of the state where the acknowledgment is made.]*

(Attach proof of authority of attorney-in-fact or surety.)

TRANSACTION FORM C
FORM OF PAYMENT BOND

Bond No. _____

FORM OF PAYMENT BOND FOR LABOR AND MATERIALS

KNOW ALL PERSONS BY THESE PRESENTS:

That we, HGS, LLC. as principal (the "Contractor"), and [_____] as surety (the "Surety"), are held and firmly bound unto the Klamath River Renewal Corporation (the "KRRC"), in the sum of _____ dollars (\$_____) lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves, heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that,

WHEREAS, the Contractor was awarded and entered into the annexed Habitat Restoration, Maintenance and Liability Transfer Agreement with the KRRC in connection with the Removal of the Lower Klamath River Dams dated as of [____], as amended from time to time (the "Agreement"), whereby the Contractor has agreed to perform the design, construction, demolition and habitat restoration services work necessary to carry out and complete the project, all as more particularly described therein, and is required by the KRRC to give this bond on the Contract Date (as defined in the Agreement) pursuant to the Agreement;

NOW, THEREFORE, if the Contractor, or its subcontractors, fails to pay any of the persons referred to in Section 9100 of the California Civil Code for any materials, provisions, provender, equipment, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld and paid over to the Employment Development Department from the wages of employees of the Contractor and its subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, the Surety will pay for the same, in an amount not exceeding the sum specified above, and also, in case suit is brought upon this bond, reasonable attorneys' fees, to be fixed by the court. This bond shall inure to the benefit of any and all persons entitled to file claims under Section 9100 of the California Civil Code so as to give a right of action to them or their assigns in any suit brought upon this bond.

Any alterations in the work to be done, or the material to be furnished, which may be made pursuant to the terms of the Agreement, shall not in any way release either the Contractor or the Surety, nor shall any extensions of time granted under the provisions of the Agreement release either the Contractor or the Surety, and notice of such alterations or extensions of the Agreement is hereby waived by the Surety.

The date when this bond first becomes effective is the date first set forth below and immediately following the end of any prior bond issued in respect of the Agreement. Notwithstanding anything contained in the Agreement to the contrary, the liability of the Contractor and Surety under this bond is limited to the term ending the ____ day of ____, 20__, and may be extended by the Surety for additional periods by continuation certificate issued by the Surety ("Bond Term"). This bond shall secure the faithful performance of all of Contractor's obligations under the Agreement whether such performance occurred during the term of any prior bonds issued in respect of the Agreement, or during the Bond Term, provided that, for the avoidance of doubt, this sentence shall not be deemed to modify the penal sum of this bond or

allow for any claim against a prior bond which has been terminated or released before the claim was made.

The Surety shall provide written notice to the KRRC not less than ninety (90) days prior to the expiration of the then-current Bond Term if the Surety will not renew this bond after the expiration of the then-current Bond Term. It is understood that if this bond is not renewed or extended by the Surety at least sixty (60) days before the end of the then current Bond Term, the Contractor is obligated under the Agreement to provide the KRRC a substitute bond or alternative security reasonably acceptable to the KRRC. If the Contractor fails to deliver a substitute bond or alternative security at least forty-five (45) days prior to the end of the then current Bond Term, then it is understood that such failure will represent an event of material default under this bond and a material breach of the Agreement.

The Surety hereby waives the provisions of California Civil Code Sections 2819 (regarding exoneration of sureties in certain circumstances), 2845 (regarding certain limitations on remedies against sureties) and 2849 (regarding a surety's rights as to other security held by the creditor).

The address or addresses at which the Contractor and Surety may be served with notices, papers and other documents under the California Bond and Undertaking Law (Cal. Civ. Proc. Code § 995.010 *et seq.*) is the following:

WITNESS our hands this _____ day of _____, 20[___].

(Seal)

Contractor

By _____

Title

(Surety's Corporate
Seal)

Surety

By _____

Title

Address of Surety

Approved:

[Title]

Klamath River

Renewal Corporation

Notice: No substitution or revision to this bond form will be accepted.

ACKNOWLEDGMENT BY NOTARY PUBLIC

[Cal. Civ. Code § 1189]

State of California)
County of)

On _____ before me, _____, a notary public,
personally appeared _____, who proved to me on the
basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s),
or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

*[Any acknowledgment taken in another state shall be sufficient if it is taken in accordance with the
laws of the state where the acknowledgment is made.]*

(Attach proof of authority of attorney-in-fact of surety.)

APPENDICES

to the

HABITAT RESTORATION, MAINTENANCE AND LIABILITY TRANSFER AGREEMENT

ENTERED INTO
IN CONNECTION WITH
THE REMOVAL OF THE LOWER KLAMATH RIVER DAMS

between

THE KLAMATH RIVER RENEWAL CORPORATION

and

HGS, LLC

Dated

[_____], 2020

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APPENDIX 1
SUMMARY OF THE DEFINITE PLAN

APPENDIX 1

SUMMARY OF THE DEFINITE PLAN

1.1. PURPOSE

This Appendix serves as a non-binding reference document. It summarizes the scope and contents of the Definite Plan as it was submitted to FERC on June 28, 2018. This Appendix does not account for any changes made to the Definite Plan, any further KRRC submittals to FERC, or any other developments whatsoever, after June 28, 2018. References to sections and appendices within this Appendix refer to the sections and appendices of the Definite Plan, unless stated otherwise.

1.2. BACKGROUND

On June 28, 2018, the KRRC submitted the Definite Plan for the Lower Klamath Project to FERC for the proposed removal of J.C. Boyle, Copco 1, Copco 2, and Iron Gate dams. As of this submittal, the Definite Plan consists of an Executive Summary, nine chapters, and 17 appendices. The Definite Plan provides the blue print to decommission and remove the Lower Klamath Project consistent with the terms of the KHSA. It delineates (i) the methods to be undertaken to effect dam removal and a timetable for dam removal; (ii) plans for management, removal, and disposal of sediment, debris, and other materials; (iii) plans for site remediation and restoration; (iv) plans for measures to avoid or minimize adverse downstream impacts; (v) a plan for compliance with all applicable laws; (vi) a detailed statement of the estimated costs of dam removal; and (vii) measures to reduce risks of cost overruns, delays, or other impediments to dam removal.

The Definite Plan provides a comprehensive statement of the methods and other specifications to implement the Project, as required by Section 7.2 of the KHSA. It states the scientific and engineering analyses that support those specifications, and serves as a basis for FERC's hearings of the license transfer and surrender applications, review by other regulatory agencies, and public comment. KRRC proposed to incorporate the Definite Plan, in its final form, into all regulatory authorizations, including license surrender, to implement the Project.

1.3. DEFINITE PLAN SUMMARY

The below subsections summarize each section of the Definite Plan.

1.3.1 Section 1: Objectives and Background

Section 1 of the Definite Plan (Objectives and Background) describes the objectives of the Definite Plan objectives, and the Project and its background. Section 1.3 summarizes KRRC's plan for compliance with applicable laws and regulations.

1.3.2 Section 2: Existing Feature Descriptions

Section 2 (Existing Feature Descriptions) describes the then-existing features and developments of the four dams and their powerhouses.

1.3.3 Section 3: FERC Compliance and Dam Safety

Section 3 (FERC Compliance and Dam Safety) explains KRRC's proposed program to comply with FERC dam safety requirements and engineering guidelines. The proposed program is designed to allow removal of the Project to be undertaken in a manner that minimizes risk to

people, structures, infrastructure, and the natural resources of the Klamath River Basin. The removal will be fully consistent with FERC's dam safety requirements and FERC Engineering Guidelines, and will incorporate the review and recommendations of the Oregon Water Resources and the California Department of Water Resources, Division of Dam Safety to the full extent of any state agency jurisdiction over the decommissioning and removal of the Facilities.

FERC requires the following dam removal plans and submittals to be provided: Cofferd Dam Design; Cofferd Dam Certification; Temporary Construction Emergency Action Plan; Quality Control Inspection Program; Dam Stability Analysis (Iron Gate and J.C. Boyle); Blasting Plan; Reservoir Rim Stability Analyses; Flood Routing Analysis and Inundation Study; and rock quality evaluation in the areas of planned breaching.

1.3.4 Section 4: Reservoir Drawdown and Diversion Plan

Section 4 (Reservoir Drawdown and Diversion Plan) describes the drawdown facilities; process, flows and sediment releases; anticipated downstream effects; monitoring; and adaptive management measures. Drawdown facilities that will be used for drawing down the reservoirs and diverting Klamath River flows around the dams include, depending on the dam: spillways, modified diversion tunnels, power intake, and diversion culverts beneath the dam. The Definite Plan provides detailed actions to effectuate drawdown for each reservoir.

Section 4 also provides flood frequency analyses and a summer flow frequency analysis. The drawdown periods are scheduled to minimize release of flows with high suspended sediments into downstream areas during critical times for important aquatic species and life stages. Deconstruction, including site preparation, drawdown, and facilities removal, will occur over about 20 months. The drawdown period could be longer during a wet year and shorter during a dry year. The Definite Plan describes how KRRC will use the diversion facilities to draw down the reservoirs and release sediment, the timing of the discharges, the range of discharge rates anticipated, the portion of discharge associated with specific structures, and the change in reservoir elevation per day. Analysis of the embankment and reservoir rims demonstrate the Project will maintain adequate factors of safety to prevent embankment slope instability, provided the drawdown rate is controlled. Analyses were conducted of drawdown's effect on downstream river flows. The Definite Plan describes monitoring requirements during drawdown for any evidence of embankment instability; best management practices to avoid diversion facility failure or blockage and respond to instability of embankments.

The Definite Plan states that the KRRC will update the existing Emergency Action Plans relating to catastrophic dam failures. KRRC performed a reservoir rim stability evaluation that is provided in Appendix E. Potential instability includes deep-seated large landslides along the reservoir rim that could impact roads or property and slides of material beneath the current water surface, the latter of which would only impact resources within the current reservoir footprint. The Definite Plan discusses potential effects in the river channel downstream of Iron Gate Dam, including aggradation at tributaries, pool depths, lateral channel migration, water quality and slope instability.

1.3.5 Section 5: Dam Removal Approach

Section 5 (Dam Removal Approach) describes the removal limits, construction access, staging and disposal areas, removal process, demolition methods and equipment, imported materials, and waste disposal for the four Facilities. The Project achieves the objectives of free-flowing river conditions and volitional fish passage by the complete removal of dams (except for buried features), power generation facilities, water intake structures, canals, pipelines, and ancillary buildings. KRRC also presents a partial removal alternative for purpose of environmental

review, which would leave portions of each dam in place, along with ancillary buildings and structures.

The Definite Plan describes actions the contractor will take to dispose of earth materials generated from dam removal; concrete rubble; and rebar, mechanical and electrical equipment, each in an appropriate location. On-site disposal actions include burying earth materials and/or concrete rubble, grading the area, covering it with topsoil and hydroseeding it. KRRC will complete erosion monitoring of on-site disposal sites annually for 5 years to assess and repair significant erosion and slope deterioration, to the satisfaction of the appropriate regulatory agency.

Detailed actions for the removal of each dam and ancillary structures (such as powerhouses and transmission lines) are described in the Definite Plan. The Plan describes the demolition methods and estimated equipment and workforce needed at each dam.

1.3.6 Section 6: Reservoir and Other Restoration

Section 6 (Reservoir and Other Restoration) summarizes the proposed plan to stabilize remaining reservoir sediment post-drawdown and to restore the former reservoir areas at each development to native habitat. Appendix H contains the full Reservoir Area Management Plan. The 2011 Reservoir Area Management Plan was developed as part of the 2012 EIS/R and 2013 Secretarial Determination of Record. Appendix H reflects updates to the 2011 Plan. The 2011 Plan focused on control of invasive exotic vegetation (IEV) species and revegetation of the reservoir areas with native grasses, shrubs and trees as the primary method for restoration.

KRRC proposes a two-pronged approach consisting of revegetation and active habitat restoration with monitoring and adaptive management. The Definite Plan outlines a sequence of activities beginning 1 to 2 years pre-drawdown and concluding 10 years post-dam removal. The activities in Section 6 and Appendix H include: sourcing of plant materials; seed collection and propagation; IEV removal; terrestrial restoration of all former reservoir and other disturbed areas with native vegetation and engineered habitat features, including excavation to optimize near-channel habitat and improve floodplain and tributary connectivity, installation of large wood habitat features, riparian bank revegetation, and installation of bank stability or channel fringe complexity features in select locations; installation of irrigation systems; plant establishment and maintenance; plant monitoring and reporting; monitoring native plant establishment; re-seeding difficult and underperforming areas; continuing to install pole cuttings and seed plantings; adaptively replacing pole cuttings, acorns, and container plants; maintaining existing and previously planted vegetation; IEV control and inspections; herbivore control; maintaining the irrigation systems; field-based monitoring throughout reservoir areas where restoration features were installed; modification, adaptive improvement, and augmentation of installed habitat features as needed; constructing in-stream habitat features based on engineered designs that are appropriate for the system; constructing off-channel wetlands, side channels, and alcoves where appropriate; enhancing mid-channel gravel bars; conducting field monitoring of the mainstem and tributaries; fish passage monitoring; removing all non-natural fish passage barriers; and monitoring and report preparation. The Reservoir Area Management Plan also includes cattle exclusion fencing around the reservoir restoration areas where they abut grazing land.

Monitoring of the reservoir restoration aspects of the Project will be accomplished using physical site characteristics to produce data to monitor and adaptively manage the restoration efforts. After dam removal, initial conditions data points will be established. Actions include establishing permanent ground photo points throughout the reservoir areas, high resolution vertical aerial photos of the reservoir areas, and LiDAR data collection after sediment evacuation and initial ground cover stabilization.

Section 6 also describes habitat restoration on the floodplains and tributaries that flow into the Klamath River in the reservoir areas:

1. Tributary Connectivity: Light equipment and manual labor to move materials and enhance longitudinal connectivity; place large wood to promote habitat complexity
2. Wetlands, Floodplain and Off-Channel Habitat Features: Restore or create wetlands; create floodplain swales; restore side channels by modifying hydraulics
3. Floodplain Roughness: Create floodplain roughness using equipment and partially bury brush and woody debris
4. Bank Stability and Channel Fringe Complexity: Introduce complexity through riparian revegetation and placement of large wood
5. Large Wood Habitat Features: Promote conditions that restore natural ecosystem processes and protect vegetation

Revegetation will also be conducted for areas disturbed by construction activities but outside of the former reservoir areas, such as staging areas, spoil disposal areas, and temporary access roads. Section 6 lists these areas and the appropriate restoration activities.

1.3.7 Section 7: Other Project Components

Section 7 (Other Project Components) describes other features of the Project including proposed aquatic and terrestrial resources measures, long-term road improvements, City of Yreka water supply infrastructure improvements, recreation facilities demolition/restoration, and other resource management plans.

Section 7.2 includes background information pertaining to basin-specific fish populations, disease, passage and related water quality data and information. In addition, Section 7.2.5 summarizes the proposed aquatic resource measures to protect and benefit relevant species that the KRRC will implement as part of the Project. A full discussion of the aquatic resource measures is included in Appendix I.

Section 7.3 describes terrestrial resource measures KRRC will implement to reduce potential impacts to terrestrial resources. These measures are:

1. The Habitat Rehabilitation Plan (the restoration plan summarized in Section 6 and Appendix H);
2. Surveys and avoidance and minimization measures for: nesting birds, bald and golden eagles and special status wildlife species, special status plant species, bats, and the Northern Spotted Owl; and
3. Compliance with regulatory requirements for delineating and protecting wetlands.

Appendix J discusses the full terrestrial resource work plans and planned avoidance and minimization measures.

Section 7.4 describes road improvements to facilitate construction access, provide safety measures during dam removal, and return roads used by Project-related vehicles to a state that at least equals existing condition. Appendix K shows the findings of an assessment of the road infrastructure expected to be used throughout the Project.

Section 7.5 describes the proposed improvements to the City of Yreka water supply pipeline, which crosses the Klamath River and would likely be damaged due to high velocity river flows after removal of Iron Gate Dam.

Section 7.6 describes the recreation facilities removal and the Draft Recreation Plan. As of the June 28, 2018 submittal, PacifiCorp provides recreation facilities at J.C. Boyle Reservoir, Copco Lake, and Iron Gate Reservoir. KRRC will remove certain features of each recreation facility as specified in the Definite Plan, and regrade, seed and plant affected areas. Some recreation facilities will remain in place. Appendix Q provides the Draft Recreation Plan, which proposes new or improved recreation facilities to be built.

Section 7.7 describes KRRC's proposed downstream flood control improvements. Thirty-six habitable structures would be located within the 100-year floodplain following dam removal (thirty-four of these structures are already in the 100-year floodplain with the dams in place; i.e., two are added to the floodplain due to dam removal). KRRC will work with the owners to move or elevate legally established structures, where feasible. KRRC will coordinate with FEMA on revising the map of the future 100-year floodplain. KRRC will consult with the owners of river crossing bridges to address effects of the increase in flood depths after dam removal.

Section 7.8 describes the Fish Hatchery Plan. The hatchery facilities are operated by CDFW as of the June 28, 2018 submittal. They will be transferred to the State of California and thereafter operated by CDFW with funding from PacifiCorp for 8 years after the removal of Iron Gate Dam. One-time improvements will be made as necessary, funded by PacifiCorp. KRRC will facilitate the transfer and cooperate with CDFW in its implementation of the Definite Plan. KRRC will demolish certain features of the Iron Gate Hatchery, funded by PacifiCorp to the extent required under the KHSa. The Definite Plan provides detailed data and analysis regarding operations of the hatchery facilities.

Section 7.9 briefly describes the Cultural Resources Plan, which is provided in Appendix L. The Cultural Resources Plan describes, as of the date of submittal, cultural resources studies conducted by KRRC in the past, that are ongoing, and that it expects to conduct to comply with regulatory requirements. The Cultural Resources Plan provides the status as of submittal of consultation with affected tribal organizations.

Section 7.10 lists other plans included in the Project: Fire Management Plan (Appendix O1), Traffic Management Plan (Appendix O2), Hazardous Materials Management Plan (Appendix O3), Emergency Response Plan (Appendix O4), Noise and Vibration Control Plan (Appendix O5), Water Quality Monitoring Plan (Appendix M), and Groundwater Well Management Plan (Appendix N).

1.3.8 Section 8: Project Costs and Schedule

Section 8 (Project Costs and Schedule) provides the understanding, as of the June 28, 2018 submittal, of Project costs and construction schedules. The full Estimate of Project Costs report is provided as Appendix P.

1.3.9 Appendices

The 17 appendices to the Definite Plan are:

- A. Risk Management Plan: Contents include Risk Management Plan objectives and background; insurance, bonds, and other surety arrangements; project delivery method; and design & construction risk register.

- B. Figures: This Appendix is redacted.
- C. Figures – Other: Technical figures and maps of the Klamath River and Project features.
- D. Dam Stability Analyses: AECOM analysis of stability of J.C. Boyle and Iron Gate Dams during reservoir drawdown.
- E. Reservoir Rim Stability Evaluation: Summarizes geologic background information, recent field reconnaissance, and any analyses completed as of submittal to assess reservoir rim stability at J.C. Boyle, Copco No.1 and Iron Gate reservoirs.
- F. Reservoir Drawdown Modeling Output: Contains results from modeling of flows and water levels due to the drawdown of J.C. Boyle Reservoir, Copco Lake, and Iron Gate Reservoir; and a flood frequency analysis at J.C. Boyle, Copco and Iron Gate.
- G. Copco Foundation Removal: AECOM technical memorandum analyzing Copco No. 1 foundation removal.
- H. Reservoir Area Management Plan: Describes Project goals and objectives; historical and current conditions at each of the 3 reservoirs; anticipated reservoir conditions after drawdown; reservoir area restoration (including restoration time periods, overview for each reservoir, full description of restoration actions, and data gaps and informational studies); monitoring and adaptive management; and supplementary information.

Appendix H contains a comprehensive outline of parameters that will be monitored, which include: stability of remaining reservoir sediments, fish passage, invasive exotic vegetation, native plant revegetation, and restoration of natural ecosystem processes. It includes restoration actions and adjustments specific to each reservoir area, based on the topography and ecological features of each reservoir and the surrounding area.

Appendix H provides the following restoration timeline in relationship to the reservoir drawdown and dam removal activities:

Table 5-1 Restoration Timeline

RESTORATION PERIOD:	Pre-Dam Removal (DR)			D	DR	Post-DR	Plant Establ.	Maintenance & Monitoring				
Monitoring Period:	Preparation			Construction			Y1	Y2	Y3	Y4	Y5	
Calendar Year:	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027		
Task:												
Seed Collection												
Seed Propagation												
Prepare Construction PS&E for Pilot Growing Tests												
Pilot Growing Tests with Monitoring and Data Gathering												
Restoration PS&E Preparation												
Invasive Exotic Vegetation Control												
Construction and Dam Removal (DR)												
Drawdown (DD)												
Site Mass Grading at Reservoir Restoration Areas												
Bank Stability and Channel Fringe Actions												
Install Large Wood for Habitat (Ground/Aerial)												
Tributary Connectivity in Reservoir Areas												
Aerial Pioneer Crop Seeding (Repeated)												
Salvage & Planting of Exist. Ripari/Wetland Vegetation												
Pole Cutting Installation												
Cross-rip Compacted Areas in Disturbed Uplands												
Pioneer Crop Mowing and/or Rolling												
Permanent Seed Mix Broadcasting by Vegetation Zone												
Irrigation Installation and Maintenance												
Plant Maintenance												
Key Inspections												
Installation of Deer Fence Enclosures in Selected Areas												
Performance Criteria Monitoring												
Deer Fence and Irrigation Removal												

- I. Aquatic Resources Measures: Provides background on 2012 EIS/R measures and rationale for the revised measures included in the Definite Plan. Describes dam removal benefits and effects on aquatic resources; measures to offset effects on mainstem spawning (by removing tributary obstructions and enhancing spawning habitat) and juvenile outmigration (by relocating fish downstream and to off-channel ponds before drawdown, ensuring tributary connectivity, monitoring water conditions in tributaries and relocating juvenile fish if water quality requires); the decision not to use fall pulse flows before drawdown to promote fish migration into tributaries; Iron Gate hatchery management to reduce fish exposure to high sediment levels (by coordinating with CDFW to delay fish release until sediment levels decline); the decision not to relocate Pacific lamprey ammocoetes; and relocation of suckers and freshwater mussels (though recovery of the entire populations is not anticipated).

- J. Terrestrial Resource Measures: Describes measures to reduce Project impacts on the Northern Spotted Owl, the bald eagle and golden eagle, special status wildlife species, bats, and special status plants (by conducting surveys and either implementing recommended measures or using data to develop avoidance and minimization measures, in coordination with USFWS and CDFW for certain resources). KRRC will conduct mapping of vegetation communities and assess wetlands, implement avoidance and minimization measures, conduct wetland and riparian habitat restoration, and comply with wetland regulatory requirements.
- K. Road and Bridge Structure Data and Long-Term Improvements: Provides tables describing access roads and haul routes of significance, road intersection field observations, bridge structure field observations, and culvert field observations.
- L. Cultural Resources Plan: Describes ongoing consultations, KRRC's Cultural Resources Working Group, the process to define the area of potential effects, information on resource identification efforts, and resource evaluations. Describes the contents of management plans and agreement documents to be developed (Historic Properties Management Plan; Programmatic Agreement; Inadvertent Discovery Program; Plan of Action for the treatment of human remains; Cultural Resources Monitoring Plan; and Looting and Vandalism Prevention Plan). Describes compliance efforts under Section 106 of the National Historic Preservation Act of 1966, as well as cultural resource requirements of CEQA, and SWRCB tribal consultations required under California AB 52. AB 52 compliance is required for SWRCB's consideration of the CWA Section 401 water quality certification.
- M. Water Quality Monitoring Plan: Provides background on existing water quality monitoring in the Klamath Hydroelectric Reach and resulting data. Describes the proposed Water Quality Monitoring Plan's rationale, monitoring locations, monitoring parameters and frequency, riverbed sediment sampling and analysis, and plan implementation and schedule.
- N. Groundwater Well Management Plan: The Groundwater Well Management Plan consists of: well ownership database search and agency coordination, outreach to land owners and residents, installation of groundwater monitoring wells, groundwater monitoring, post-dam removal outreach and notification of findings, and proposed remedial actions for affected wells.
- O. Construction Related Plans:
 - 1. Fire Management Plan: Describes the need for fire management, lists fire suppression agencies with jurisdiction, describes regulations and requirements, lists contacts, describes the Fire Management Plan, and describes the water supply assessment to be conducted post-dam removal.
 - 2. Traffic Management Plan: Describes the need for a Traffic Management Plan, summarizes construction access, and lists proposed traffic management strategies.
 - 3. Hazardous Materials Management Plan: Describes the plan to address management of hazardous materials during physical removal of all structures at the four developments, lists anticipated types of hazardous

Waste at each development, and provides a hazardous materials inventory for each development.

4. Emergency Response Plan: Lists the general requirements of the emergency response plan. Emergency response scenarios include: medical, fire, traffic incident, hazardous material spill, downstream hydraulic change planning, dam or tunnel failure, catastrophic natural emergency, and security threat. General measures for each scenario are included.
 5. Noise and Vibration Control Plan: Describes measures to address and reduce increases in noise levels resulting from construction activities during removal of the dam developments.
- P. Estimate of Project Costs: Describes limitations of the costs estimates and the basis of the cost estimate (including cost categories, the construction procurement approach, construction pricing, consulting services pricing, escalation, design & construction contingency, Monte Carlo analysis to analyze uncertainties and risk, and ongoing due diligence). Provides summaries for each cost category. Provides the results of the total cost estimate, Monte Carlo results, and comparisons with previous estimates.
- Q. Draft Recreation Plan: Describes existing recreation sites and activities, objectives, identified recreation opportunities, evaluation and screening criteria for recreation opportunities, and the process for finalization of the Recreation Plan.

APPENDIX 2
KRRC PROPERTY DESCRIPTION

APPENDIX 2

KRRC PROPERTY DESCRIPTION

2.1. PURPOSE

The purpose of this Appendix is to describe the land owned by, or leased or licensed to, the KRRC as of the Habitat Project Work Implementation Contract Amendment Date.

[Note: to be inserted on the Habitat Project Work Implementation Contract Amendment Date.]

APPENDIX 3
HABITAT PROJECT WORK AREA DESCRIPTION

APPENDIX 3

HABITAT PROJECT WORK AREA DESCRIPTION

3.1. PURPOSE

The purpose of this Appendix is to describe the real property on which the Habitat Project Work will be performed.

[Note: to be inserted on the Habitat Project Work Implementation Contract Amendment Date.]

APPENDIX 4
PRELIMINARY SERVICES

APPENDIX 4

PRELIMINARY SERVICES

4.1. GENERAL REQUIREMENTS

4.1.1 Scope of Base Preliminary Services.

The Base Preliminary Services shall consist of the following nine Preliminary Services Tasks:

- Task #1: Habitat Restoration Work Management
- Task #2: Local Impact Mitigation Fund Development
- Task #3: Permitting Support and Compliance Program
- Task #4: Seed Collection/Propagation and Invasive Exotic Vegetation Control

Unless specifically excluded from this Agreement, the Contractor shall provide to the KRRC all architectural, engineering, geotechnical, landscape, Habitat Restoration Work management, cost estimating and other professional services necessary to perform the Base Preliminary Services required by this Agreement.

4.1.2 Deliverable Material.

Required Deliverable Material for each Preliminary Services Task is identified in this Appendix. All Deliverable Material identified in this Appendix shall be reviewed with representatives of the KRRC. The Contractor shall promptly correct deficiencies in Deliverable Material and shall promptly make modifications to conform to Habitat Restoration Work requirements and modifications to achieve acceptability of the Deliverable Material to the KRRC. Draft deliverables shall be provided to the KRRC in Microsoft® WORD or EXCEL format. Unless specified otherwise, the Contractor shall provide electronic copies of all final deliverables in .pdf format. For draft and final design drawing, design report and specification deliverables, the Contractor shall provide six (6) hard copies to the KRRC or their designated representative. Drawing hardcopies shall be 1/2-size printed single sided on 11 x 17 paper and spiral bound.

4.1.3 Plans and Reports.

The Preliminary Services Tasks provide for the preparation of all plans, reports and other deliverables listed in Attachment 4B (Preliminary Services Contractor Submittals).

4.1.4 Preliminary Services Completed Pursuant to the Project Agreement

The Preliminary Services described in this Appendix do not include any of the work performed by the Contractor as a subcontractor to the Project Company pursuant to the Project Agreement. Under such subcontracting arrangement, the Contractor developed a 60% design for the Habitat Project Work, which will serve as a basis of the Preliminary Services described in this Appendix and the Contractor Governmental Approvals development and finalization.

4.2. PRELIMINARY SERVICES TASK #1 - HABITAT RESTORATION WORK MANAGEMENT

4.2.1 Habitat Restoration Work Management.

The Contractor shall provide Habitat Restoration Work management of the Contractor team in terms of staffing, budget, schedule, scope, as well as communication and coordination with the KRRC.

This Preliminary Services Task includes managing the scope of work, schedule and budget, coordination with the KRRC and development of the plans and reports listed below:

- Mobilization and Site Access Plan, which shall include:
 - Site Trailers and Utilities Plan
 - Security Plan
 - Photographic Documentation Plan
 - Related Projects Coordination Protocol
 - Emergency Operations and Response Plan
- Health and Safety Plan
- Habitat Restoration Work Execution Plan, which shall include:
 - Habitat Restoration Work Team Structure and Staffing Plan
 - Communications Plan
 - Scope Management Plan
 - Change Management/Integration Management Plan, which shall include a Trend Management Log and Habitat Restoration Work Decision Log
 - Schedule Management Plan
 - Budget Management Plan
 - Risk Management Plan, which shall include risk register
 - Procurement Management Plan
 - Habitat Restoration Work Quality Management Plan, which shall meet the requirements set forth in Appendix 9 (Habitat Restoration Work Quality Control Requirements) (including QA/QC requirements)
 - Document Control Plan
- Preliminary Services Schedule and Initial Habitat Restoration Work Schedule
- FERC-Required Plans and Submittals
- Monthly Progress Reports

Requirements associated with the various plans and submittals listed above are included in Sections 4.2.8 (Mobilization and Site Access Plan) through 4.2.12 (FERC and DSOD-Required Plans and Submittals) below.

The Contractor will prepare invoices, progress reports, and design progression and design decision log updates on a monthly basis. Other activities include keeping the KRRC informed and soliciting input from the KRRC when making key decisions, coordination with Subcontractors, scheduling of staff, and coordinating the QA effort.

The Contractor shall also conduct weekly Habitat Restoration Work management meetings with the Contractor Habitat Restoration Work managers and KRRC Habitat Restoration Work managers. An agenda will be distributed to the KRRC prior to the meetings and the Contractor will distribute meeting notes and action items within three days after each meeting. Each meeting agenda shall include:

- (a) Ongoing activities

- (b) Upcoming activities
- (c) Scope, schedule and budget
- (d) Habitat Restoration Work risks
- (e) Issues
- (f) Decisions and actions
- (g) Change management
- (h) Health and safety

During Preliminary Services Task #1 Contractor shall conduct weekly Habitat Restoration Work management meetings throughout the duration of the Preliminary Services Period.

A minimum of nine Technical Workshops shall be incorporated into Base Preliminary Services to address specific subjects and facilitate collaboration and development of ideas and decisions to be carried forward during design development. Each workshop will last two to four hours in length and will be facilitated by the Contractor and KRRC Habitat Restoration Work managers. An agenda (including desired outcomes) as well as technical background documents will be distributed to workshop attendees prior to the meetings. The Contractor will document the outcome of each workshop and distribute meeting notes and action items within three days after each workshop. At a minimum, Technical Workshops will be conducted on the following subjects:

- (a) Habitat Restoration Work Kickoff and Partnering
- (i) Risk Identification, Evaluation and Management
- (j) Design Submittals and Challenges
- (k) Schedule and Habitat Restoration Work Sequencing
- (l) Permitting and Compliance
- (m) Subcontractor Procurement

Deliverables:

All final plan or other submittals shall be submitted within 2 weeks of receipt of KRRC comments, unless otherwise noted below.

- Draft and final Mobilization and Site Access Plan; draft shall be submitted within 60 calendar days of the Contract Date
- Draft and final Health and Safety Plan; draft shall be submitted within 30 calendar days of the Contract Date
- Draft and final Habitat Restoration Work Execution Plan; draft shall be submitted within 30 calendar days of the Contract Date
- Draft and final Preliminary Services Schedule; draft shall be submitted within 30 calendar days of the Contract Date
- Monthly Updates to Preliminary Services Schedule: shall be submitted in each Monthly Progress Report

- Draft and final FERC Plans/Submittals; drafts shall be submitted based on final Preliminary Services Schedule
- Meeting Agendas and Notes
- Technical Workshop Agendas and Notes

4.2.2 Document Submittal Procedures.

Within 10 days following the Contract Date, the Contractor shall submit to the KRRC a set of document submittal procedures ("Document Submittal Procedures"). The Document Submittal Procedures shall identify the key document submittal packages to be prepared by the Contractor, the expected submittal dates to the KRRC, as well as the expected review durations for the KRRC. Proposed KRRC review durations should vary based on the type and size of submittal, and review durations should be organized by category. The Contractor should expect a two week review for draft submittals, except for Preliminary Services Tasks #7 and #8, which will require three weeks. A one week review duration shall be assumed for all final submittals to back-check. The parties acknowledge and agree that if submittals are not provided on the agreed upon submittal dates, it could extend the KRRC's review completion date a corresponding number of days. The Document Submittal Procedures shall also identify the frequency of the Contractor's design progress meetings during various phases of the design. The Document Submittal Procedures shall require the Contractor to submit a minimum of one electronic and one original hardcopy, with up to six paper copies of each document submittal and CD copies as requested by the KRRC. The Document Submittal Procedures shall also require the Contractor to distribute the document submittals as directed by the KRRC.

Unless otherwise noted herein for specific tasks/submittals, the Contractor shall anticipate a review duration of two weeks for any submittals/applications to agencies or other stakeholders.

The Contractor may, in coordination with the Program Manager, propose to create a Habitat Restoration Work web site, accessible to the KRRC and KRRC-designated representatives, for posting all document submittals and other reference information. This web site shall be integrated with the Records Management System described in Section 4.2.5 (Records Management System). Implementation of the Habitat Restoration Work website shall be subject to the KRRC's approval. The KRRC may reduce the requirements for hard copies and electronic and CD copies of submittals in consideration of access to information on the web site.

Deliverables:

- Draft and final Document Submittal Procedures

4.2.3 Monthly Progress Report Requirements.

The Contractor shall submit Monthly Progress Reports during the Preliminary Services Period which meet the requirements set forth in subsection 6.2(C) (Habitat Restoration Work Schedule and Reports) of this Agreement.

Deliverables:

- Monthly Progress Reports

4.2.4 Kickoff Meeting and Partnering.

Within two weeks after each Preliminary Services Task notice to proceed, key staff members of the KRRC and Contractor will participate in a Habitat Restoration Work kickoff/partnering workshop. The goal of the workshops is to deepen working relationships, develop common

goals and objectives for the Habitat Restoration Work, and achieve a cooperative partnership environment among Habitat Restoration Work participants. The workshop attendees, agendas, facilitation, and venue will be coordinated by the KRRC and Contractor's Habitat Restoration Work managers immediately following the Preliminary Services Task notice to proceed. The Contractor will develop a Draft and Final Partnering Charter for review and execution by the KRRC. The Contractor will distribute (within one week after workshop) and track action items that come out of the partnering workshops.

Deliverables:

- Kickoff Agenda and Meeting Notes
- Draft and Final Partnering Charter
- Workshop Action Items

4.2.5 Records Management System.

The Contractor will, at the KRRC's discretion either (a) utilize the Program Manager's System 6 Sharepoint software or (b) furnish and implement a records management software system (such as EADOC or similar) to facilitate work flow and transmit and store written documents associated with the Habitat Restoration Work. The system will be utilized by the KRRC, Contractor, and their Subcontractors and vendors to transmit, review and respond, log, and store Habitat Restoration Work related documents. The records management system will incorporate the following:

- (a) Overall Habitat Restoration Work tracking and monitoring of key performance indicators;
- (b) Meeting and workshops agendas, presentations, and notes;
- (c) Action items, issues, decision logs, and tracking;
- (d) Budget and schedule tracking;
- (e) Risk tracking and mitigation;
- (f) Submitting and tracking requests for information (RFIs);
- (g) Document submittals and transmittals including drawings (pdf format);
- (h) Quality management documentation including comments, responses, and confirmations;
- (i) Value engineering submissions;
- (j) Invoices and monthly reports;
- (k) Templates and tools;
- (l) Habitat Restoration Work related communication; and
- (m) Dashboards of Habitat Restoration Work progress for the KRRC.

Deliverables:

- Records Management System documentation

- Posting of deliverables required by this Appendix
- Entry and updating of on-line logs (action, issue, decision)
- Posting of RFIs

4.2.6 Constructability Reviews.

4.2.6.1 30% and 60% Design Stage. The Contractor shall provide for constructability reviews of the design at the 30% and 60% design submittal milestones as follows:

- (a) Identify and establish a team of individuals among the Contractor team primarily responsible for Habitat Restoration Work who will undertake constructability reviews on behalf of the Contractor;
- (b) Submit 30% or 60% design submittal, as applicable, to Contractor's constructability review team and to the KRRC for constructability review;
- (c) Schedule and conduct constructability workshop with Contractor's constructability review team and the KRRC;
- (d) Discuss recommendations with the KRRC and conduct follow-up evaluations including cost, schedule, and risk impact analysis of any preliminary constructability comments that are tentatively agreed-to;
- (e) Prepare written constructability review report;
- (f) Meet and review constructability review report and results of constructability evaluations with KRRC; and
- (g) Proceed with agreed-to changes.

Deliverables:

- Written constructability review report
- Workshop agenda

4.2.7 Value Engineering.

Value engineering shall be conducted at the design criteria report, 30%, and 60% design submittal milestones by the value engineering team designated by the KRRC. At each such design submittal milestone, the Contractor shall submit a draft of the Design Criteria Report, 30% or 60% design submittal, as applicable, to the value engineering team and participate in a value engineering workshop to be conducted by the value engineering team. The value engineering team shall prepare a value engineering report, and the Contractor shall review such report and prepare responses to the value engineering recommendations, including a discussion of cost and Habitat Restoration Work Schedule impacts. The Contractor shall meet with the KRRC to review responses and submit final recommendations regarding value engineering input to the KRRC for review and approval. Upon approval by the KRRC, the Contractor shall proceed with the agreed-to changes.

Deliverables:

- Value engineering report associated with referenced design tasks
- Responses to value engineering recommendations associated with referenced design tasks

- Workshop agendas

4.2.8 Mobilization and Site Access Plan.

The Contractor shall develop a Mobilization and Site Access plan that clearly identifies all proposed access routes with anticipated truck or equipment use, all mobilization activities with clear descriptions and timing of each activity, as well as a description and location of any proposed on-site construction staff housing and offices. Refer to Section 6.2 (Habitat Restoration Work Generally) of the Agreement for additional requirements associated with laydown areas, Utilities, and temporary Habitat Project Work Area facilities.

The plan shall clearly identify the number and type of temporary office facilities for the Contractor and the KRRRC, including at a minimum the requirements outlined in Section 4.5 (Habitat Restoration Work Generally) of this Appendix. A schematic will be provided showing areas to be used by the Contractor for storage of construction, demolition and restoration materials and equipment, the location of a temporary construction trailer and for construction of new facilities including required setbacks and traffic flow for the construction vehicles entering and exiting the Habitat Project Work Area.

The plan shall identify the approach, in coordination with the Project Company, to providing site security for all areas where the Habitat Restoration Work will occur. In addition, the Contractor shall propose a process to coordinate closely with PacifiCorp to allow for ongoing maintenance and operations of existing Facilities (see Reference Document 12 (PacifiCorp Operations and Maintenance Agreement)).

A plan for photographic documentation throughout the duration of the Habitat Restoration Work shall be developed. The Contractor shall consult with the Owner to determine strategic locations for sequential construction photographs and other photographs required. Other construction photographs shall document; pre-existing conditions; disputed, changed, or deficient work; progress information; and other areas as appropriate. At a minimum, aerial photography of the entire Habitat Project Work Area shall be taken on an annual basis.

4.2.9 Health and Safety Plan.

The Contractor shall develop and implement, in coordination with the Project Company, a written Habitat Project Work Area-specific Health and Safety Plan that includes management commitment, maintaining a safe workplace, employee participation, hazard evaluation and controls, employee training and periodic inspections. The objective of this plan is to eliminate injuries to all persons and damage to property, shall be developed specifically for the needs of this Habitat Restoration Work and shall be maintained at the Site (at office facilities in CA and OR) and available for review upon request. See Section 4.7 (Habitat Restoration Work Safety and Security) of this Appendix for additional Health and Safety requirements to be included in the plan.

4.2.10 Habitat Restoration Work Execution Plan.

4.2.10.1 Submission of Habitat Restoration Work Execution Plan. In accordance with the Preliminary Services Schedule, the Contractor shall develop and submit a Habitat Restoration Work Execution Plan to the KRRC for review and comment. A Habitat Restoration Work Execution Plan shall serve as a Habitat Restoration Work management tool for the KRRC and Contractor (including Subcontractors) and will include guidelines and procedures for execution of the work and issues resolution. The Habitat Restoration Work Execution Plan will be in compliance with the Contract Standards and include:

- (a) A Habitat Restoration Work Team Structure and Staffing Plan that provides guidance on how the Habitat Restoration Work will be staffed, managed, and eventually released, including:
 - (1) a description of Contractor's organization;
 - (2) roles and responsibilities defining positions, skills and competencies that the Habitat Restoration Work demands;
 - (3) Habitat Restoration Work organization charts that identifies all key discipline design leads for the Habitat Restoration Work; and
 - (4) a staffing management plan delineating the time periods each Habitat Restoration Work team member will be needed and other information important to engage the Habitat Restoration Work team;
- (b) A Communications Plan that provides the following:
 - (1) contact information for both the Contractor and the KRRC (including phone numbers, facsimile numbers, e-mail addresses, and points of contact);
 - (2) communication requirements for the Contractor and the KRRC (including frequency and time frame of communications, information to be communicated, and methods or technologies used to convey information);
 - (3) resources allocated for communication activities, the method of updating and refining the plan, flow charts for information flow, and a glossary of common terminology;
 - (4) regulatory coordination and public relations procedures;
 - (5) a public notification plan to inform the KRRC, Governmental Bodies, and residents and businesses located in the vicinity of the Habitat Restoration Work of the status of Habitat Restoration Work. The plan shall provide a schedule for issuing public notices and conducting public meetings as well as measures that are planned to notify specific residents and businesses that may be affected by the Habitat Restoration Work;

- (6) the Contractor's designated public relations person and their contact information. The public relations person shall assist the KRRC with notifications and with inquiries from the public and media; and
 - (7) the Communication Plan shall be updated and resubmitted semi-annually or sooner if needed to remain current during the Habitat Restoration Period.
- (c) A Scope Management Plan that describes how the scope will be defined, developed, monitored, controlled, and verified, including:
 - (1) process for preparing the Habitat Restoration Work scope statement;
 - (2) creation of the Records Management System from the detailed scope statement, and how the Records Management System will be maintained; and
 - (3) procedures for obtaining formal acceptance of completed Habitat Restoration Work deliverables and processing of the detailed scope statement;
- (d) A Change Management/Integration Management Plan that includes:
 - (1) identification of procedures that will be used to document any changes from the accepted Specifications;
 - (2) identification of procedures that will be used to document the communication flow to the appropriate contractor's construction personnel;
 - (3) description of the process for reviewing all change requests, approving changes and managing changes to deliverables, organization process assets, Habitat Restoration Work documents, the Habitat Restoration Work Execution Plan, and communicating their disposition;
 - (4) Trend Management Log; and
 - (5) Habitat Restoration Work Description Log;

The Contractor shall prepare and maintain a change management log for the duration of the Base Preliminary Services. The change management log shall integrate with the Habitat Restoration Work decision log and be used to document proposed and approved changes to the price, schedule, or changes to the Agreement. At a minimum, the change management log shall be submitted on a monthly basis and shall include the following information:

- (1) Change identification number
- (6) Brief description of change
- (7) Status of change (pending, approved, rejected)
- (8) Dates associated with change including initial proposal date and the date on which the change was accepted or rejected

- (9) Back-up information including cost, schedule, and technical information

Change management shall be a standing agenda item at Habitat Restoration Work management meetings. Following approval of the Design Criteria Report (DCR), the change management log shall be used to track changes to the approved Habitat Restoration Work and their associated cost and schedule impacts.

- (e) A Schedule Management Plan that describes the criteria and activities for developing, monitoring, and controlling the Habitat Restoration Work Schedule, including:

- (1) Habitat Restoration Work Schedule model development;
- (2) scheduling methodology and scheduling tools;
- (3) level of accuracy and the acceptable range used in determining realistic activity durations;
- (4) units of measure, such as staff hours, staff days, or weeks, as well as physical units of measurement;
- (5) organizational procedures links with activities tied to the approved Records Management System;
- (6) Habitat Restoration Work Schedule model maintenance and the process used to update status and record progress of the Habitat Restoration Work during execution;
- (7) control thresholds, variance thresholds for monitoring schedule performance and agreed-upon amounts of variation to be allowed;
- (8) rules of performance management, such as earned value management rules, rules for establishing percent complete, control accounts, earned value measurement techniques, and schedule performance measurements;
- (9) reporting formats, including the formats and frequency of schedule reports; and
- (10) descriptions of each of the schedule management processes;

- (f) A Budget Management Plan that describes how the Habitat Restoration Work budget will be planned, structured, and controlled, including:

- (1) units of measure, the level of precision and accuracy;
- (2) coordination with approved Records Management System; and
- (3) control thresholds for monitoring budget performance, including the rules of performance measurement (earned value management);

- (g) A Risk Management Plan that describes how risk management activities will be structured and performed, including:

- (1) how risk management will be incorporated into the delivery of the Habitat Restoration Work in accordance with the Contract Standards.
- (2) the methodology, approaches, tools, and data sources that will be used to perform risk management on the Habitat Restoration Work;
- (3) roles and responsibilities, defining the lead and support risk management team members for each type of activity and their responsibilities;
- (4) budgeting to establish estimates of funds needed based on assigned resources for inclusion in the cost baseline and protocols for application of contingency and management reserves;
- (5) timing of risk management processes to be performed through the Habitat Restoration Work life cycle; and
- (6) protocols for application of schedule contingency reserves and risk management activities associated with the Habitat Restoration Work Schedule;

A risk management workshop will be conducted with the KRRC within 30 days of the kickoff/partnering workshop. The workshop shall be used to identify key Habitat Restoration Work risk and opportunities for avoiding and minimizing risks.

The Risk Management Plan will include a risk register developed and maintained by the Contractor. The register shall be initially populated with risks identified in the risk management workshop. The risk register shall include the following information:

- (2) Risk identification;
- (7) Activities affected (tied to schedule activities);
- (8) Risk description including qualitative categorization of risk;
- (9) Estimated/calculated percent likelihood that risk may occur (note: this will be output from quantitative analysis performed on key risks that could exceed target cost or schedule thresholds);
- (10) Phase of Habitat Restoration Work that risk could impact;
- (11) Potential schedule impact should risk occur;
- (12) Potential cost impact should risk occur;
- (13) Potential health and safety impacts should risk occur;
- (14) Risk trigger;
- (15) Risk owner; and
- (16) Risk strategy (transfer, mitigate, accept, exploit).

Risks shall be reviewed at the weekly Habitat Restoration Work management meetings. Additionally, the following risk management workshops shall be conducted to provide for re-evaluation of overall risks, a deeper level of risk analysis for identified risks, identification of new risks, and review of risk avoidance, and mitigation measures:

- (3) During the development of the DCR
- (17) Upon submission of the 30% DCD
- (18) Upon submission of the 60% DCD

Ongoing qualitative risk analysis shall be conducted by Contractor with review and input from the KRRC.

- (h) A Procurement Management Plan that describes how the Contractor will acquire goods or services from outside its organization, including:
 - (1) management of procurement processes from developing procurement documents through contract closure;
 - (2) guidance for the types of contracts to be used and use of independent estimates and standardized documents; and
 - (3) handling of long lead items, requests to self-perform and linking them into activity resources and schedule;
- (i) A Habitat Restoration Work Quality Management Plan that meets the requirements set forth in Appendix 9 (Habitat Restoration Work Quality Control Requirements);
- (j) A Document Control Plan that identifies how documents will be managed throughout the Habitat Restoration Work life cycle, including:
 - (1) the process of organizing, storing, protecting, and sharing documents;
 - (2) the management of both the hard copy and electronic repositories of documents, historical information, and a consistent approach to the creation, update and format of documents.

4.2.10.2 Establishment and Compliance with Habitat Restoration Work Execution Plan. The KRRC will review the draft Habitat Restoration Work Execution Plan and return comments in accordance with the Preliminary Services Schedule. The Habitat Restoration Work Execution Plan will be accepted by the KRRC only after the Contractor has addressed all KRRC comments to the reasonable satisfaction of the Habitat Restoration Work Director. Any subsequent amendments or updates to the Habitat Restoration Work Execution Plan will be submitted to the Habitat Restoration Work Director for review and comment in the same manner as the initial Habitat Restoration Work Execution Plan. The Contractor will implement and comply with the accepted Habitat Restoration Work Execution Plan, and any accepted amendments or updates thereto, in connection with the performance of the Habitat Restoration Work.

4.2.11 Preliminary Services Schedule.

The Contractor shall prepare the Preliminary Services Schedule using Primavera P6 scheduling software (latest version), and shall submit the Preliminary Services Schedule as electronic files (native and pdf) and hardcopy. The Contractor shall provide licenses for up to three KRRC personnel to access the Preliminary Services Schedule at any given time.

The Preliminary Services Schedule shall reflect the schedule, by use of a Gantt or Bar Chart, for all activities comprising the Preliminary Services, and shall set forth all tasks and key subtasks in a logical and efficient work sequence that the Contractor intends to utilize in taking the Habitat Restoration Work from execution of this Agreement to the Habitat Project Work Implementation Contract Amendment Date.

The Contractor shall submit the Initial Preliminary Services Schedule on the Contract Date. During the Preliminary Services Period, the Contractor shall update the Initial Preliminary Services Schedule on a monthly basis. The Initial Preliminary Services Schedule, as updated pursuant to this subsection, is referred to herein as the Preliminary Services Schedule.

The Contractor shall undertake and complete the Preliminary Services in accordance with the Preliminary Services Schedule. Updates on the Contractor's compliance with the Preliminary Services Schedule shall be submitted monthly with the Monthly Progress Report required by Section 4.2.3 (Monthly Progress Report Requirements) of this Appendix and subsection 6.2(C) (Habitat Restoration Work Schedule and Reports) of this Agreement. The Initial Preliminary Services Schedule, prepared in accordance with the requirements set forth in this subsection, is included as Attachment 4A (Initial Preliminary Services Schedule) to this Appendix.

At a minimum, the Preliminary Services Schedule shall generally include:

- (a) Start date for each activity;
- (b) Finish date for each activity;
- (c) Major milestones;
- (d) Meeting and workshop dates;
- (e) Submittal dates including draft submission dates, KRRC review periods, and final submission dates;
- (f) Identification of critical path; and
- (g) Float.

The KRRC shall review and comment on the Initial Preliminary Services Schedule within 15 days of receipt. Comments on the Initial Preliminary Services Schedule shall be discussed at the weekly Habitat Restoration Work management meeting following receipt of any comments provided by the KRRC. The Contractor shall provide a revised Preliminary Services Schedule, as applicable, based on agreed-to changes at the next weekly Habitat Restoration Work management meeting.

The KRRC shall review and comment on the update to the Preliminary Services Schedule. The review process shall include evaluation of missing logic, critical path, leads and lags, and float, percent complete, and changes in schedule logic or activity durations. Comments on the updates to the Preliminary Services Schedule shall be discussed at the weekly Habitat Restoration Work management meeting following receipt of any comments provided by the

KRRC. The Contractor shall provide a revised draft Preliminary Services Schedule based on agreed-to changes at the next weekly Habitat Restoration Work management meeting.

4.2.12 FERC and DSOD-Required Plans and Submittals.

In connection with the FERC license transfer and surrender application process, and DSOD's dam removal permit process, the Contractor shall coordinate with the KRRC to develop specific plans and schedules for compliance at FERC and DSOD's direction, and consistent with any recommendations provided by the FERC Board of Consultants (the "BOC"). The Contractor shall assume up to 15 separate plans will be required for separate submittal to FERC/DSOD during the Preliminary Services. For each anticipated plan, the Contractor shall develop an approach to supply an adequate level of detail to FERC or DSOD based on their previous FERC/DSOD experience. The approach should be closely coordinated with other Preliminary Services design tasks (Tasks #5 through #7) and shall identify appropriate standards and criteria that apply.

The Contractor shall build on previous preliminary plan information provided in the Definite Plan, and shall complete all additional work required to inform the final plans listed below in the detailed design Preliminary Services Tasks #5 through #7. The Contractor should anticipate additional effort to organize the design information into separate plan submittals to FERC/DSOD on the various topics. The Contractor shall anticipate BOC review prior to any plan submittal to FERC, and shall address all BOC comments to the satisfaction of the BOC and KRRC.

The following plans and submittals may be required by FERC/DSOD during the Contractor's Preliminary Services.

- Erosion and Sediment Control Plan
- Traffic Management Plan
- Public Safety Plan
- Noise and Vibration Control Plan
- Cofferdam Plan
- Temporary Construction Emergency Action Plan
- Spill Prevention, Control and Countermeasure Plan (SPCC)
- Quality Control and Inspection Plan
- Blasting Plan
- Dust Control Plan
- Reservoir Rim Stability Plan
- Recreation Improvements Plan
- Revegetation and Wetlands Management Plan
- Woody Debris Management Plan

Deliverables:

- Draft and final approach to each plan
- Draft and final plans (up to 15 separate plans)
- Response to BOC comments matrix and revised final plan

4.3. PRELIMINARY SERVICES TASK #2 - LOCAL IMPACT MITIGATION FUND DEVELOPMENT

[Contractor to develop workscope description.]

4.4. PRELIMINARY SERVICES TASK #3 – PERMITTING SUPPORT AND COMPLIANCE PROGRAM

The Contractor shall identify, understand and comply with all Applicable Law and Contractor Governmental Approvals. Appendix 5 (Role of the KRRC, Contractor and Project Company with Respect to the Governmental Approvals) allocates responsibility relating to the Governmental Approvals between the Project Company, KRRC and the Contractor. The Contractor is responsible for all activities associated with Contractor Governmental Approvals.

For KRRC Governmental Approvals, the Contractor shall, as required by Appendix 5 (Role of the KRRC, Contractor and Project Company with Respect to the Governmental Approvals) provide draft applicable reviews and attend up to five agency coordination meetings for each Contractor Governmental Approval. In addition, the Contractor shall provide the KRRC with the necessary reports, submittals, plans, information, drawings and specifications, and responses to agency comments, as required to submit final applications and obtain approvals.

For Contractor Governmental Approvals prepared during the Preliminary Services, draft application submittals shall be supplied to the KRRC a minimum of 10 days prior to anticipated agency submittal for review and comment. The Contractor shall provide a “response to comments” matrix along with the revised application to the KRRC prior to submitting to agencies. The KRRC shall be given notification a minimum of five working days prior to direct communication with agencies pertaining to the Habitat Project Work. The KRRC shall be given the opportunity to be involved in all communication and coordination activities with agencies.

For some KRRC Governmental Approvals, the KRRC may meet regulatory requirements by applying a good neighbor approach that would result in a letter memorandum outlining compliance requirements, or by entering into a Memorandum of Understanding with agencies. In either case, the Contractor shall consider documented requirements coming out of the process as mandatory, and shall implement accordingly.

The Contractor, under this Preliminary Services Task #3 shall also prepare all necessary management plans required by the KRRC Governmental Approvals relating to the Habitat Project Work.

The Contractor shall develop an Initial Environmental Compliance Plan that outlines their understanding of required activities and submittals, in addition to a summary of their approach to ensuring acquisition of all KRRC Governmental Approvals and Contractor Governmental Approvals and implementation of all associated requirements and conditions. The initial plan shall also contain a matrix identifying all required KRRC Governmental Approvals and Contractor Governmental Approvals, status of those approvals, and any known or assumed conditions. The Contractor shall develop the matrix in an excel database. The Contractor will be responsible for identifying any conflicts between the various and KRRC Governmental Approvals which will become Contractor-Allocated KRRC Regulatory Terms and Contractor Governmental Approval requirements, and proposing an approach to resolve such conflicts.

As Governmental Approvals are issued, the Contractor will review and include all requirements in the Initial or Final Environmental Compliance Plan. This plan will organize requirements of all Contractor Regulatory Compliance Terms in one place, identifying requirements by permit or source document, resource category, and any associated agency submittals, frequency and timing. The matrix will also identify responsible entity and staff for each requirement, and any staff or subcontractor training or certifications required for compliance with Contractor Regulatory Compliance Terms including, but not limited to, ESA or cultural resources conditions.

The Contractor shall acknowledge and consider that regulatory requirements may constrain their proposed schedule, methods, and sequence of performing the Habitat Project Work.

During investigations and restoration, some agencies may have the authority to approve or inspect certain elements of the work. Contractor shall coordinate its activities with agencies as required by the Contractor Regulatory Compliance Terms, and shall allow agency representatives access to locations within Habitat Project Work Area as required by the Contractor Regulatory Compliance Terms

Deliverables:

- Initial Environmental Compliance Plan: Plan to be developed by the Contractor, for KRRC review and acceptance
- Final Environmental Compliance Plan: Within 45 calendar days of the date of issuance of the FERC Surrender Order, the Contractor shall submit a Final Environmental Compliance Plan for review and acceptance by the KRRC. No physical work at the site shall begin prior to acceptance of the Contractor's plan or an interim plan covering the work to be performed. Acceptance of the Final Environmental Compliance Plan by the KRRC in no way releases the Contractor of any and all responsibility to adhere to all requirements associated with Contractor Regulatory Compliance Terms and other Applicable Law.
- Amended Environmental Compliance Plans: The Environmental Compliance Plan shall be updated throughout the Habitat Project Work, as necessary, to document any changes to the management of environmental compliance activities and reporting that result from any permit changes that occur during design and construction, or that are negotiated with the governmental agencies during the Habitat Restoration Work. Any revisions to the Environmental Compliance Plan shall be submitted to the KRRC for review and acceptance.
- Permits: Copies of draft permit applications and final permit documents associated with Contractor Governmental Approvals
- Plans: Contractor shall prepare and maintain any plans, as required, pursuant to Applicable Law. Plans shall be submitted to the applicable regulatory agencies by the specified dates or as required to permit related construction activities to begin, whichever is earlier. All such plans shall be submitted to the KRRC for review and acceptance a minimum of two (2) weeks prior to agency submittal. Contractor shall prepare and submit these plans as required by Appendix 5 (Role of the KRRC, Contractor and Project Company with Respect to the Governmental Approvals). Contractor shall comply with all aspects of the plans as they pertain to the Habitat Restoration Work.
- Acceptance is conditional and is predicated upon satisfactory performance during construction. The KRRC reserves the right to require the Contractor to make changes in the Environmental Compliance Plan or operations if the KRRC determines that environmental protection requirements are not being met.

Assumptions:

- (a) KRRC entities responsible for providing background information or identified as a responsible party in the environmental compliance plan matrix will provide the Contractor with all required information in a timely and organized manner and actively participate in information exchange with the Habitat Project Work team, as required to support the Contractor delivering the environmental compliance plan within budget and on schedule.

- (b) Only one initial in-person kickoff meeting for permitting information and knowledge transfer and one in-person environmental compliance plan approach and planning coordination meeting will be required.
- (c) Only one round of KRRC review and revisions of environmental compliance plan format and outline will be required and KRRC review feedback of the environmental compliance plan will be conducted in one four-hour meeting with KRRC written comments consolidated into one comment set provided within one week of the meeting.
- (d) No more than eight management plans will be incorporated into the ECP. Any additions will either be out of scope or addressed after the Habitat Project Work Implementation Contract Amendment Date.
- (e) The KRRC will actively and timely communicate draft/final permit compliance requirements allowing for proposed conditions to be evaluated by the design teams to determine any efficiencies or conflicts.
- (f) KRRC representatives will be available to transfer knowledge of permitting, plan status and details in such a manner as to prevent delays in the environmental compliance plan or design development. The level of effort required to fulfill the requirements of this task are difficult to fully estimate due to the Contractor participation being dependent upon the KRRC and regulatory agency requests for information and support. The level of effort included considers responsibility for supporting environmental compliance delegated to the Habitat Project Work team, the scale and nature of the Habitat Project Work and the environment the Habitat Project Work is being executed.
- (g) The KRRC is responsible for any Bureau of Land Management Governmental Approval.

4.5. PRELIMINARY SERVICES TASK #4 - SEED COLLECTION/PROPAGATION AND INVASIVE EXOTIC VEGETATION CONTROL

4.5.1 General Scope.

In general:

- (a) Contractor will contract with proposed seed propagators for seed collection and propagation, and will be responsible for obtaining further information from KRRC about actual yields achieved and seed banked as part of its seed collection and propagation scope. Contractor will also perform its own collection and propagation work to augment KRRC's collection and propagation work. It is understood that quantities provided by initial seed collection and propagation will not be sufficient to cover all Habitat Restoration Work needs for complete restoration and that additional seed collection and propagation will be needed under a future task to achieve the complete restoration of the Habitat Project Work Area.
- (b) Contractor will oversee and coordinate the seed collection including review of current practices, landowner coordination, regulatory agency coordination (collection techniques, seed mix/rates, etc.), special use permits for collection on state/federal lands, and coordination with existing seed collectors for the collection season.

- (c) Contractor will oversee and coordinate the seed propagation program, including a review of current practices and coordination with existing seed propagators for the propagation season.

4.5.2 Deliverable Material

This Preliminary Services Task #4 requires the following Deliverable Materials to be delivered to the KRRC on the dates identified in the Preliminary Services Schedule:

- (a) Contractor will develop a concise seed collection and propagation plan that proposes specific areas to be used for collection (and schedule/duration for each area) and anticipated PLS yields, as well as details and timing associated with coming to an agreement with seed propagators and anticipated yields from those propagators.
- (b) Seed Collection and Propagation Schedule
- (c) Description of Seed Collection and Propagation Techniques (including (i) precautions to be taken during plant materials collection, propagation and storage; and (ii) plant species composition and seed mix species rates);
- (d) Propagation Contractor Selection Process Overview

4.6. PRELIMINARY SERVICES FEE

The **“Preliminary Services Fee”** shall be the sum of the compensation components described in this Section 4.6 of this Appendix.

4.6.1 Compensation for Preliminary Services Tasks #1, #2 and #4.

For Preliminary Services Tasks #1, #2 and #4, the KRRC shall pay the Contractor a fixed price of \$[_____], in 12 equal installments on the first of each month beginning on the 1st of the month following the Contract Date. Such fixed price shall serve as the Contractor’s entire compensation for Preliminary Services Tasks #1, #2 and #4 performed as required under this Agreement, and shall include costs for any and all out-of-pocket disbursements for travel, lodging and other expenses incidental to the performance of the Base Preliminary Services and any payments to third parties such as Subcontractors.

4.6.2 Compensation for Preliminary Services Task #3.

For Preliminary Services Task #3, the KRRC shall pay the Contractor on a time and materials basis, with an upset limit of [\$_____ for permits and \$_____ for management plan development]. Such upset limit, as may be adjusted upward by the KRRC, acting reasonably, shall serve as the Contractor’s entire compensation for Preliminary Services Tasks #1, #2 and #4 performed as required under this Agreement, and shall include costs for any and all out-of-pocket disbursements for travel, lodging and other expenses incidental to the performance of the Base Preliminary Services and any payments to third parties such as Subcontractors

4.6.3 Contingency Release Compensation Upon Receipt of All KRRC Governmental Approvals.

KRRC has reserved a contingency specifically related to potential changes in the anticipated Contractor-Allocated KRRC Regulatory Terms; in particular, the Contractor-Allocated KRRC Regulatory Terms requiring the monitoring associated with species of concern (as described in Appendix 7) and all AR and TER measures included in the CWA 401 permit, other than TER 7 – Mussel Relocation (collectively, the “Specifically Identified Permits”). If on the Habitat Project Work Implementation Contract Amendment Date, (1) the terms in the Specifically Identified Permits are substantially the same as described in Appendix 7 (Assumed Contractor Regulatory Compliance Terms) or (2) such terms have changed and the Contractor has agreed that it will not change the Contract Compensation relative to what was included in the Agreement on the Contract Date, the Contractor shall at such time receive from the KRRC a one-time payment equal to \$[_____]. If the terms in the Specifically Identified Permits have been modified between the Contract Date and the Habitat Project Work Commencement Date and such modification has resulted in an increase in the Contract Compensation, relative to what was included in the Agreement on the Contract Date, then the Contractor shall receive no release from contingency; provided that this sentence shall not limit the KRRC and the Contractor’s right to enter into a Contract Amendment.

4.6.4 Compensation for Additional Preliminary Services.

In the event the KRRC elects to request any Additional Preliminary Services, compensation for the Additional Preliminary Services shall be negotiated by the KRRC and the Contractor in accordance with subsection 5.2(B) (Additional Preliminary Services) of this Agreement.

ATTACHMENT 4A

INITIAL PRELIMINARY SERVICES SCHEDULE

[Note: to be inserted on the Habitat Project Work Implementation Contract Amendment Date.]

ATTACHMENT 4B

PRELIMINARY SERVICES CONTRACTOR SUBMITTALS

Task No.	Task Name	Required Submittals	BOC Review	Applicable Governmental Review Entity
1	Habitat Restoration Work Management			
		Monthly Progress Reports		
		Meeting Agendas and Notes		
		Technical Workshop Agendas and Notes		
		Mobilization and Site Access Plan		
		Site Trailers and Utilities Plan		
		Security Plan		
		Photographic Documentation Plan		
		Related Projects Coordination Protocol		
		Emergency Operations and Response Plan		
		Health and Safety Plan	Yes	FERC
		Habitat Restoration Work Execution Plan		
		Habitat Restoration Work Team Structure and Staffing Plan		
		Communications Plan		
		Scope Management Plan		
		Change Management/Integration Management Plan		
		Schedule Management Plan	Yes	FERC
		Budget Management Plan	Yes	FERC
		Risk Management Plan	Yes	FERC
		Procurement Management Plan		
		Habitat Restoration and Quality Management Plan		
		Document Control Plan		
		Preliminary Services Schedule		
		FERC Required Plans and Submittals	Yes	FERC
		Document Submittal Procedures		
		Partnering Charter		
		Records Management System Documentation		
		Constructability Review Report(s)	Yes	FERC
		Value Engineering Report(s)	Yes	FERC
2	Local Impact Mitigation Fund Development			
		[To be developed]		
3	Permitting Support and Compliance Program			
		Initial, Final and Amended Environmental Compliance Plan		Federal and State regulatory agencies
		Permit Applications		
		Plans or supporting material for KRRC Governmental Approvals		
4	Seed Collection/Propagation and Invasive Exotic Vegetation Removal			
		Seed Collection and Propagation Schedule		
		Description of Seed Collection and Propagation Techniques		
		Propagation Contractor Selection Process Overview		
		Reference Site Information for Each Planting Zone		

APPENDIX 5

ROLE OF THE KRRC, CONTRACTOR AND PROJECT COMPANY IN OBTAINING THE GOVERNMENTAL APPROVALS

APPENDIX 5

ROLE OF THE KRRC, CONTRACTOR AND PROJECT COMPANY IN OBTAINING THE GOVERNMENTAL APPROVALS

5.1. PURPOSE

The purpose of this Appendix is to provide a list of the Governmental Approvals that are expected to be required with respect to the Project and the Habitat Project Work. To the best knowledge of the Parties, Table 5-1, Table 5-2, and Table 5-3 of this Appendix, in sum, represents the complete list of Governmental Approvals necessary for the Project.

5.2. KRRC GOVERNMENTAL APPROVALS

The purpose of Table 5-1 is to indicate the Governmental Approvals for which (1) the KRRC will be the named permittee, application manager and party responsible for paying application fees; and (2) to provide additional details on the assistance that the KRRC and the Project Company are expected to provide to the KRRC with respect to obtaining the KRRC Governmental Approvals. After the KRRC Governmental Approvals are issued, such terms will be allocated as the responsibility of either the Project Company or the Contractor on the Habitat Project Work Implementation Contract Amendment Date. Such allocation will be reflected in Appendix 6 (Allocation of Responsibility between the Contractor and the Project Company with Respect to the KRRC Governmental Approvals).

5.3. CONTRACTOR GOVERNMENTAL APPROVALS

The purpose of Table 5-2 is to indicate the Governmental Approvals for which (1) the Contractor will be the named permittee, application manager and party responsible for paying application fees; and (2) to provide additional details on the assistance, if any, that the KRRC and the Project Company are expected to provide to the Project Company with respect to obtaining the Contractor Governmental Approvals. The Contractor will be solely responsible for complying with all terms and conditions of the Contractor Governmental Approvals, as issued.

5.4. PROJECT COMPANY GOVERNMENTAL APPROVALS

The purpose of Table 5-3 is to indicate the Governmental Approvals for which (1) the Project Company will be the named permittee, application manager and party responsible for paying application fees; and (2) to provide additional details on the assistance, if any, that the KRRC and the Contractor are expected to provide to the Project Company with respect to obtaining the Project Company Governmental Approvals. The Project Company will be solely responsible for complying with all terms and conditions of the Project Company Governmental Approvals, as issued.

Table 5-1 KRRC Governmental Approvals			
#	Name of Governmental Approval	Issuing Agency	Role of the Contractor and Project Company in Assisting the Application Process
1.	NEPA Record of Decision or FERC Order	FERC	Contractor: [To be finalized] Project Company: Data and analyses from Preliminary Services work to support FERC, as needed.
2.	Approval Establishing Effectiveness of LKP License Transfer	FERC	Contractor: [To be finalized] Project Company: Data and analyses from Preliminary Services work to support FERC, as needed.
3.	Approval Establishing Effectiveness of LKP License Surrender	FERC	Contractor: [To be finalized] Project Company: Data and analyses from Preliminary Services work to support FERC, as needed.
4.	CWA Section 404 Individual Permit	United States Army Corps of Engineers (USACE)	Contractor: [To be finalized] Project Company: Draft application review; Data and analyses from Preliminary Services work to support application, as needed.
5.	WSR Determination Memo	NPS (primary), BLM, USFWS, or USFS	Contractor: [To be finalized] Project Company: None
6.	ESA Section 7 Biological Opinions	United States Fish and Wildlife Service / National Marine Fisheries Service	Contractor: [To be finalized] Project Company: None

Table 5-1 KRRC Governmental Approvals			
#	Name of Governmental Approval	Issuing Agency	Role of the Contractor and Project Company in Assisting the Application Process
7.	NHPA Section 106 Consultation and associated plans	SHPOs, THPOs, ACHP, Tribes	Contractor: [To be finalized] Project Company: None
8.	CEQA Notice of Determination	California State Water Resources Control Board (SWRCB)	Contractor: [To be finalized] Project Company: Data and analyses to support SWRCB as needed.
9.	Section 401 Water Quality Certification	SWRCB / ODEQ	Contractor: [To be finalized] Project Company: Data and analyses to support SWRCB as needed.
10.	Lake and Streambed Alteration Agreement	CDFW	Contractor: [To be finalized] Project Company: Draft application review; Data and analyses from Preliminary Services work to support application, as needed.
11.	Incidental Take Permit	CDFW	Contractor: [To be finalized] Project Company: Draft application review; Data and analyses from Preliminary Services work to support application, as needed.
12.	Removal/Fill and In Water Work Period Variance	ODSL	Contractor: [To be finalized] Project Company: Draft application review; Data and analyses from Preliminary Services work to support application, as needed.
13.	Fish Passage Approval	ODFW	Contractor: [To be finalized] Project Company: Draft application review; Data and analyses from Preliminary Services work to support application, as needed.

Table 5-1 KRRC Governmental Approvals			
#	Name of Governmental Approval	Issuing Agency	Role of the Contractor and Project Company in Assisting the Application Process
14.	State Lands Surface and Submerged Lands Lease	State Lands Commission	Contractor: [To be finalized] Project Company: Draft application review.
15.	Dam Removal Permit	California Division of Safety of Dams (DSOD)	Contractor: [To be finalized] Project Company: Draft application review; Data and analyses from Preliminary Services work to support application, as needed. All Project Company design submittals will require review by DSOD.
16.	Dam Safety/Decommissioning	OWRD	Contractor: [To be finalized] Project Company: Draft application review; Data and analyses from Preliminary Services work to support application, as needed.
17.	California Coastal Zone Consistency Review	CCC	Contractor: [To be finalized] Project Company: Draft application review; Data and analyses from Preliminary Services work to support application, as needed.
18.	Land Use Permits	Klamath County / Siskiyou County	Contractor: [To be finalized] Project Company: None
19.	Community Development Department – Building Division and Septic On-Site Division Permits (e.g., structural, electrical, mechanical, plumbing permits)	Klamath County	Contractor: [To be finalized] Project Company: Data and analyses from Preliminary Services work pertaining to any septic system demolition.

Table 5-1 KRRC Governmental Approvals			
#	Name of Governmental Approval	Issuing Agency	Role of the Contractor and Project Company in Assisting the Application Process
20.	Site Development Permit	Klamath County	Contractor: [To be finalized] Project Company: None
21.	Development and Demolition Permit	Siskiyou County	Contractor: [To be finalized] Project Company: None
22.	Building Permit (Hatchery Work)	Siskiyou County	Contractor: [To be finalized] Project Company: Draft application review
23.	CLOMR/LOMR	Siskiyou County / Klamath County	Contractor: [To be finalized] Project Company: Data and analyses from Preliminary Services work to support application, as needed. Materials and information required for LOMR application.

Table 5-2 Contractor Governmental Approvals			
#	Name of Governmental Approval	Issuing Agency	Role of the KRRC and Project Company in Assisting the Application Process
24.	Business License	Klamath County	KRRC: None. Project Company: [To be finalized]
25.	Business License	Siskiyou County	KRRC: None. Project Company: [To be finalized]
26.	Transportation Permit	Siskiyou County	KRRC: None. Project Company: [To be finalized]
27.	Sign Permit	Siskiyou County	KRRC: None. Project Company: [To be finalized]

Table 5-3 Project Company Governmental Approvals			
#	Name of Governmental Approval	Issuing Agency	Role of the Contractor and KRRC in Assisting the Application Process
28.	Section 402 National Pollutant Discharge Elimination System (General Construction Permit)	Regional Water Quality Control Board (RWQCB) / ODEQ	KRRC: None. Contractor: [To be finalized]
29.	Encroachment Permit	Oregon Department of Transportation (ODOT)	KRRC: None. Contractor: [To be finalized]
30.	Over-Dimensional Permit	ODOT	KRRC: None. Contractor: [To be finalized]
31.	Forestry Notification and Permit to Use Fire or Power-Driven Machinery (PDM)	Oregon Department of Forestry	KRRC: None. Contractor: [To be finalized]
32.	Asbestos/Lead/PCB/Other Hazardous Wastes Removal and Abatement Notifications and related reporting and sampling	ODEQ /Oregon Health Authority / U.S. Environmental Protection Agency (EPA) / Occupational Safety and Health Administration (OSHA)	KRRC: None. Contractor: [To be finalized]
33.	Underground Storage Tanks/Leaking	ODEQ	KRRC: None.

Table 5-3 Project Company Governmental Approvals			
#	Name of Governmental Approval	Issuing Agency	Role of the Contractor and KRRC in Assisting the Application Process
	Underground Storage Tanks decommissioning/cleanup notification and related sampling and reporting		Contractor: [To be finalized]
34.	Explosives Storage and Explosives Magazine Relocation notifications	Oregon Office of the State Fire Marshal	KRRC: None. Contractor:
35.	Treated Wood Generation Notice	California Department of Toxic Substances Control	KRRC: None. Contractor: [To be finalized]
36.	Geotechnical Hole / Monitoring Well / Water Supply Well Report Forms	Oregon Department of Water Resources	KRRC: None. Contractor: [To be finalized]
37.	In-Water Blasting Permit	ODFW	KRRC: None. Contractor: [To be finalized]
38.	Explosives Storage and Explosives Magazine Relocation notifications	California Office of the State Fire Marshal	KRRC: None. Contractor: [To be finalized]
39.	Business License	Klamath County	KRRC: None. Contractor: [To be finalized]

Table 5-3 Project Company Governmental Approvals			
#	Name of Governmental Approval	Issuing Agency	Role of the Contractor and KRRC in Assisting the Application Process
40.	Business License	Siskiyou County	KRRC: None. Contractor: [To be finalized]
41.	Asbestos/Lead/PCB/Other Hazardous Wastes Removal and Abatement declaration and related reporting and sampling	Siskiyou County	KRRC: None. Contractor: [To be finalized]
42.	Environmental Health Division Water Wells / Monitoring Wells / Exploratory Borings Permits	Siskiyou County	KRRC: None. Contractor: [To be finalized]
43.	Encroachment Permit	Siskiyou County	KRRC: None. Contractor: [To be finalized]
44.	Building Permit (Flood Control Improvements)	Siskiyou County	KRRC: None. Contractor: [To be finalized]
45.	Transportation Permit	Siskiyou County	KRRC: None. Contractor: [To be finalized]
46.	Sign Permit	Siskiyou County	KRRC: None. Contractor: [To be finalized]

Table 5-3 Project Company Governmental Approvals			
#	Name of Governmental Approval	Issuing Agency	Role of the Contractor and KRRC in Assisting the Application Process
47.	Underground Storage Tanks/Leaking Underground Storage Tanks closure/cleanup notification and related sampling and reporting	Siskiyou County	KRRC: None. Contractor: [To be finalized]

APPENDIX 6

ALLOCATION OF RESPONSIBILITY BETWEEN THE CONTRACTOR AND THE PROJECT COMPANY WITH RESPECT TO THE KRRC GOVERNMENTAL APPROVALS

APPENDIX 6

ALLOCATION OF RESPONSIBILITY BETWEEN THE CONTRACTOR AND THE PROJECT COMPANY WITH RESPECT TO THE KRRC GOVERNMENTAL APPROVALS

6.1. PURPOSE

The purpose of this Appendix is to, as of the Project Habitat Work Implementation Contract Amendment Date, designate each KRRC Regulatory Term in the KRRC Governmental Approvals as either a Contractor-Allocated KRRC Regulatory Term or a Project Company-Allocated KRRC Regulatory Term. Table 6-1 indicates if a KRRC Governmental Approval is (a) solely a Contractor-Allocated KRRC Regulatory Term, (b) solely a Project Company-Allocated KRRC Regulatory Term, or (c) contains terms and conditions that are allocable to both the Project Company and the Contractor. Table 6-2 allocates the KRRC Regulatory Terms, on a line by line basis, of any KRRC Governmental Approval that containing provisions to be allocated to both the Project Company and the Contractor.

Table 6-1 KRRC Governmental Approvals Responsibility Allocation		
#	Name of Governmental Approval	Project Company-Allocated KRRC Regulatory Term, Contractor-Allocated KRRC Regulatory Term, or Both
1.	NEPA Record of Decision or FERC Order	[To be determined]
2.	Approval Establishing Effectiveness of LKP License Transfer	
3.	Approval Establishing Effectiveness of LKP License Surrender	
4.	CWA Section 404 Individual Permit	
5.	WSR Determination Memo	
6.	ESA Section 7 Biological Opinions	
7.	NHPA Section 106 Consultation and associated plans	
8.	CEQA Notice of Determination	
9.	Section 401 Water Quality Certification	
10.	Lake and Streambed Alteration Agreement	
11.	Incidental Take Permit	

Table 6-1 KRRC Governmental Approvals Responsibility Allocation		
#	Name of Governmental Approval	Project Company-Allocated KRRC Regulatory Term, Contractor-Allocated KRRC Regulatory Term, or Both
12.	Removal/Fill and In Water Work Period Variance	
13.	Fish Passage Approval	
14.	State Lands Surface and Submerged Lands Lease	
15.	Dam Removal Permit	
16.	Dam Safety/Decommissioning	
17.	California Coastal Zone Consistency Review	
18.	Land Use Permits	
19.	Community Development Department – Building Division and Septic On-Site Division Permits (e.g., structural, electrical, mechanical, plumbing permits)	
20.	Site Development Permit	
21.	Development and Demolition Permit	
22.	Building Permit (Hatchery Work)	
23.	CLOMR/LOMR	

Table 6-2 KRRC Regulatory Terms Allocation – For KRRC Governmental Approvals Containing Both Project Company-Allocated KRRC Regulatory Terms and Contractor-Allocated KRRC Regulatory Terms			
#	Name of Governmental Approval	Project Company-Allocated KRRC Regulatory Terms	Contractor-Allocated KRRC Regulatory Terms
1.		[To be determined]	[To be determined]
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
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APPENDIX 7

ASSUMED CONTRACTOR REGULATORY COMPLIANCE TERMS

APPENDIX 7

ASSUMED CONTRACTOR REGULATORY COMPLIANCE TERMS

7.1. PURPOSE

This Appendix sets forth the assumed material terms and conditions that the Contractor will be expected to comply with during the Term, and upon which the Contractor's Contract Compensation is established as of the Contract Date. Upon finalization of the Habitat Project Work Implementation Contract Amendment, the assumed terms and conditions set forth herein will be referenced in determining if any adjustment to the Contract Compensation is justified prior to executing the Habitat Project Work Implementation Contract Amendment.

7.2. LIST OF ANTICIPATED CONTRACTOR-ALLOCATED KRRC REGULATORY TERMS¹

- (a) U.S. Army Corps of Engineers ("USACE") Clean Water Act ("CWA") Sec. 404 Permit
- (b) US Fish and Wildlife Service ("USFWS") / National Marine Fisheries Service ("NMFS") Endangered Species Act ("ESA") Sec. 7 Biological Opinion
- (c) USFWS Eagle Take Permit
- (d) California State Water Resources Control Board ("SWRCB") CWA Sec. 401 Certificate
- (e) California Department of Fish and Wildlife ("CDFW") Permits or MOU
- (f) Oregon Department of Fish and Wildlife ("ODFW") Permits or MOU
- (g) Oregon Department of Environmental Quality ("ODEQ") CWA Sec. 401 Certificate
- (h) Management Plan – Sucker Management Plan
- (i) Management Plan – Water Quality Monitoring Plan
- (j) Management Plan – Restoration Plan
- (k) Management Plan – Reservoir Area Management Plan
- (l) Management Plan – Chemical Vegetation Control Proposal (IEV Management) Plan
- (m) Management Plan – Amphibian and Reptile and Relocation Plan
- (n) Management Plan – Fish Presence Monitoring Plan
- (o) Management Plan – Juvenile Salmonid Rescue and Relocation Plan
- (p) Management Plan – Spawning Habitat Availability Report and Plan,

¹ Includes anticipated permits, MOUs and management plans.

- (q) Management Plan – Tributary-Mainstem Connectivity Plan
- (r) Management Plan – Reservoir Sediment Assessment and Stabilization

7.3. INTRODUCTION

The ultimate restoration objective of the Project is to restore lands formerly inundated by the reservoirs behind the dams and establish free-flowing conditions on the Klamath River and in key fish-bearing perennial tributaries. This requires, among other things, (1) minimizing impacts to terrestrial and aquatic resources, (2) revegetating lands that were formerly inundated, (3) restoring connectivity between the Klamath River and key fish-bearing perennial tributaries, (4) removing barriers to fish passage as the system returns to a natural condition, and (5) monitoring and maintenance to ensure performance criteria are met. These restoration objectives are expected to be reflected in the Contractor-Allocated KRRC Regulatory Terms, as well as the performance criteria that must be met for the objectives to be met.

Multiple permits, MOUs and management plans refer to the same performance criteria. For example, the requirement to monitor barriers to fish passage and remove those barriers are described in the SWRCB CWA Sec. 401 Certificate, ODEQ CWA Sec. 401 Certificate, CDFW, ODFW, USFWS / NMFS ESA Sec. 7 Biological Opinion.

This list of anticipated Contractor-Allocated KRRC Regulatory Terms is organized by reference to performance criteria (e.g., monitoring barriers to fish passage) rather than permit (e.g., SWRCB CWA Sec. 401 Certificate).

7.3.1 Regulatory Background

This exhibit describes the terms and conditions that are anticipated to be included within the Contractor-Allocated KRRC Regulatory Terms. This is based on Contractor's extensive discussions and in-person meetings with the regulators over several months, drafts of permits and MOUs, Contractor's work on other projects, and precedent transactions. Many of these anticipated terms are included in drafts, or finalized versions, of permits and MOUs that have been reviewed, and approved by, the applicable regulators.

In developing the Anticipated Contractor-Allocated KRRC Regulatory Terms, the Contractor team has worked along-side the state and federal regulators to establish common expectations for a successful river restoration for volitional fish passage in the Klamath River Project Area. This effort began with the Project Company holding in-person workshops with the state and federal regulators at the 30 percent design phase. Three separate all-day meetings/workshops were held to introduce the design teams, review the approach for dam removal and restoration, and establish resource agency needs and interests for the development of the 60 percent designs. In addition to the Contractor's 30 percent design review workshops, the Contractor held several on-site meetings to address specific design needs with key regulators. The regulatory design review meetings built the foundation for the 60 percent restoration design approach, establishing a common set of restoration objectives. Concurrently, the Contractor project team met with regulatory staff to identify the regulatory approval terms and conditions that would be expected to address the restoration design, construction, and post-construction adaptive management. This partnership with the resource agencies will continue as the regulatory requirements are formalized.

7.3.2 Design Background

Not all means and methods for achieving the restoration objectives are described below, or will be described in the Contractor-Allocated KRRC Regulatory Terms. For example, the

Contractor-Allocated KRRC Regulatory Terms requires the removal of certain barriers to fish passage. To achieve this objective, Contractor anticipates mobilizing sediment during drawdown using airboats but, depending on a number of factors, may elect to use more conventional means. Contractor has engaged in an extensive design process to establish the feasibility of implementing the Contractor-Allocated KRRC Regulatory Terms for the Contract Compensation. This included (1) a review of existing reports and data (The Definite Plan and its predecessors, supporting literature, and appendices; topographic data; historical data and accounts; and flow and climatological data), (2) multiple weeks of field work to collect stream channel dimension data (planform, section, and profile) and reference vegetation data both within the project area and within nearby reference drainages and (3) restoration design and pricing completed by Contractor and its team.

7.3.3 Management Plans

KRRC, working with Contractor, will develop certain management plans for submittal to FERC. These management plans will reflect and expand on the permits and MOUs, but are subject to FERC's review and approval and FERC may impose new conditions. Contractor has included key management plans below that support the direct restoration of the Klamath River, but not all management plans are included in this Exhibit as others are dam facility removal related. Contractor has assumed that the management plans will reflect restoration obligations that are consistent with (1) Contractor's 60 percent-level design and (2) the other Contractor-Allocated KRRC Regulatory Terms.

7.4. SPAWNING HABITAT CREATION OBLIGATION

Under the Spawning Habitat Creation Obligation (Definite Plan, DEIR, CDFW MOU, Draft SWRCB CWA 401), (1) 44,100 yd² of mainstem spawning gravel will be required to offset the effects to 2,100 mainstem-spawning fall Chinook salmon redds and (2) 4,700 yd² of tributary spawning gravel will be required to offset the effects to 179 tributary-spawning steelhead redds. To determine if there is adequate mainstem spawning gravel, a survey of the Hydroelectric Reach and newly accessible tributaries (as determined in accordance with the Spawning Habitat Availability Report and Plan) following reservoir drawdown will be completed. If the survey reveals that the mainstem spawning gravel availability is less than the target values following reservoir drawdown, Contractor will meet with the Aquatics Technical Work Group (ATWG) to design, and Contractor will implement, a spawning gravel augmentation or habitat restoration action.

To support the above, Contractor will develop a Spawning Habitat Availability Report and Plan (SHARP) and a related management plan which summarizes the survey of newly accessible anadromous fish spawning habitat and, if necessary, propose actions to augment spawning habitat. The SHARP will be developed in consultation with staff from the State Water Board, North Coast Regional Board, CDFW, NMFS, USFWS, ODEQ, and ODFW and submitted to the SWRCB Deputy Director for review and approval no later than December 31 of the year in which drawdown is completed.

Based on discussions with the applicable resource agencies Contract Compensation reflects the following assumptions:

- A spawning survey protocol was prepared by River Design Group, with assistance from Contractor, and reviewed by ATWG. Contractor has thus assumed that such survey protocol will be adequate to satisfy the SHARP. For example, this protocol states that the mainstem survey will be completed with drone imagery.
- The Project Company constructed work pads downstream of Iron Gate and Copco 1 dams will contain fish-friendly aggregate (river-rounded gravel and cobble) and, based

on a desktop assessment of potential mainstem spawning areas, no additional augmentation will be required.

The applicable Governmental Approvals that explicitly or implicitly require this restoration condition be satisfied include the following: SWRCB CWA Sec. 401 Certificate, CDFW, ODFW, USFWS / NMFS ESA Sec. 7 Biological Opinion, Spawning Habitat Available Report and Plan (SHARP).

7.5. JUVENILE SALMONID RELOCATION AND MONITORING OBLIGATION

The Juvenile Salmonid Relocation and Monitoring Obligation requires the relocation of coho salmon as well as monitoring, maintenance and adaptive management measures.

Programmatic Relocation:

Up to 500 juvenile coho salmon will be sampled and relocated from the Klamath River between Iron Gate Dam and the Trinity River prior to reservoir drawdown. Sampling and salvage sites will focus primarily on alcoves, side channels, and backwatered floodplain features adjacent to the mainstem Klamath River. This work would occur in the Fall of the pre-drawdown year. Additionally, between March 1 through July 1 of the drawdown year juvenile salmonids will be relocated from up to 13 key tributary confluences between Iron Gate Dam and the Trinity River if water temperature and turbidity thresholds are exceeded. The Programmatic Relocation addresses a large downstream area and impacts associated with sediment release during drawdown.

Site Specific Relocation:

Relocation will be required at specific locations where in-water construction work could impact coho salmon. For these locations, relocation and exclusion of juvenile coho salmon below Iron Gate Dam is expected for planned in-water work by the Project Company prior to the start of drawdown. In-water work activities include the installation of the access road at the base of the Iron Gate Dam spillway, diversion tunnel, and the temporary bridge installation. Work for fish salvage and exclusion will be timed to the start of in-water construction actions downstream of Iron Gate Dam. Fish salvage and exclusion will also be used as an in-water work Best Management Practice (BMP) for the restoration period and maintenance period as part of minimization measures with the NMFS/USFWS Biological Assessment.

Monitoring and Adaptive Management:

With respect to monitoring and adaptive management, two plans will be created:

- A monitoring and adaptive management plan (Juvenile Rescue and Relocation Plan) will be created to monitor juvenile coho salmonids and water quality conditions in 13 key tributaries downstream of Iron Gate Dam between March 1 and July 1 of the drawdown year. If water quality triggers are exceeded, Contractor will take steps to salvage juvenile salmonids from the tributary confluences in coordination with the ATWG.
- No later than 24 months following issuance of a FERC license surrender order, a Fish Presence Monitoring Plan (Fish Presence Plan) will be submitted to the SWRCB Deputy Director for review and approval. The Fish Presence Plan will be developed in consultation with staff from the State Water Board, North Coast Regional Board, CDFW, and NMFS.

Contractor will draft a Fish Presence Monitoring Plan and Juvenile Salmonid Rescue and Relocation Plan for submission to FERC. The contents of the plans will address the following:

Fish Presence Monitoring Plan

- List of anadromous fish species covered by the plan
- California survey reaches
- Frequency and duration of surveys
- Survey methods
- Reporting

Juvenile Salmonid Rescue and Relocation Plan

- Methods that will be used to find and relocate juvenile salmonids
- Potential relocation areas and/or criteria that will be used to identify potential relocation areas

Description of water quality monitoring to be performed at each confluence of the Klamath River and the 13 tributaries listed in AR Measure 2, Action 3Description of proposed rescue efforts that includes duration, method of rescue, target number of fish, locations for capture and relocation

- Provisions for incidental rescue and relocation of Pacific lamprey encountered in tandem with any juvenile salmonid rescue and relocation efforts
- Reporting

Based on discussions with the applicable resource agencies Contract Compensation reflects the following assumptions:

- The drawdown will be conducted January 1 through March 15 in the drawdown year.
- No fish rescue and relocation will occur during drawdown activities, and fish salvage and exclusion actions prior to the restoration of volitional fish passage conditions (i.e., October 1, 2022) as a minimization measure will be limited to the area immediately below Iron Gate Dam. The applicable permits will allow the extent and duration of fish exclusion activities to be determined by the lead fisheries biologist. (For Site Specific Relocation)
- In respect of the Juvenile Rescue and Relocation Plan, weekly water quality data will be sufficient to evaluate the need to relocate juvenile coho salmon between March 1 and July 1. No additional temperature and turbidity monitoring nor fish relocation work will be required for this measure following July 1 of the drawdown year.
- No follow-up monitoring of relocated coho salmon will be required.
- None of the plans described above or in any Contractor-Allocated KRRC Regulatory Terms will require any additional actions if fish presence is not detected or recovery is not achieved at any location as Contractor cannot guarantee the presence of species.

- The juvenile coho salmon relocation will be completed only once prior to drawdown (For Programmatic Relocation)
- Only a single relocation event would be required between March 1 and July 1 if water temperature and turbidity exceed identified thresholds.
- Fish Presence Survey work will take place once in the spring/summer period and once in the fall/water period from 2022 until 2026.

The Governmental Approvals that explicitly or implicitly require this restoration condition be satisfied include the following: SWRCB CWA Sec. 401 Certificate, CDFW, USFWS / NMFS ESA Sec. 7 Biological Opinion, Fish Presence Monitoring Plan, Spawning Habitat Availability Report and Plan and Juvenile Salmonid Rescue and Relocation Plan.

7.6. FISH PASSAGE BARRIER MONITORING AND REMOVAL OBLIGATION

The Fish Passage Barrier Monitoring and Removal Obligation requires that Contractor monitor tributary-mainstem connectivity at four sites, Spencer Creek, Shovel Creek, Fall Creek, and Jenny Creek, in the Hydroelectric Reach and five sites, Bogus Creek, Dry Creek, Little Dry Creek, Willow Creek, and Cottonwood Creek, in the 8-mile reach from Iron Gate Dam (RM 193.1) to Cottonwood Creek (RM 185.1) (the "Monitoring Area"). If barriers to fish passage occur within the monitoring area, Contractor will monitor and/or remove such barriers. Contractor will use a variety of means and methods to prevent barriers to fish passage from arising during the drawdown and after, including reconnection and re-grading of key fish bearing perennial tributaries, mobilization of sediment during drawdown, revegetation, and other means and methods.

The requirement to monitor and remove fish passage barriers will be contained in a monitoring and adaptive management plan, as well as in various Contractor-Allocated KRRC Regulatory Terms:

- Contractor will monitor barriers to fish passage within the Monitoring Area, provided that after the first two years, beginning in the drawdown year, the requirement to monitor the 8-mile portion downstream of Iron Gate will no longer require monitoring. Fish passage monitoring and reporting will be required (1) three times in the drawdown year, (2) twice the year after and (3) annually thereafter for a total of 6 years in aggregate. Fish passage monitoring results will be coordinated with the ATWG and summarized in annual reports. In addition, monitoring and reporting will occur following a 5-year flow event of 10,895 cfs or greater on the Klamath River recorded at the USGS Klamath River Below Iron Gate Dam CA gage (#11516530) (note: SWRCB Draft CWA Sec. 401 Certificate requires after a 10-year flow event), if that 5-year flow event occurs within the aforementioned 6-year monitoring period..
- Contractor will develop a monitoring plan to monitor tributary-mainstem connectivity (Tributary – Mainstem Connectivity Plan) in the Monitoring Area. The monitoring requirements will be consistent with the fish passage monitoring requirements described above.

Contractor will develop management plans related to the removal of fish passage barriers including a Tributary-Mainstem Connectivity Plan detailing and describing the methods, timing, duration, frequency, locations, and reporting for tributary mainstem connectivity and a Reservoir Sediment Assessment and Stabilization plan describing stabilization of sediment, including by revegetation.

Based on discussions with the applicable regulators the Contract Compensation reflects the following assumptions:

- Monitoring will be conducted with biologists in the field and using unmanned aerial vehicles (i.e. UAVs/drones). Meaning, fish passage monitoring will be primarily observation based and will not require extensive labor-intensive quantitative field surveys nor measurements.
- Fish passage monitoring criteria include the following:
 - Manmade structures (as identified and described in the FERC filing authorizing the Project) will be removed in accordance with the 60 percent design plan, but other pre-existing non-manmade fish passage obstructions will not be removed (i.e., naturally occurring barriers will not be modified or removed);
 - New culverts in fish-bearing streams installed by the Project Company will comply with the fish passage stream simulation design method;² and
 - Residual reservoir sediment headcuts of 6 inches³ or greater (a “Fish Passage Barrier”) will be identified and monitored and evaluated as follows:
 - In the drawdown year, Contractor will monitor within the Monitoring Area to identify localized residual reservoir sediment accumulations that pose a threat to fish migration.
 - The Contractor will identify vertical headcuts likely resulting in a water surface elevation drop greater than 6 inches² in the mainstem and fish-bearing tributaries during prescribed monitoring period.
 - The Contractor will evaluate barriers and determine whether the obstruction is due to residual sediment or pre-dam channel bed during the prescribed monitoring period. Headcuts due to factors beyond dam removal (i.e. naturally occurring sediment loads due to fire or storms or residual headcuts) will not be removed.
 - If a non-naturally occurring barrier is identified per the above, Contractor will
 - Estimate the erodibility of residual sediment.
 - Assess whether there is likely fish passage around the headcut and
 - Take active measures to address headcuts that are located in erosion-resistant deposits of residual reservoir sediment, and/or pose an immediate threat to fish passage given lack of alternate fish passage route past the residual reservoir sediment.

² See [NMFS] National Marine Fisheries Service. 2019. *Addendum NMFS 2001 Guidelines for salmonid passage at stream crossings*. Santa Rosa, California

³ NMFS (2019) *Guidelines for salmonid passage at stream crossings addendum* standards allow for juvenile jump heights of 12 inches. Following the drawdown year, in coordination with NMFS and CDFW, the residual reservoir sediment headcut threshold for the California portion of the Project will be adjusted from 6 inches to 12 inches. A similar monitoring adjustment will be made to the Oregon portion pending ODFW coordination.

- Contractor will revisit identified barriers during future monitoring to re-evaluate the need to take active measures.

The Governmental Approvals that explicitly or implicitly require this restoration condition be satisfied include the following: SWRCB CWA Sec. 401 Certificate, ODEQ CWA Sec. 401 Certificate, CDFW, ODFW, USFWS / NMFS ESA Sec. 7 Biological Opinion, Tributary-Mainstem Connectivity Plan and Reservoir Sediment assessment and Stabilization Plan.

7.7. RESERVOIR SUCKER RELOCATION OBLIGATION

The Reservoir Sucker Relocation Obligation requires that Contractor salvage and relocate adult Lost River sucker and shortnose sucker (i.e. protected suckers). CDFW has defined the salvage effort, for the California portion of the project, as up to 100 suckers of each species (200 total) or a total of 14 sampling days, whichever comes first, at each reservoir (two reservoirs Copco and Iron Gate) (CDFW). It is assumed the Oregon (ODFW) requirement will be up to 100 suckers of each species (6400 total) or a total of 14 sampling days, whichever comes first. Therefore, it is assumed the entire project will include up to 400 suckers or 14 total sampling days, whichever comes first. Salvage and relocation in the Project Area reservoirs will occur prior to drawdown and collected protected suckers will be relocated to Tule Lake.

To effectuate the above, Contractor will prepare a sampling, salvage, and relocation plan (Sucker Plan) for protected suckers. In addition, Contractor will develop a management plan for submission to FERC which will describe Contractor's proposed actions in greater detail.

Based on discussions with the applicable resource agencies, the Contract Compensation reflects the following assumptions:

- USFWS and ODFW will not require a minimum number of protected suckers to be salvaged and relocated.
- Following the salvage and relocation effort, no further salvage and relocation work for protected suckers will be required (i.e. during or following drawdown). No follow-up monitoring of relocated protected suckers will be required.
- Genetic samples provided by KRRC to USFWS Abernathy Laboratory for evaluation of sampled protected suckers will not result in USFWS changing the salvage effort requirement.

The Governmental Approvals that explicitly or implicitly require this restoration condition be satisfied include the following: SWRCB Draft CWA Sec. 401 Certificate, ODEQ CWA Sec. 401 Certificate, CDFW, ODFW, USFWS / NMFS ESA Sec. 7 Biological Opinion, Adaptive Management Plan (Suckers).

7.8. WATER QUALITY MONITORING OBLIGATION

The Water Quality Monitoring Obligation requires that Contractor complete water quality monitoring and develop two water quality management plans ("WQMPs"), one under the SWRCB Draft CWA 401 Certification and under the ODEQ CWA 401 Certification.

Based on discussions with KRRC, the Contract Compensation reflects the following assumptions:

- There are 6 operational & adequate USGS stations already existing to facilitate Water Quality Monitoring for the Klamath River Project.

- Contractor will install no additional USGS stations for a total of 6 existing stations at which water quality monitoring will be performed.
- Assumes that Contractor will provide O+M costs for the 6 USGS stations, but major improvements (upgrades to existing equipment, including telemetry, power, DCP, etc., or additional equipment installation) to the 6 existing stations are not needed.
- Includes installation of water quality data sondes at 5 of the existing USGS stations.
- No additional requirements re: water quality will be required, other than the monitoring requirements described above (including in respect of adaptive management)
- The ODEQ CWA Sec. 401 Certificate and the SWRCB Draft CWA Sec. 401 Certificate do not include water quality monitoring associated with pre-construction activities.

The Governmental Approvals that explicitly or implicitly require this restoration condition be satisfied include the following: SWRCB CWA Sec. 401 Certificate and ODEQ CWA Sec. 401 Certificate. Additional potential approvals include (CA MOU, ODFW, USFWS / NMFS ESA Sec. 7 Biological Opinion, USACE CWA Sec. 404 Permit)

7.8.1 CALIFORNIA (SWRCB DRAFT CWA SEC. 401 CERTIFICATION)

- Drawdown duration is from January 1, 2022 to March 15, 2022. Post-Drawdown monitoring sampling will begin on March 16, 2022. Pre-Drawdown monitoring and sampling will begin January 1, 2021.
- Condition 2 of the SWRCB Draft CWA Sec. 401 Certificate will not require additional monitoring past 36 months.

Requirements of the Water Quality Monitoring Plan are anticipated to include the following:

- Continuous water quality monitoring (6 parameters) required at a minimum frequency of hourly readings (average of 15-minute intervals) during pre-drawdown and post-drawdown for 36 months at 12 locations.
- Collection and laboratory analysis of water quality grab samples (16 parameters) at a monthly frequency during pre-drawdown and every two weeks frequency during drawdown and post-drawdown for 36 months at 12 locations.
- Collection and laboratory analysis of sediment grab samples (10 parameters) to be collected at one event during pre-drawdown and at one event within 3 to 6 months following completion of drawdown at 7 locations.

7.8.2 OREGON (ODEQ CWA SEC. 401 CERTIFICATION)

- Drawdown duration is from January 1, 2022 to March 15, 2022. Post-Drawdown monitoring sampling will begin on March 16, 2022. Pre-Drawdown monitoring and sampling will begin January 1, 2021.
- Section 3 of the ODEQ CWA Sec. 401 Certificate will not require additional monitoring past 24 months.

Requirements of the Water Quality Management Plan are anticipated to include the following:

- Continuous water quality monitoring and flow monitoring (6 parameters) are required at a minimum frequency of 15-minute intervals during pre-drawdown and post-drawdown for 4 years after initiating drawdown at 2 locations
- Collection and laboratory analysis of water quality grab samples and flow monitoring (11 parameters) at a monthly frequency during pre-drawdown and post-drawdown for four years after initiating drawdown at 2 locations
- Quantification of suspended sediment load
- Monitor turbidity at 4 locations (not during established compliance schedule)

7.9. ENVIRONMENTAL COMPLIANCE AND BIOLOGICAL MONITORING OBLIGATION

The Environmental Compliance and Biological Monitoring Obligation requires that, during construction, Contractor monitor Covered Activities to help minimize and/or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat during construction (as those terms are defined within the draft CDFW). While a "Designated Biologist" is required by the CDFW, the biological monitors will also satisfy conditions under certain management plans or other permits (e.g., relocation of western pond turtles, monitoring requirements related to nesting birds and eagle nests, ensuring that in-water work BMPs are functioning, etc.). In addition, a Worker Environmental Awareness Program (WEAP) will cover biological and natural resources management plan requirements and permit conditions that workers will need to follow. WEAP training will be required for all persons employed or otherwise working in the project area.

Based on discussions with the applicable resource agencies Contract Compensation reflects the following assumptions:

- A biological monitor will be required each day in the vicinity of construction activities; full-time monitoring of construction activities will not be required.
- All work sites will not require the full-time presence of the Designated Biologist; e.g. the Designated Biologist will cover an "area" that has multiple construction efforts.
- The Designated Biologist will serve as a lead monitor for the California and Oregon work areas and will train crew foremen (or equivalent) to cover basic compliance.
- The Civil Contractor will have adequately trained their staff to avoid known resource constraints, and the Contractor compensation does not include regulatory coordination, repairs, or mitigation due to the Civil Contractor not conforming to compliance conditions.
- If there are multiple requests at the same time for support, the project could have minor delays – Contractor would not be responsible for those delays.
- Biological monitoring would occur in the pre-drawdown year, drawdown year, and year following drawdown.

The Governmental Approvals that explicitly or implicitly require this restoration condition be satisfied include the following: SWRCB CWA Sec. 401 Certificate, ODEQ CWA Sec. 401 Certificate, CDFW, ODFW, USFWS Eagle Take Permit, and Amphibian and Reptile and Relocation Plan.

7.10. REVEGETATION AND REVEGETATION MONITORING AND MAINTENANCE OBLIGATION

The Revegetation and Revegetation Monitoring and Maintenance Obligation requires that Contractor revegetate any areas that were formerly inundated by the reservoirs using a native seed mix, and manage invasive exotic species (IEV) to allow the native species to establish. These lands will be divided into riparian, wetland, and upland areas.

Satisfying this obligation will require monitoring and annual reporting for natural revegetation establishment until performance criteria are met. Vegetation monitoring is required twice annually and is anticipated to include species richness, tree and shrub density, and percentage of vegetation cover (as described below). In addition, Contractor will monitor and remove high-priority IEV until certain performance criteria are met.

To effectuate the above, the Contractor will develop an annual report for the applicable regulators. In addition, Contractor will draft a Chemical Vegetation Control Proposal (IEV Management) Plan for submission to FERC. The contents of the plan will address the following:

- Description of the implementation of chemical vegetation management, including any public noticing or additional measures.
- Timeline for the application of chemicals and any potential impacts to beneficial uses of water, including Native American culture uses.
- Comments and recommendations made in connection with the consultation.
- Description of how the proposal incorporates or addresses agency comments and recommendation.

Based on discussions with the applicable resource agencies Contract Compensation reflects the following assumptions:

- Reference areas established by KRRC/Contractor ("Reference Sites") will provide suitable and obtainable standards for revegetation performance and associated monitoring.
- Two annual monitoring events will be required, and annual reporting will occur post drawdown each year until the earlier of (1) 5-years and (2) when the performance criteria are met.
- Performance targets will cap the maximum percent cover of high (3%) and medium (10%) priority IEV species within 500 feet of the reservoir rim, based on agency and Cal-IPC ratings.
- A chemical vegetation control proposal will be submitted to the SWRCB Deputy Director and approved. Herbicides accepted by SWRCB will be compatible with NMFS requirements for use of herbicides near waterbodies.
- Reference areas will provide suitable and obtainable standards for revegetation performance and associated monitoring.
- Riparian performance criteria for irrigated sites: Richness: Year 1 = 60% cover, Year 2 = 65% cover, Year 3 = 70% cover, Year 4 = 75% cover, and Year 5 = 80% cover as

compared to Reference Sites; tree and shrub density: Year 1 = 50% cover, Year 2 = 55% cover, Year 3 = 60% cover, Year 4 = 65% cover, and Year 5 = 70% cover as compared to Reference Sites; and vegetation cover: Year 1 = 50% cover, Year 2 = 55% cover, Year 3 = 65% cover, Year 4 = 70% cover, and Year 5 = 80% cover as compared to Reference Sites.

- Upland performance criteria: Richness: Year 1 = 60% cover, Year 2 = 65% cover, Year 3 = 70% cover, Year 4 = 75% cover, and Year 5 = 80% cover as compared to Reference Sites; and vegetation cover: Year 1 = 15% total cover, Year 2 = 30% total cover, Year 3 = 50% total cover, Year 4 = 60% cover, and Year 5 = 70% cover as compared to Reference Sites (Years 4 and 5 only).

The Governmental Approvals that explicitly or implicitly require this restoration condition be satisfied include the following: SWRCB CWA Sec. 401 Certificate, ODEQ CWA Sec. 401 Certificate, CDFW, ODFW, USFWS / NMFS ESA Sec. 7 Biological Opinion, USACE CWA Sec. 404 Permit, Chemical Vegetation Control Proposal (IEV Management) Plan.

7.11. NESTING BIRD SURVEY OBLIGATION

The Nesting Bird Survey Obligation requires the removal of vegetation or structures that may impact nesting birds occur between September 1 and January 31 in order to avoid impacting nesting birds. If vegetation removal or structure modification/demolition is necessary between February 1 and August 31 (i.e. the nesting season) nesting bird surveys are required in order to locate nesting birds prior to habitat removal and implement measures to avoid or minimize impacts. If nesting birds are detected in vegetation or structures slated for removal, state wildlife agencies will be contacted and coordination on minimization measures will be discussed.

Based on discussions with the applicable resource agencies Contract Compensation reflects the following assumptions:

- The applicable Contractor-Allocated KRRC Regulatory Terms will not provide that stoppage of work is a remedy.
- The removal of vegetation or structures required by this Obligation will be the responsibility of the contractor who is working in an area with potential impacts to Nesting Birds in accordance with agency regulations.
- Full time nest monitoring will not be required.
- Nesting bird exclusion will not be required.
- No protocol level surveys are required.
- A biological survey supervisor selected by Contractor and/or biological monitor(s) will oversee any tree and vegetation trimming, removal, and structural removal/modification that occurs within the nesting season in the pre-drawdown and drawdown year and during restoration activities.
- Post dam removal nesting bird surveys would be minimal/not required as no significant vegetation clearing nor ground disturbance actions are anticipated.

The Governmental Approvals that explicitly or implicitly require this restoration condition be satisfied include the following: SWRCB CWA Sec. 401 Certificate, CDFW, ODFW, USFWS / NMFS ESA Sec. 7 Biological Opinion.

7.12. BALD AND GOLDEN EAGLE SURVEY OBLIGATION

The Bald and Golden Eagle Survey Obligation requires that, as part of the USFWS permit authorizing “take” of Bald and Golden Eagle, “non-protocol” level eagle nest surveys will be conducted in the pre-drawdown, drawdown, and 1 or 2 years post-drawdown years to monitor the implementation of the terms of the permits. Take of golden eagle territories will require the payment of mitigation funding to retrofit electric transmission lines at the time of permit issuance – this cost is not included in the Contract Compensation.

Based on discussions with the applicable resource agencies and KRRC the Contract Compensation reflects the following assumptions:

- Permit conditions will not restrict timing, scope, or duration of the construction.
- No eagle nest exclusion.
- No protocol level surveys will be required.
- KRRC will be responsible for any mitigation funding payment required by the permit.

The Governmental Approvals that explicitly or implicitly require this restoration condition be satisfied include the following: SWRCB CWA Sec. 401 Certificate, and USFWS Eagle Take Permit.

7.13. WETLAND BUFFER DEMARCATION OBLIGATION

The Wetland Buffer Demarcation Obligation requires that Wetlands not specifically authorized to be impacted will be flagged or fenced off to protect them from disturbance and/or erosion. This demarcation for protective purposes applies to wetlands within or near construction “limits of work”. A 20’ buffer zone is included in the California DEIR, as a recommended measure and as a terrestrial resource measure in the NMFS/USFWS draft Biological Assessment. Demarcation of wetlands would occur in the pre-drawdown year, drawdown year, and year following drawdown.

In developing the Contract Compensation Contractor made the following assumptions:

- The project is self-mitigating, and will not require compensatory mitigation for wetlands, waters, or riparian.
- The jurisdictional wetland delineation report, being prepared by KRRC or its consultants, will be accepted by the US Army Corps of Engineers and will serve as the project reference for what wetlands require demarcation in the field.

The Governmental Approvals that explicitly or implicitly require this restoration condition be satisfied include the following: SWRCB Draft CWA Sec. 401 Certificate, ODEQ CWA Sec. 401 Certificate, ODFW, USACE CWA Sec. 404 Permit.

7.14. BAT MANAGEMENT OBLIGATION

The Bat Management Obligation requires that certain bat protection and exclusion actions will be taken, including pre-construction surveys of buildings prior to demolition, timing demolition of structures to non-occupied periods when possible, and the use of exclusion or deterrence actions when necessary and feasible. Protocols to remove facilities that contain roosting bats

will be developed in the form of a Bat Exclusion Plan. Bat management actions would occur in the pre-drawdown year, drawdown year, and year following drawdown.

Based on discussions with the applicable resource agencies, the Contract Compensation reflects the following assumptions:

- The bat management plan to avoid and minimize impacts will be consistent with state agency recommendations, which are assumed to be limited to pre-construction surveys, and timing the demolition and removal of structures to minimize directly impacting roosting bats to the extent feasible.
- Implementing these measures will be the responsibility of the civil contractor who is impacting potential roosting structures.
- Measures to minimize and avoid impacts to bats would be implemented as reasonable and practicable.
- No additional field studies are necessary.
- Compensatory mitigation will not be required for the project.
- The USFWS Biological Opinion will not include any bat protection measures since they are not a listed threatened or endangered species.
- The applicable Contractor-Allocated KRRC Regulatory Terms will not provide that stoppage of work is a remedy.

The Governmental Approvals that explicitly or implicitly require this restoration condition be satisfied include the following: SWRCB Draft CWA Sec. 401 Certificate.

7.15. AMPHIBIAN AND REPTILE MANAGEMENT OBLIGATION

The Amphibian and Reptile Management Obligation requires Contractor to develop an amphibian and reptile rescue and relocation management plan describing the protective measures to be implemented during the project. The plan will identify species to be covered, survey protocols, locations, and frequency; rescue and relocation techniques; and reporting requirements.

To effectuate the above, a construction monitoring plan is required to be developed in coordination with CDFW, USFWS, and NMFS. The monitoring plan will address all monitoring, biologist qualifications, resources to be monitored, and reporting requirements. In addition, Contractor will draft an Amphibian and Reptile and Relocation Plan for submission to FERC. This plan will include the Western Pond Turtle Rescue and Relocation Plan required by the Draft EIR. The contents of the plan will address, as informed by the draft permit language, the following:

- The amphibians and reptiles covered by the plan.
- Surveys and protocols that will be implemented to identify and relocate amphibians and reptiles.
- Identification of the minimum qualifications for the individual(s) that will conduct the surveys and relocations, if necessary.

- Timing and locations where surveys will be conducted, including all areas of the Project affected by drawdown and land-disturbing activities in California with known amphibian or reptile habitat or presence.
- Identification of potential relocation areas.
- Monitoring and reporting that will be implemented to document compliance with this condition, including notification and reporting.

Based on discussions with the applicable resource agencies Contract Compensation reflects the following assumptions:

- ODFW will lead any required pond turtle monitoring, rescue and relocation in Oregon, with minimal Contractor involvement.
- No additional or protocol level surveys or follow-up monitoring of relocated amphibians and reptiles will be required.
- No compensatory mitigation will be required for impacts to amphibians and reptiles.
- It is assumed all authorization to collect and relocate amphibians and reptiles will be granted through project governmental approvals (i.e. permits, MOU's, etc.).
- The covered species are those species specifically identified in the SWRCB CWA Sec. 401 Certificate, and ODEQ CWA Sec. 401 Certificate.
- Measures will be limited to the year prior to drawdown, the drawdown year and the year after drawdown.
- Required abundance and overwintering study identified in the ODEQ CWA Sec. 401 Certificate has been completed by AECOM.
- The applicable Contractor-Allocated KRRC Regulatory Terms will not provide that stoppage of work is a remedy.

The Governmental Approvals that explicitly or implicitly require this restoration condition be satisfied include the following: SWRCB CWA Sec. 401 Certificate, ODEQ CWA Sec. 401 Certificate, CDFW, ODFW.

7.16. RESERVOIR AREA MANAGEMENT PLAN

The Reservoir Area Management Plan is a requirement under SWRCB CWA Sec. 401 Certificate, ODEQ CWA Sec. 401 Certificate. Under the SWRCB CWA Sec. 401 Certificate, it is also characterized as the "Restoration Plan". For this purpose, they are considered the same Plan. The Plan will be a comprehensive management plan, which both CWA 401s require submittal to FERC and serve as an update to Definite Plan Appendix H – Reservoir Area Management Plan. The contents of the plan will include aspects of the other Anticipated Contractor-Allocated KRRC Regulatory Terms.

In drafting the Reservoir Area Management Plan, Contractor will incorporate terms and conditions that are consistent with the other Contractor-Allocated KRRC Regulatory Terms and, as applicable and in Contractor's discretion, Contractor's 60%-level design. The Contractor Compensation assumes that this management plan, as ultimately drafted by Contractor, will be approved by FERC without material changes.

Potential measures covered by this management plan include:

- The material elements of Contractor's restoration plan for the Project.
- Detailed description of proposed restoration activities and map identifying proposed locations for restoration activities. The preliminary map will be updated following drawdown, as necessary. The description of proposed restoration activities will include associated water quality protection measures KRRC will implement as part of restoration.
- Use of native plants, with preference for plants that promote soil stabilization.
- Description of how KRRC will ensure floodplain connectivity within the reservoir footprint.
- Description of how KRRC will monitor for and address invasive weeds in the restored area.
- Plan for installation of large woody material in the Hydroelectric Reach in California that includes:
 - Number or volume of large woody material to be installed.
 - Placement of a portion of large woody material at or above the OHWM to create habitat at higher flows.
 - Consistency with practices in California Salmonid Stream Habitat Restoration Manual (CDFG 2010) or guidance provided through consultation with staff from CDFW, NMFS, North Coast Regional Board, and State Water Board.
 - Timeline for placement of large woody material, which will not occur until active dam and facilities removal work is complete.
- Monitoring and reporting on the implementation of the Restoration Plan, including adaptive management measures that will be implemented over time to ensure successful restoration (e.g., measures to address the loss of newly planted vegetation, soil instability, etc.).
- Reservoir Restoration Activities:
 - Procedures to stabilize and restore the former reservoir area following dam removal.
 - Performance criteria for evaluating restoration efforts to meet the following objectives:
 - Unobstructed stream continuity.
 - Fish passage.
 - Sediment stability.
- IEV abatement and native vegetation cover establishment.

- Proposed actions for meeting plan objectives including:
 - Actions to ensure tributary connectivity following drawdown.
 - Strategies to create or enhance wetlands, floodplain, and off-channel habitat features.
 - Actions to improve revegetation success by enhancing floodplain roughness; Locations for placement of large wood or other structures to improve channel margin complexity.
- Monitoring:
 - Annually conduct aerial LiDAR reconnaissance surveys of the affected area to measure sediment stability and estimate the volume of sediment export following reservoir drawdown. Annual sediment stability monitoring will be supplemented with visual inspections, physical measurements, and photo- documentation at monitoring locations identified in the Reservoir Area Management Plan.
 - Conduct surveys to determine the area of invasive exotic vegetation and native vegetation cover in the reservoir restoration area.
 - Annually inspect mainstem Klamath River and affected tributaries for the presence of physical barriers to volitional fish passage.
- Sediment Management: If monitoring demonstrates that runoff from exposed embankment areas may cause erosion, sedimentation, or a lowering of water quality Contractor may be required to propose an appropriate corrective response. Corrective actions may include measures to increase soil stability through additional plantings, irrigation to maintain revegetated areas, contouring sediment to reduce slope, adding energy dissipating features such as large wood or boulders, modifying stream channel slope, or other methods deemed appropriate to achieve the goals and objectives of the plan.

Many of the assumptions underpinning this management plan are described elsewhere in this Appendix.

APPENDIX 8

GENERAL HABITAT RESTORATION WORK REQUIREMENTS

APPENDIX 8

GENERAL HABITAT RESTORATION WORK REQUIREMENTS

8.1. PURPOSE

The purpose of this Appendix is to set forth certain requirements for the performance of the Habitat Restoration Work. The Contractor shall perform the Habitat Restoration Work in accordance with the Contract Standards, including the requirements set forth in this Appendix.

8.2. MANAGEMENT AND COORDINATION

8.2.1 Coordination.

The Contractor shall hold meetings that are separate from and in addition to Habitat Restoration Work progress meetings described in Section 8.4.2 (Habitat Restoration Work Progress Meetings - Scheduling and Attendance) of this Appendix, and shall prepare correspondence and make any other arrangements as necessary to coordinate the Habitat Restoration Work. The Contractor shall coordinate its activities with other contractors performing work at or near the Habitat Project Work Area. The Contractor shall identify other construction or operations work that may be in progress in close proximity to or bordering on the Habitat Restoration Work. The Contractor shall coordinate all Habitat Restoration Work activities that could impact existing Utility services and installations (e.g., conduits, pipelines, transmission mains and other Utility equipment and appurtenances) with the Utilities. Coordination meetings may include review of the Habitat Restoration Work Schedule and installation procedures of other contractors to identify potential conflicts, allocation of space on the Habitat Project Work Area, drawing/design interchange among contractors, establishment and modification of schedules and sequences of construction, demolition and restoration, and planning of future meetings. Such obligations described in this paragraph shall be in addition to the Contractor's obligations to coordinate its Habitat Restoration Work with the Project Company's Project Implementation Work, as further described in the Related Projects Coordination Protocol.

8.2.2 Partnering Sessions.

The KRRC and the Contractor shall use good faith efforts to promote the formation of a successful formal partnering relationship in order to effectively perform this Agreement to the benefit of both parties. The purpose of this relationship is to establish and maintain cooperative communication and to mutually resolve conflicts at the lowest responsible management level. The establishment of a formal partnering relationship will not change or modify the terms and conditions of this Agreement and will not relieve any party of the legal requirements of this Agreement.

The KRRC and the Contractor shall implement the partnering relationship through at least one pre-commencement partnering workshop ("Partnering Sessions"). The purpose of the Partnering Sessions is to deepen working relationships, develop common goals and objectives for the Habitat Restoration Work, achieve a cooperative partnership environment among Habitat Restoration Work participants, and mutually develop a strategy for forming a successful partnering relationship. The KRRC and the Contractor may participate in additional facilitated workshops during the Term as they mutually agree is necessary and appropriate.

The scheduling of a Partnering Session, selection of the facilitator and workshop site, and other administrative details will be coordinated by the KRRC and the Contractor's project managers. The parties shall use good faith efforts to schedule the initial Partnering Session before

commencing the Habitat Restoration Work and to select the facilitator for the workshop as soon as reasonably possible following the Habitat Project Work Implementation Contract Amendment Date.

Each party shall bear their respective costs of formal partnering (including costs involved in providing the pre-commencement Partnering Session, any subsequent, additional Partnering Sessions, and the facilitator for the Partnering Sessions). All other costs associated with the Partnering Sessions will be borne separately by the party incurring the costs, such as wages and travel expenses, and no additional compensation will be allowed therefor.

8.3. HABITAT RESTORATION WORK SCHEDULE

8.3.1 Initial Habitat Restoration Work Schedule.

All activities comprising the Habitat Restoration Work shall be scheduled and monitored by use of a Gantt or Bar Chart which sets forth all tasks and key subtasks in a logical and efficient work sequence that the Contractor intends to utilize in taking the Habitat Restoration Work from the Habitat Restoration Work Technical Requirements to Habitat Restoration Work Completion. The "Initial Habitat Restoration Work Schedule," prepared in accordance with these requirements, is set forth as Attachment 8A to this Appendix. The Initial Habitat Restoration Work Schedule, as updated periodically pursuant to this Section, is referred to herein as the "Habitat Restoration Work Schedule." The Contractor shall undertake and complete the Habitat Restoration Work in accordance with the Habitat Restoration Work Schedule.

8.3.2 Habitat Restoration Work Schedule Updates.

The Contractor shall, as required from time to time during the Habitat Restoration Work Period, but no less than once per calendar month, in consultation with the KRRC update the Initial Habitat Restoration Work Schedule so that it is at all times an accurate, reasonable and realistic representation of the Contractor's plans for the completion of the Habitat Restoration Work in accordance with the requirements of this Agreement. The updates shall include:

- (a) Adjustments resulting from Uncontrollable Circumstances and Habitat Restoration Work Technical Requirements Changes, if any, as permitted by this Agreement and as provided in Section 8.3.4 (Events Affecting the Habitat Restoration Work Schedule) of this Appendix;
- (b) As the design progresses, proposed changes in the:
 - (i) Start and completion dates for design work described in this Appendix; and
 - (ii) Commencement of Habitat Restoration Work;
- (c) Start and completion dates of the major activities of Habitat Restoration Work; and
- (d) The date on which the Habitat Restoration Work Completion Date is expected to occur.

The Contractor shall deliver to the KRRC and the Program Manager on a monthly basis the updated Habitat Restoration Work Schedule. The monthly updated Habitat Restoration Work Schedule shall be accompanied by a report that (1) shows current work progress and the

status of work completed for each task and subtask included in the Initial Habitat Restoration Work Schedule; (2) contains information on the resources to be employed and work to be completed in the upcoming month, including a 60-day look-ahead that reflects all agreements made by the parties as to Habitat Restoration Work Schedule revisions in sufficient detail for the KRRC to be able to verify agreed-upon work schedule and milestone date changes; and (3) describes conditions that have affected or may accelerate or decelerate the Habitat Restoration Work Schedule then in effect, together with proposed Habitat Restoration Work Schedule adjustments and mitigation measures.

8.3.3 KRRC Review.

The KRRC shall review the updated Habitat Restoration Work Schedule and advise the Contractor as to any of its concerns, along with proposed changes. Every three months, or more frequently if requested by the KRRC, in addition to the weekly progress meetings, the Contractor shall meet with the KRRC to discuss Habitat Restoration Work progress and the updated Habitat Restoration Work Schedule. The Contractor shall respond to KRRC concerns and indicate how the proposed changes or revisions thereto can be made to satisfactorily address KRRC concerns. Upon KRRC approval, the changes shall be incorporated in the updated Habitat Restoration Work Schedule and replace any previously issued Habitat Restoration Work Schedule. Habitat Restoration Work Schedule updates are for the purpose of providing the Contractor with flexibility in its work activity durations and sequences, but in no event shall such updates result in a change in the Scheduled Habitat Restoration Work Completion Date. The Scheduled Habitat Restoration Work Completion Date shall be adjusted solely as provided in Section 7.3 (Effect of Unexcused Delay in Achievement of Habitat Restoration Work Completion) of this Agreement.

8.3.4 Events Affecting the Habitat Restoration Work Schedule.

No later than 15 days following the occurrence of an Uncontrollable Circumstance, the Contractor shall submit a report containing an analysis of the effects of such events on the Habitat Restoration Work Schedule, including any new dates for work task and major subtasks, Habitat Restoration Work Completion and Scheduled Habitat Restoration Work Completion Date. The Contractor shall present mitigation measures that were considered to offset potential work delays; those proposed for KRRC review and acceptance; and a revised Habitat Restoration Work Schedule incorporating the Contractor's proposed changes.

8.4. HABITAT RESTORATION WORK MEETINGS AND REPORTS

8.4.1 Pre-Commencement Conference.

The Contractor shall hold a pre-commencement conference prior to commencement of the Habitat Restoration Work. The Contractor shall prepare an agenda which shall be reviewed with the KRRC prior to the conference, and shall preside at the conference, contribute appropriate items for discussion, provide any data requested, record minutes to summarize significant proceedings and decisions, and distribute the minutes to all parties in attendance. The agenda shall include, but shall not necessarily be limited to, the status of the following items:

- (a) Designation of responsible personnel during the Habitat Restoration Work Period.
- (b) Subcontractors, and their roles on the Habitat Restoration Work.
- (c) Coordination with other contractors and projects.

- (d) Habitat Restoration Work Schedule.
- (e) Contractor submittals and KRRC review.
- (f) Schedule of Contractor submittals.
- (g) Requests for information and clarification.
- (h) Required Insurance.
- (i) Contractor's site-specific Health and Safety Plan.
- (j) Security.
- (k) Housekeeping.
- (l) Record drawings.
- (m) Proposed Habitat Restoration and Maintenance Commencement Date.
- (n) Contractor Governmental Approvals.
- (o) Emergency telephone numbers.
- (p) Temporary Utilities/Utilities coordination.
- (q) Any other Habitat Restoration Work-related items.

The pre-commencement conference shall be scheduled by the Contractor at a time reasonably acceptable to the KRRC and shall be attended by the Program Manager, the Habitat Project Work Manager, the Habitat Restoration Manager and the Contractor's principal Subcontractors' project managers or superintendents and representatives of major suppliers as the Contractor deems appropriate. Other attendees may include a representative from the Contractor's executive team, the quality assurance/quality control manager ("QA/QC Manager"), local police and fire departments and other Governmental Bodies with jurisdiction over the Habitat Restoration Work, any other contractors whose work affects or is affected by restoration work and others as deemed appropriate by these parties. The Contractor shall conduct the conference at the Habitat Project Work Area and make all arrangements for space, facilities and food services and shall notify all participants of the arrangements.

8.4.2 Habitat Restoration Work Progress Meetings – Scheduling and Attendance.

The Contractor shall schedule, hold, and facilitate regular weekly Habitat Restoration Work progress meetings from the time mobilization for Habitat Restoration Work commences through Habitat Restoration Work Completion, and at other times if requested by the KRRC or as the Contractor deems necessary. The Habitat Restoration Work progress meetings shall be attended by the Contractor Habitat Restoration Work Manager and the Contractor's principal Subcontractors' project managers or superintendents and representatives of major suppliers, as the Contractor deems appropriate. The Contractor, Habitat Restoration Work Manager and representatives from the Contractor's executive team shall attend progress meetings periodically as requested by the KRRC. Other attendees may include the QA/QC Manager, any other contractors whose work affects or is affected by, restoration work, and others deemed appropriate by these parties. The KRRC shall attend the weekly progress meetings. Habitat Restoration Work progress meetings shall be held at the Habitat Project Work Area.

8.4.3 Habitat Restoration Work Progress Meetings – Agenda.

At such meetings, discussions shall be held concerning all aspects of the Habitat Restoration Work including, but not limited to, the Habitat Restoration Work Schedule, coordination of work with others, Habitat Restoration Work Technical Requirements Changes, Contractor Governmental Approvals and Habitat Restoration Work submittals, and any test results. The Contractor shall prepare an agenda, preside at meetings, record minutes to include significant proceedings and decisions, and distribute the minutes to all parties in attendance within 10 Business Days of the meeting. The agenda shall include, but shall not necessarily be limited to, the status of the following matters:

- (a) Summary of previous meeting issues, actions and assignments.
- (b) Progress since last meeting (Contractor and Subcontractors).
- (c) Schedules, including updates on planned progress for next four to six weeks, off-site fabrication and delivery schedules; corrective action measures, if required and when to be implemented.
- (d) Problems, issues and considerations.
- (e) Contract Administration Memoranda and Agreement Amendments.
- (f) Status of submittals, including to be submitted, submitted, responses requiring corrective actions and resubmittal and approved.
- (g) Requests for Information, including those to be submitted, submitted, responses and whether adequate or more information is required.
- (h) Quality standards and control.
- (i) Quality assurance/quality control (“QA/QC”) reviews, findings, issues and actions.
- (j) Coordination among parties.
- (k) Safety program update, concerns, accidents, and injuries, if any.
- (l) Visits by regulatory agencies.
- (m) Public affairs and issues or concerns of nearby residents.
- (n) Habitat Project Work Area visits by KRRC, KRRC’s representatives, representatives of Governmental Bodies and Contractor’s representatives.
- (o) Compliance with CEQA mitigation requirements and any environmental issues.
- (p) Status of record drawings and specifications.
- (q) Other business.
- (r) Next meeting date.

8.4.4 Monthly Progress Reports.

Monthly progress reports required to be submitted by the Contractor shall include:

- (a) A summary of Habitat Restoration Work activities during the reporting month.
- (b) A schedule of upcoming Habitat Restoration Work activities.
- (c) A listing of submittals delivered during the reporting month and their status;
- (d) A listing of submittals scheduled for delivery the following month.
- (e) The Contractor's verification that the record documents have been updated as appropriate.
- (f) A summary of activities involved with obtaining Contractor Governmental Approvals.
- (g) A listing of any violations of Contractor Governmental Approvals or Applicable Law and actions taken or to be taken to eliminate any subsequent violations.
- (h) A listing of issues needing resolution.
- (i) A listing of all telephone calls received during the reporting month involving material inquiries or complaints.
- (j) Habitat Restoration Work Schedule updates.
- (k) The Contractor's plan for accelerating the Habitat Restoration Work Schedule to meet the Scheduled Habitat Restoration Work Completion Date should the Contractor's progress-to-date indicate that the Contractor's Habitat Restoration Work is behind schedule and at risk of not being completed by the then applicable Scheduled Habitat Restoration Work Completion Date (as adjusted for extensions of time permitted under this Agreement).
- (l) Expenditures for the most recently completed month and for the Habitat Restoration Work to date, and a comparison to the Schedule of Values; explanations for significant deviations from the Schedule of Values for both over expenditures and under expenditures; corrective actions proposed by the Contractor to bring spending in-line with Schedule of Values or proposals to KRRC for an adjustment in the Schedule of Values or acceptance of the deviations.
- (m) Progress payment requests as described in Article 8 (Compensation for Habitat Restoration Work) of this Agreement. The format of the payment request shall be matched with the description of work activities completed for the reporting month so that the KRRC can easily relate the breakdown of the payment request to work progress on specific tasks and subtasks. Supporting documentation shall be provided so that the KRRC can readily determine the basis for the requested payment amounts for Habitat Restoration Work performed during the month by task or subtasks in terms of labor hours, Habitat Restoration Work equipment costs, capital improvements equipment and materials expenditures, specialty Subcontractors including similar breakdowns for Subcontracts in excess of \$500,000 and other Habitat Restoration Work costs incurred during

the month. Current retainage and total retainage to date shall be included in the monthly report. Payment request information shall include similar information for changes made pursuant to Sections 6.6 (Changes to the Habitat Restoration Work Technical Requirements at Contractor Request) and 6.7 (Other Changes to the Habitat Restoration Work Technical Requirements) of this Agreement.

The monthly progress report shall also provide a description of (1) any concerns or issues raised by the KRRC or other parties regarding the Habitat Restoration Work, and the Contractor's approach to promptly addressing and resolving such concerns or issues, and (2) a Section containing health and safety statistics and a description of any accidents or injuries that occurred and the follow up investigations as to cause and subsequent corrective actions to be taken or already implemented by the Contractor. The format of the monthly report shall be developed by the Contractor and approved by the KRRC prior to the commencement of any construction or demolition on the Habitat Project Work Area.

8.4.5 Habitat Restoration Work Records.

The Contractor, in connection with the Habitat Restoration Work generally, shall maintain and provide the following records:

- (b) Record Drawings and Specifications: The Contractor shall:
 - (i) Throughout the Habitat Restoration Work, update the Habitat Restoration Work Design Documents (with respect to the drawings, such update shall be in hard copy and "CAD" or other electronic format reasonably acceptable to the KRRC), including approved shop drawings that are available from Subcontractors in CAD format, so as to produce accurate and complete record documents for the Habitat Restoration Work.
 - (ii) As requested from time to time during the Habitat Restoration Work, make available such record drawings and specifications to the KRRC for review to permit the KRRC to monitor the Contractor's compliance with the requirements of this Section.
 - (iii) Provide seven hard copies (in architectural D size and electronically in PDF format and current version of Bentley Microstation CAD file) of the completed record drawings and specifications to the KRRC as a condition to Habitat Restoration Work Completion. The record drawings shall not be deemed to have satisfied the condition to the applicable Habitat Restoration Work Completion unless reviewed and deemed final by the KRRC.
- (b) Design Records: The Contractor shall retain records of the design development.
- (c) Minutes of Meetings: The Contractor shall retain minutes of meetings between the KRRC and the Contractor relating to the Habitat Restoration Work, and shall circulate such minutes to the KRRC and the KRRC Technical Representative for review and comment.
- (d) Inspection Reports and Tests Results: The Contractor shall retain official reports and certified test records of all inspections and tests which were undertaken as part of the Habitat Restoration Work.

- (e) Utility Plans: The Contractor shall retain Utility plans for the Habitat Restoration Work and the Habitat Project Work Area.
- (f) Landscape and Irrigation Plans: The Contractor shall retain landscape and irrigation plans for the Habitat Restoration Work and the Habitat Project Work Area.
- (g) Copies of all Contractor Governmental Approvals: The Contractor shall retain copies of all Contractor Governmental Approvals for the Habitat Restoration Work.
- (h) Signed Habitat Restoration Work Quality Management Plan: The Contractor shall retain a signed copy of the Habitat Restoration Work Quality Management Plan for the Habitat Restoration Work and all records of the QA program implemented as required by this Agreement.

The records referred to in this Section shall be retained for at least five years following the Habitat Restoration Work Completion Date.

8.5. HABITAT RESTORATION WORK GENERALLY

8.5.1 Deliverable Material.

The Contractor shall deliver to the KRRC all Deliverable Material required to be delivered under this Appendix, Appendix 9 (Habitat Restoration Work Quality Control Requirements), and Appendix 10 (Habitat Restoration Work Review Procedures).

8.5.2 Signs.

The Contractor shall provide and maintain temporary identification and information signs during the Habitat Restoration Work Period. No signs shall be erected until their appearance, content, and location have been fully reviewed and approved by the KRRC, which approval shall not unreasonably be withheld, conditioned or delayed. The Contractor shall remove temporary signs from the Habitat Project Work Area when they are no longer necessary.

8.5.3 Laydown Areas and Field Office Space.

Laydown and staging areas for materials shall be located at the Habitat Project Work Area or at other locations arranged and paid for by the Contractor. At a minimum, field office facilities shall include the following:

- (a) Field office facilities for the Contractor;
- (b) Field office facilities for the KRRC's construction management team and inspectors;
- (c) At a minimum, separate office facilities shall be provided at J.C. Boyle and Copco/Iron Gate;
- (d) Each office facility shall provide a minimum of two private offices with doors and keyed locksets, two restrooms, one enclosed conference room, one breakroom with refrigerator, microwave oven, coffee brewer, bottled water and waste receptacle, copier/scanner/printer/fax and security system;

- (e) All office desks or offices shall have duplex power receptacles, telephone, broadband internet connection, and appropriate lighting at desktop; and
- (f) The cost of the KRRC's construction office furniture, fixtures, equipment, supplies, consumables, or telephone/internet service provider fees shall be borne by the Contractor.

1.1.2 Maintenance of the Habitat Project Work Area.

During performance of the Habitat Restoration Work, the Contractor shall be responsible for the overall maintenance of the Habitat Project Work Area. The Contractor shall keep the Habitat Project Work Area neat and orderly at all times, and shall clean up and remove all rubbish and restoration debris from the Habitat Project Work Area as they accumulate in accordance with the Contract Standards.

8.5.4 Temporary Utilities.

The Contractor shall supply all necessary temporary Utilities, including electricity, telecommunications services, potable water (at no unit charge from KRRC), fire protection, lighting, and sanitary facilities, during the performance of the Habitat Restoration Work. Prior to the Habitat Restoration Work Completion Date, the Contractor shall disconnect and arrange for the disconnection and removal of all temporary Utility connections and services. The Contractor shall coordinate with the KRRC on all temporary Utilities.

8.5.5 Relocation of Existing Utilities.

The Contractor shall be responsible for all construction activities required with regard to existing Utility services and installations (e.g., conduits, pipelines, transmission mains and other Utility equipment and appurtenances), including after KRRC review and approval of any relocation of Utilities.

8.5.6 Noise Control.

The Contractor shall comply with all noise regulations required pursuant to Applicable Law. Habitat Restoration Work will be allowed as defined in Section 7.2.4 (Required Design Criteria – On-Site Work Hours) of Appendix 7 (Habitat Restoration Work Technical Requirements). In the event that the work hours are restricted further than as described therein, such restrictions will be considered an Uncontrollable Circumstance, as and to the extent provided in Article 12 (Uncontrollable Circumstances) of this Agreement.

8.5.7 Notice of Default.

The Contractor shall provide to the KRRC, promptly following the receipt thereof, copies of any notice of default, breach or non-compliance received under or in connection with any Governmental Approval or Subcontract that may have a material and adverse effect on performance by the Contractor of its obligations under this Agreement.

8.6. HABITAT RESTORATION WORK SAFETY AND SECURITY

8.6.1 Safety and Security.

The Contractor shall maintain safety and security at the Habitat Project Work Area at all times at a level consistent with the Contract Standards. The KRRC will neither assume

administration nor direct control and responsibility for maintaining the Contractor's health and safety program.

Nothing contained in this Section shall relieve the Contractor, or any Subcontractor or Supplier, from the obligations set forth above and obligations as required by Applicable Law. If a provision of this Section conflicts with any applicable provision of this Agreement or any Applicable Law, the more stringent requirements that maintain a greater level of safety shall apply.

Without limiting the foregoing, the Contractor shall:

- (a) Implement a zero incident philosophy on the Habitat Restoration Work and establish a goal of zero accidents and zero injuries with work tasks designed to minimize or eliminate hazards to personnel, process, equipment, environment and the general public.
- (b) Be committed to protecting the health and safety of individual employees, their co-workers, and the public at large from the hazards caused by the misuse of drugs and alcohol on the job. The safety of the public, as well as the safety of fellow employees, dictates that employees are not permitted to perform their duties while under the influence of drugs or alcohol. Accordingly, the Contractor agrees to develop and comply with an appropriate substance abuse policy. Contractor shall select and use a qualified, approved substance abuse third party administrator to perform all required substance abuse testing.
- (c) Include a description of the process of notification, reporting, and investigating incidents or near-miss incidents. The results of investigations of incidents shall be documented in final root cause analysis and corrective actions reports. Investigations of incidents shall be documented in investigation reports.
- (d) Take appropriate precautions for the safety and security of the Habitat Restoration Work and provide appropriate protection to prevent damage, injury or loss related to the performance of the Habitat Restoration Work over the Habitat Restoration Work Period for:
 - (i) Workers at the Habitat Project Work Area and all other persons who may be involved with deliveries or inspections;
 - (ii) Visitors to the Habitat Project Work Area;
 - (iii) Passersby, neighbors and adjacent properties with respect to the Habitat Restoration Work activities;
 - (iv) Materials and equipment under the care, custody or control of the Contractor or Subcontractors on the Habitat Project Work Area;
 - (v) Other property constituting part of the premises or the Habitat Restoration Work; and
 - (vi) KRRC Property;
- (e) Establish and enforce appropriate safeguards for safety and protection, including posting danger signs and other warnings against hazards;

- (f) Provide temporary fencing of all open or partially open trenches and excavations, all open or partially completed structures, and all work and storage areas at all times while unattended by workmen;
- (g) Implement a comprehensive safety program in accordance with Applicable Law;
- (h) Give all notices and comply with all Applicable Law relating to the safety of persons or property or their protection from damage, injury or loss;
- (i) Operate and maintain all equipment in a manner consistent with the manufacturer's safety requirements;
- (j) Provide for safe and orderly vehicular movements;
- (k) Develop and implement a written Habitat Project Work Area-specific Health and Safety Plan that includes management commitment, maintaining a safe workplace, employee participation, hazard evaluation and controls, employee training and periodic inspections ("Health and Safety Plan");
- (l) Designate an appropriately certified and experienced safety professional to develop and sign the Habitat Project Work Area-specific Health and Safety Plan, including all safety rules at the Habitat Project Work Area;
- (m) Designate a qualified safety professional at the Habitat Project Work Area during on-site Habitat Restoration Work activities who shall be responsible for the implementation of safety rules at the Habitat Project Work Area, the prevention of fires and accidents, monitoring compliance with the Contractor's Habitat Project Work Area-specific Health and Safety Plan, and the coordination of such activities as shall be necessary with the KRRC and all Governmental Bodies related to health and safety; and
- (n) Require all Subcontractors to work in accordance with and implement the Health and Safety Plan, comply with the Contractor's on-site safety requirements, and designate a qualified safety professional whose duty shall be the implementation of safety rules at the Habitat Project Work Area and monitoring compliance of Subcontractor employees with the Subcontractor's Habitat Project Work Area-specific Health and Safety Plan.
- (o) The Contractor shall maintain Habitat Restoration Work safety audits, equipment safety inspection logs, incident reports, and all reports covering the implementation of Health and Safety Plan on the Habitat Project Work Area for review upon request by the KRRC.
- (p) If the Contractor repeatedly fails to comply with applicable health and safety-related Applicable Law and contract safety requirements, the KRRC reserves the authority to have work performed by others and to deduct corresponding costs from Contractor's progress payment(s) and/or suspend progress payments.
- (q) The Contractor's non-compliance with health and safety-related Applicable Law and Agreement safety requirements shall be considered failure by the Contractor to perform a provision of the Agreement, and may be cause for the suspension of the Habitat Restoration Work and/or the discharge from the Habitat Restoration Work of an employee, Subcontractor or Supplier as set forth in the Agreement.

The Contractor will be responsible for all costs for stoppage of Habitat Restoration Work and/or replacement of employee(s).

8.6.2 Perimeter Security.

The Contractor shall develop, maintain and comply with a Habitat Project Work Area perimeter security plan that is approved by the KRRC and the Project Company and constitutes part of the Health and Safety Plan. The perimeter security plan shall assure the security of the Habitat Project Work Area when perimeter fencing cannot be continuously maintained.

8.7. ENVIRONMENTAL REVIEW AND PROTECTION

8.7.1 Wildlife and Protected Species Protection.

In accordance with the Contractor Governmental Approvals, the Contractor shall develop and implement a plan that is consistent with required measures for wildlife and protected species that may be affected by restoration activities of the Contractor. Prior to implementing the plan, the Contractor shall obtain KRRC approval.

8.7.2 Contractor Environmental Monitor.

If required by the Environmental Mitigation Measures, the Contractor shall assign a Contractor Environmental Monitor ("CEM") to ensure that its mitigations plan is properly and fully implemented. The CEM shall be the single, identified entity or person responsible for, at a minimum, the following duties:

- (a) Planning of environmentally compliant Habitat Restoration Work methods.
- (b) Oversight of Habitat Restoration Work activities to determine compliance with mitigation measures.
- (c) Ensuring that all training has been conducted, and signage, marking and barriers to protected areas have been installed.
- (d) Ensuring compliance with the Stormwater Pollution Prevention Program (SWPPP).
- (e) Coordination with the KRRC on implementation of environmental mitigation measures.
- (f) Coordination with Governmental Bodies that have administrative oversight of the environmental sites to be protected, if required.
- (g) Compliance with environmental Contractor Governmental Approvals.
- (h) Meeting or interacting with representatives of Governmental Bodies with environmental oversight authority, if required.

All environmental monitoring duties conducted by the CEM shall be recorded in the form of a standard report and photographic log (as required). The photographic log shall be kept in both electronic and hardcopy form. All reports shall be submitted to the KRRC in summary form on a monthly basis or more frequently if required by KRRC. Copies of all daily monitoring records shall be maintained at the Habitat Project Work Area by the CEM.

8.7.3 Regulated Substances Management Program.

The Contractor shall develop, maintain and implement a Regulated Substances management plan that includes as a minimum, but is not limited to, the requirements specified in this Section ("Regulated Substances Management Program"). A copy of the Regulated Substances Management Plan shall be submitted to the KRRC for review and approval. The intent of the plan is to prevent accidental spills, site contamination, and injury or illness of all personnel on the site due to contact or exposure to Regulated Substances. The KRRC shall notify the Contractor of any observed conditions that may be in violation of the plan. If the Contractor fails to address KRRC-reported concerns about observed conditions that may be in violation of the plan in a timely and appropriate manner, the KRRC may notify all appropriate Governmental Bodies, and report the observed conditions to them, and request that they inspect the sites involved that are under the Contractor's control. All documents required by the Regulated Substances Management Plan shall be made available to the KRRC immediately upon request.

8.7.4 Contractor Regulated Substances.

Any Regulated Substances generated by the Contractor shall be the responsibility of the Contractor. The Contractor shall obtain an Environmental Protection Agency identification number for all Contractor Regulated Substances, listing the Contractor's name and address as the generator of the Contractor Regulated Substances. The Contractor shall be responsible for the identification, analysis, profiling, documentation, reporting, transport and disposal of Contractor Regulated Substances. Any fines that are levied against the KRRC for violations of Applicable Law as determined by any Governmental Body relating to Contractor Regulated Substances shall be reimbursed immediately by the Contractor after payment by KRRC.

8.7.5 Emergency/Spill Response Plan.

The Contractor shall develop an Emergency/Spill Response Plan ("Emergency Response Plan"), for each Regulated Substance or class/group of Regulated Substances either known to be on the Habitat Project Work Area or intended to be brought to the Habitat Project Work Area by the Contractor. At a minimum, the Response Plan must include the following:

- (a) A description of on-site equipment available to contain and respond to an emergency/spill of the Regulated Substance.
- (b) Notification procedures, including notification to potentially impacted residents adjacent to the Habitat Restoration Work.
- (c) Response coordination procedures between the Contractor and the KRRC.
- (d) A Regulated Substance site map showing the location of stored Regulated Substances and location spill containment/response equipment.
- (e) A description of the Regulated Substances handling and spill response training provided to the Contractor's employees and Subcontractors.

8.7.6 Dust Control.

The Contractor shall be responsible for dust control during the performance of the Habitat Restoration Work and shall comply with all air pollution control Applicable Law and Contractor Governmental Approvals. The Contractor shall furnish all necessary labor, materials and equipment for dust control.

APPENDIX 9

HABITAT RESTORATION WORK QUALITY CONTROL REQUIREMENTS

APPENDIX 9

HABITAT RESTORATION WORK QUALITY CONTROL REQUIREMENTS

9.1. PURPOSE

The purpose of this Appendix is to describe the minimum requirements for the Habitat Restoration Work Quality Management Plan, including quality assurance ("QA") and quality control ("QC") procedures that shall be implemented during the Habitat Restoration Work Period. QA/QC shall include inspection, sampling and testing, and other requirements.

9.2. KRRC'S QUALITY OBJECTIVES

The Habitat Restoration Work Quality Management Plan, including QA/QC, shall be consistent with and support the following quality objectives for the Habitat Restoration Work:

- (a) Ensure that the Habitat Restoration Work is consistent with the Contract Standards.
- (b) Ensure that Governmental Approval requirements are effectively incorporated into Habitat Restoration Work.
- (c) Develop and implement procedures to ensure that problems are discovered early, resolved in a timely manner, and do not recur.
- (d) Ensure that adequate QA/QC procedures and resources are provided by the Contractor to effectively assess and ensure high quality in all work products and services, warranty requirements, safety, security and environmental compliance requirements.
- (e) Provide timely reporting and documentation of QA/QC inspections, technical reviews, testing, analysis and determinations of compliance with the Contract Standards.
- (f) Provide follow up inspections, analysis and testing if conditions are found to be non-compliant with the Contract Standards and verify through special reports and direct communications with the KRRC that all corrective actions have been effectively implemented and that the resultant product or service is of acceptable quality.

9.3. HABITAT RESTORATION WORK QUALITY MANAGEMENT PLAN DEVELOPMENT AND IMPLEMENTATION

9.3.1 General Requirements.

The development and implementation of the Habitat Restoration Work Quality Management Plan shall be the responsibility of the Contractor. The Habitat Restoration Work Quality Management Plan shall integrate the permitting, design, and restoration phases of the Habitat Restoration Work during the Habitat Restoration Work Period and shall include detailed QA and QC programs as attachments. Other Habitat Restoration Work Quality Management Plan requirements are defined in Section 9.4 (Habitat Restoration Work Quality Control Requirements) of this Appendix.

9.3.2 Habitat Restoration Work Quality Management Plan Requirements.

The “Habitat Restoration Work Quality Management Plan” shall include a description of how the Contractor will provide the following:

- (a) Adequate resources for effective plan implementation throughout all phases of the Habitat Restoration Work. Information on QA/QC staff to be assigned to the Habitat Restoration Work and their qualifications for performing required QA/QC functions;
- (b) Programs, procedures, methods, tests, analyses and communications procedures, reports, photographs and comments on drawings and specifications and other documents used by the Contractor to assess Habitat Restoration Work quality and compliance with the Contract Standards;
- (c) How the QA/QC program shall function independently of Contractor’s production staff and be empowered to enforce plan objectives, define quality requirements, independently verify quality of Habitat Restoration Work products and services, identify potential causes of unacceptable quality of work and provide safeguards to prevent unacceptable work quality, and require prompt corrective action for identified deficiencies;
- (d) A communications plan for demonstrating that quality requirements have been established and communicated to all Subcontractors prior to their commencement of providing products or services on the Habitat Restoration Work. This shall include information on the roles, responsibilities and authorities of identified QA/QC staff; and
- (e) The Contractor shall submit its Habitat Restoration Work Quality Management Plan for KRRC review for all phases of the Habitat Restoration Work, including verification of compliance with the Contract Standards as part of its initial document submittal package. KRRC will provide comments on the Habitat Restoration Work Quality Management Plan and the Contractor shall make required changes and include the final KRRC-approved Habitat Restoration Work Quality Management Plan as an attachment to this Agreement.

9.3.3 Changes to the Habitat Restoration Work Quality Management Plan.

Revisions and updates to the Habitat Restoration Work Quality Management Plan may be proposed by the Contractor as the Habitat Restoration Work progresses. Changes to the initial Habitat Restoration Work Quality Management Plan require written approval of the KRRC. Proposed revisions or updates shall be provided to the KRRC at least 30 days prior to the start of the Habitat Restoration Work to which the revision applies. The KRRC will review and respond in a timely manner to Habitat Restoration Work Quality Management Plan proposed changes. The Contractor shall not initiate any of the Habitat Restoration Work that is impacted by such proposed revision or change until the KRRC has reviewed and accepted the change.

9.4. HABITAT RESTORATION WORK QUALITY CONTROL REQUIREMENTS

9.4.1 Habitat Restoration Work Quality Control Program.

The Habitat Restoration Work Quality Management Plan shall include the details of the Contractor’s Habitat Restoration Work Quality Control Program (“CQCP”). Instructions for

performing inspections must be clearly defined, including the work attributes to be inspected, acceptability criteria, frequency of inspections, and the requirements for documenting the inspection results. Documentation requirements shall include Contractor production reports, Contractor quality control reports, field test reports, testing plan and log, inspection reports, rework items list and quality control meeting minutes. The CQCP shall require inspection during the performance of the Habitat Restoration Work by inspectors who are not responsible, in whole or in part, for the scheduling or performance of the Habitat Restoration Work being inspected. Inspection records must be kept current, have sufficient detail to enable the KRRC to identify inspections which have been performed, and the results of these inspections. Inspections must be made throughout the Habitat Restoration Work Period, including the initial work, in-process inspections, final inspections, and testing during the performance of the Habitat Restoration Work. The CQCP shall describe methods to be implemented, including a daily quality control report, to identify and track all unsatisfactory, deviating, and nonconforming work until the required repair, rework, or replacement is performed, and the work has been re-inspected and accepted. The CQCP shall detail the means and methods for identifying and correcting all deficiencies such that the Habitat Restoration Work quality meets the Contract Standards and the Contractor's Habitat Restoration Work Design Documents. The Contractor shall be informed of all unsatisfactory conditions that the Contractor will correct and for any nonconforming conditions for which the Contractor intends to request the KRRC's acceptance in accordance with Section 6.11 (Correction of Work) of this Agreement.

9.4.2 Materials and Equipment.

The CQCP shall ensure the quality of all material and equipment. Procedures shall be used to verify that the procurement documents meet all Contract Standards and the Contractor's Habitat Restoration Work Design Documents, and that quality has been controlled during the manufacture and testing of all equipment which is being fabricated for the Habitat Restoration Work. The CQCP shall require written documentation of inspection of all material and equipment to ensure that it meets all Contract Standards and the Contractor's Habitat Restoration Work Design Documents. Documentation such as material test reports, certifications, and equipment tests results must be delivered to the KRRC and KRRC-designated representatives to demonstrate compliance with all Contract Standards and the Contractor's Habitat Restoration Work Design Documents. The CQCP shall include monitoring procedures to ensure that material and equipment delivered to the Habitat Project Work Area are undamaged, in the proper quantities and in accordance with the specification requirements, and that all materials and equipment are stored and maintained on the Habitat Project Work Area according to the Contract Standards, including the requirements of the designer and the manufacturer. Procedures and controls shall be provided to ensure that inspections are being performed using the latest Habitat Restoration Work Design Documents and approved shop drawings. Procedures shall ensure that an adequate number of inspection personnel are available at all times, and that all inspectors are qualified, trained, and proficient in performing inspections for the Habitat Restoration Work to which they are assigned.

9.5. INSPECTION OF HABITAT RESTORATION WORK

9.5.1 Inspection and Correction.

All Habitat Restoration Work performed by the Contractor or its Subcontractors shall be inspected by the Contractor. All nonconforming Habitat Restoration Work and any safety hazards in the work area shall be noted and promptly corrected. The Contractor is responsible for the performance of the Habitat Restoration Work safely and in conformance with Section 8.6 (Habitat Restoration Work Safety and Security) of Appendix 8 (General Habitat Restoration Work Requirements).

9.5.2 KRRC Access.

The KRRC, its employees, agents, representatives and contractors shall be permitted access to all parts of the Habitat Restoration Work, including plants where materials or equipment are manufactured or fabricated. The presence of the KRRC, its employees, agents, representatives and contractors shall not relieve the Contractor of the responsibility for the proper execution of the Habitat Restoration Work in accordance with all requirements of this Agreement. No act or omission on the part of the KRRC, its employees, agents, representative and contractors (other than KRRC Fault) shall be construed as relieving the Contractor of this responsibility.

9.5.3 Materials Inspection.

All materials and articles furnished by the Contractor shall be subject to documented inspection, by qualified personnel, and no materials or articles shall be used in the Habitat Restoration Work until they have been inspected and accepted by the QA/QC Manager or other designated representative. Any Habitat Restoration Work covered in the absence of inspection shall be subject to uncovering as set forth in Section 6.10 (Monitoring, Observations, Testing and Uncovering of Habitat Restoration Work) of this Agreement.

9.6. INSTALLATION

9.6.1 Inspection and Measurement.

The Contractor shall inspect materials or equipment upon the arrival at the jobsite and immediately prior to installation, and remove damaged and defective items from the jobsite. The KRRC shall be provided the opportunity to observe any such Contractor inspections in accordance with Section 6.10 (Monitoring, Observations, Testing and Uncovering of Habitat Restoration Work) of this Agreement. The Contractor shall verify measurements and dimensions of the work as an integral step of starting each installation.

9.6.2 Manufacturer's Instructions.

Where installations include manufactured products, the Contractor shall comply with manufacturer's applicable instructions and recommendations for installation, to whatever extent these are more explicit or more stringent than the Contract Standards, so as not to violate manufacturers' warranty conditions.

APPENDIX 10

HABITAT RESTORATION WORK REVIEW PROCEDURES

APPENDIX 10

HABITAT RESTORATION WORK REVIEW PROCEDURES

10.1. OVERVIEW

10.1.1 Purpose.

The purpose of this Appendix is to set forth the procedures for the KRRC's review of each aspect of the Habitat Restoration Work to verify that the Habitat Restoration Work has been performed in accordance with the Habitat Restoration Work Technical Requirements and the terms and conditions of this Agreement.

10.2. DOCUMENTS TO BE SUBMITTED

At a minimum, the documents to be submitted during the Habitat Restoration Work Period shall include the following:

- (a) Monthly progress schedule updates
- (b) Intermediate submittals for review sessions and workshops on various materials, facilities, systems, equipment, and disciplines
- (c) Draft Issued for Habitat Restoration Work Specifications
- (d) Applications and supporting documents required for Contractor Governmental Approvals
- (e) Record drawings and specifications

Such documents shall be submitted in accordance with the Document Submittal Procedures.

10.2.1 Habitat Restoration Work Package Information.

The Contractor shall have flexibility with how it organizes and performs Habitat Restoration Work packages so that it can proceed with ordering any necessary equipment or commence with any necessary restoration activities such as civil-site work prior to the 100% design; provided, however, such restoration or ordering of equipment prior to the 100% design shall not negatively affect the remaining Habitat Restoration Work, the Habitat Restoration Work Price or the Habitat Restoration Work Schedule. The Contractor shall provide the following information, as applicable, in the appropriate Habitat Restoration Work package in accordance with the Document Submittal Procedures:

- (a) Specifications, Design Narratives and Lists:
 - (i) Habitat Restoration Work design criteria
 - (ii) Specifications
 - (iii) Process systems piping line list
 - (iv) Major equipment list (process, mechanical, electrical, instrumentation and control, support systems, other)

- (v) Proprietary technology/equipment list
- (b) Drawings, in both three dimensional electronic and standard design formats:
 - (i) Cover sheet
 - (ii) Drawing index
 - (iii) Layout of the Habitat Project Work Area
 - (iv) Habitat Project Work Area master planning layouts
 - (v) Landscape inventory plan
 - (vi) Landscape and irrigation plans
 - (vii) Habitat Project Work Area grading and Utility plans, with sections as needed for restoration clarity or dimensioning
 - (viii) Surface drainage system and features plans and details
 - (ix) Fire protection and security system plans
 - (x) Habitat Project Work Area sections and details
 - (xi) Major structure foundation plans and sections
 - (xii) Major structure exterior elevations and sections
 - (xiii) Architectural renderings
 - (xiv) Electrical site plan

10.3. KRRC DOCUMENT REVIEW

10.3.1 KRRC Review Responsibilities.

On or before the Habitat Project Work Commencement Date, the Contractor shall submit updated Document Submittal Procedures that address the submittal of the draft Issued for Habitat Restoration Work Specifications (the "Final Design Submittal Protocol"). In accordance with the Final Design Submittal Protocol, the KRRC shall review the Contractor's draft Issued for Habitat Restoration Work Specifications for compliance and consistency with the final 90% Habitat Restoration Work Design Documents for compliance and consistency with the draft Issued for Habitat Restoration Work Specifications and both for overall compliance with the requirements of this Agreement. The KRRC's input during finalization of the Habitat Restoration Work Design Documents and preparation and finalization of Habitat Restoration Work packages shall be solicited by the Contractor on a timely basis so as to provide adequate periods for review by the KRRC, revisions by the Contractor and final review by the KRRC without negatively impacting the Habitat Restoration Work Schedule. The KRRC shall make reasonable efforts to bring staff or representatives with review and decision-making authority to the work sessions as requested and scheduled by the Contractor. The Contractor shall provide the KRRC with advance notice of the work sessions and agenda topics to facilitate the KRRC's scheduling of the appropriate participants for the work sessions. The Contractor shall provide the KRRC with Final Habitat Restoration Work Design Documents before commencing

any Habitat Restoration Work activity, except as provided in Section 10.2.1 (Habitat Restoration Work Package Information) of this Appendix. Habitat Restoration Work activities shall not vary from the Final Habitat Restoration Work Design Documents submitted to the KRRC except where such variations are allowed, subject to the KRRC's and applicable Governmental Bodies' review and approval. Adherence to the draft Issued for Habitat Restoration Work Specifications during work completion shall be a factor used by the KRRC in its review and approval of the Contractor's Payment Requests during Habitat Restoration Work.

10.3.2 Time for KRRC Review.

The KRRC shall complete its review of each submittal in a timely manner in order to determine that the Habitat Restoration Work conforms to the Habitat Restoration Work Technical Requirements and other Contract Standards. The Contractor and the KRRC shall periodically review the Document Submittal Procedures, which define key submittals and the target submittal dates, and develop a submittal review schedule for each submittal based on the content and criticality of each submittal.

10.3.3 Time for Contractor Response.

For each submittal, the KRRC shall provide written comments in a tabular summation describing any concerns, problems, or assertions of non-compliance with the applicable Contract Standards. The tabular summation shall be on a form created mutually by the Contractor and the KRRC, with provisions on the form for the Contractor's responses. The Contractor shall provide a written response to the KRRC's comments within 15 Business Days of receipt of the KRRC's comments, primarily through use of the tabular summary form, including documentation of responses and agreed-upon action items.

10.3.4 Habitat Restoration Work Progress Meetings.

For the purpose of facilitating a timely review process, the Contractor shall schedule design-build progress meetings with the KRRC on a routine basis and at least monthly (unless both parties agree that more frequent meetings are required) throughout the design finalization and Habitat Restoration Work package development period. Any outstanding review comments not satisfactorily resolved shall be transferred to an issues tracking form by the Contractor for subsequent follow-up. The primary purpose of these meetings shall be to discuss overall Contractor work progress, the conformance of the design and Habitat Restoration Work packages to the Habitat Restoration Work Technical Requirements, and to address outstanding issues arising from the review and response process. The status and issues of related permitting and may also be included as agenda items for each Habitat Restoration Work progress meeting. These meetings shall be held in the KRRC's offices, or another location agreed to by the KRRC. Contractor representatives with responsibility for the Habitat Restoration Work shall participate in the meeting. Similarly, the KRRC shall be appropriately represented by individuals with knowledge and authority for decision making at the meeting.

10.3.5 Design Submittals During Habitat Restoration Work.

It is anticipated that there could be some redesign or design clarifications needed during the performance of the Habitat Restoration Work. Additional design work by the Contractor shall be subject to the KRRC's review for compliance and consistency with applicable Habitat Restoration Work Technical Requirements. Design changes to a particular Habitat Restoration Work Design Document performed following the issuance of the Habitat Restoration Work Design Document for the Habitat Restoration Work shall be issued under a Design Change Notice ("DCN") process that accurately tracks and documents changes to the design. No later than 30 days prior to initiation of the Habitat Restoration Work, the Contractor shall submit to

the KRRC additions to the Document Submittal Procedures to include the DCN. The KRRC shall be provided with copies of all DCNs in a timely manner to allow review, comment, and, where appropriate, approval in the same manner as set forth with respect to the initial design. Design clarifications shall be issued in a timely manner using a similar procedure. If a DCN requires a material change from what was reflected in the applications for Contractor Governmental Approvals, the DCN must be approved by the appropriate Governmental Body if required by Applicable Law.

10.3.6 Design Change Authority.

The Contractor shall be responsible for providing design changes to the Habitat Restoration Work Design Documents necessary to complete the Habitat Restoration Work in accordance with this Agreement. All such changes shall be implemented in accordance with the DCN process described above, and in accordance with this Appendix. No DCN shall operate to change the Habitat Restoration Work Technical Requirements unless approved by the KRRC in writing. Any DCN which requests a change to the Habitat Restoration Work Technical Requirements shall be subject to the KRRC's rights under subsection 10.3.2 (Changes to Habitat Restoration Work Technical Requirements) of this Appendix.

10.4. KRRC HABITAT RESTORATION WORK INSPECTION

10.4.1 Habitat Restoration Work Review Intent.

The KRRC and its designated representatives, including the Program Manager, shall have the right, as provided in this Appendix, periodically to review and inspect Habitat Restoration Work activities and participate in Habitat Restoration Work progress meetings as needed to verify compliance with the Contract Standards. In addition, the KRRC shall have the right to monitor the progress of the Habitat Restoration Work and verify all applications for payment covering all Habitat Restoration Work performed during the preceding calendar month in accordance with the procedures set forth in Article 8 (Compensation for Habitat Restoration Work) of this Agreement. Notwithstanding the KRRC's review of Habitat Restoration Work activities, the Contractor shall be fully responsible for means, methods, techniques, sequences, and procedures of the Habitat Restoration Work, as well as safety precautions and programs in the performance of the Habitat Restoration Work. The KRRC's review and involvement in the Habitat Restoration Work activities is intended for the informational purposes of the KRRC and to monitor compliance with this Agreement. Such activities shall also be a part of the KRRC's independent QA process and shall not be viewed as an additional layer or integral part of the Habitat Restoration Work Quality Management Plan.

10.4.2 "Or Equals".

Whenever an item of material or equipment is specified in the Habitat Restoration Work Technical Requirements by using the name of a proprietary item or the name of a particular supplier, and is followed by the words "or equal", material or equipment of other suppliers may be considered. The KRRC shall determine, acting reasonably, the acceptability of proposed "or equal" items associated with the Habitat Restoration Work. The Contractor shall allocate adequate time in the Document Submittal Procedures for the KRRC to review and approve all "or equal" items for the Habitat Restoration Work. Any delays resulting from submittal of "or equal" items later than as set forth in the Document Submittal shall be the responsibility of the Contractor. The Contractor's design personnel shall be permitted to review proposed "or equal" suppliers for the balance of the Habitat Restoration Work.

10.4.3 Named Suppliers.

Whenever an item of material or equipment is specified in the Habitat Restoration Work Technical Requirements by using the name of a proprietary item or the name of a particular supplier, and is not followed by the words “or equal”, the Contractor shall provide the named material or equipment.

10.4.4 Functionally Equal.

If, in the KRRC’s reasonable discretion, an item of material or equipment proposed by the Contractor for the Habitat Restoration Work is functionally equal to that named, it may be considered by the KRRC as an “or equal” item. A proposed item of material or equipment shall be considered functionally equal to an item so named if:

- (a) The KRRC determines that:
 - (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; and
 - (ii) it shall reliably perform at least equally well the function imposed by the design concept of the completed Habitat Restoration Work as a functioning whole; and
- (b) The Contractor certifies that it shall conform substantially, even with deviations, to the detailed requirements of the item named in this Agreement.

10.4.5 Corrections and Changes.

The procedures to be followed for correction of non-conforming Habitat Restoration Work and for instituting changes and additions to such work are set forth in Article 6 (Habitat Restoration Work) of this Agreement.

10.5. RECORD DRAWINGS

At Habitat Restoration Work Completion, the Contractor shall prepare and submit to the KRRC two complete sets of record drawings for the Habitat Restoration Work as implemented. The record drawings shall be submitted in accordance with the Document Submittal Procedures. The record drawings shall be prepared in accordance with the Contract Standards and shall include any applicable electrical and control wiring schematics/diagrams.

APPENDIX 11
INSURANCE REQUIREMENTS

APPENDIX 11

INSURANCE REQUIREMENTS

11.1. REQUIRED CONTRACTOR HABITAT PROJECT WORK INSURANCE

In connection with the performance of the Habitat Project Work, the Contractor shall obtain, pay for and maintain, or cause to be obtained, paid for and maintained, the insurance coverage listed below beginning on the Habitat Project Work Implementation Contract Amendment Date through each applicable statute of repose.

11.1.1 Professional Liability

A professional liability errors and omissions insurance policy covering negligent acts, errors or omissions arising out of the Contractor's professional services, which policy shall:

- be in an amount not less than \$15,000,000 per claim and in the aggregate;
- be on a "claims-made" basis;
- provide for rectification coverage;
- not contain any exclusion for punitive damages, where punitive damages are insurable;
- contain modified workmanship and liquidated damages exclusions, per industry practice; and
- have an extended reporting or discovery "tail" period, or be renewed for a period, of not less than the statute of repose.

Such policy shall have a retroactive date effective before the commencement of any Preliminary Services.

The primary design professional shall maintain its practice policy for the discovery period required above in an amount not less than \$15,000,000. Such practice policy shall not include any exclusionary language relating to habitat restoration joint ventures or partnerships, or both.

11.1.2 Commercial General Liability

A commercial general liability insurance policy, written on an occurrence basis and be at least as broad as the most recently issued Insurance Services Office (ISO) Form CG 0001, and covering liabilities arising out of the performance of the Habitat Project Work, including independent contractors, products and completed operations, personal and advertising liability, and liability assumed under an insured contract, and (unless covered under separate professional liability insurance) professional services provided in connection with the performance of the Habitat Project Work. The policy shall not include exclusions for property damage from explosion, collapse or underground hazard, or inadvertent construction defects. The products and completed operations liability coverage shall be maintained through the statute of repose. The insurance shall apply separately for each insured against whom a claim is made or a lawsuit is brought, subject only to the insurance policy limits of liability. This insurance policy shall:

- have coverage for any one occurrence or claim of not less than \$2,000,000 per occurrence, \$4,000,000 general aggregate, and \$4,000,000 products completed operations with project specific limits;
- be maintained throughout the Term through the statute of repose; and
- also include terrorism, premises-operations, blanket contractual liability, and host liquor liability.

11.1.3 Commercial Automobile Liability

A commercial automobile liability insurance policy with limits of liability of not less than \$5,000,000 combined single limit for bodily injury and property damage, which requirement may be met by any combination of primary and excess coverage so long as the excess is written on a “follow form” (or as broad as) basis. The insurance must cover liability arising from any Contractor’s motor vehicle, including owned, non-owned, leased, hired, rented, borrowed or otherwise assigned to or used in connection with the performance of the Habitat Project Work.

11.1.4 Workers’ Compensation and Employer’s Liability

Workers’ compensation as required by Applicable Law, and employer’s liability insurance having coverage limits of \$1,000,000 for each accident, \$1,000,000 for disease (each employee), and \$1,000,000 for disease (policy limit). Workers’ compensation insurance shall be in accordance with the requirements of the laws of each of the States, as amended from time to time. The required workers’ compensation insurance shall include other states’ coverage, voluntary compensation coverage, and if applicable, federal longshoreman and harbor workers coverage.

11.1.5 Excess Liability

An excess liability insurance policy with limits of liability of not less than \$75,000,000. The insurance coverage shall be as broad as and follow form of the commercial general liability, commercial automobile liability, watercraft and aircraft liability, and employer’s liability coverages required pursuant to Section 11.1 (Required Contractor Habitat Project Work Insurance) of this Appendix. The policy shall include a drop-down provision over the primary policies and a priority of coverage endorsement.

11.1.6 Watercraft and Aircraft Liability

If the Contractor or any Subcontractor intends to utilize any watercraft, aircraft, helicopters or drones as part of the Habitat Project Work, the Contractor or such Subcontractor must procure and maintain insurance, through the general corporate policies of the Contractor or its affiliates, project-specific policies, a contractor controlled insurance program or a combination of the foregoing, for claims arising from bodily injury and property damage, with limits not less than the following amounts:

- Watercraft: \$5,000,000 per occurrence;
- Aircraft: \$5,000,000 per occurrence;
- Helicopters: \$10,000,000 per occurrence; and
- Drones: \$5,000,000 per occurrence.

Watercraft and aircraft liability insurance is not required if the Contractor or a Subcontractor is exclusively using drones under 10 kilograms in weight, so long as such smaller drones are covered by the commercial general liability policy described in Section 11.1.2 (Commercial General Liability) of this Appendix.

11.1.7 Contractors' Machinery, Tools and Equipment Insurance

Contractors' machinery, tools and equipment insurance sufficient to cover physical damage to all owned, leased, rented, or borrowed machinery, tools and equipment used on the jobsite, including rental charges. All contractors' miscellaneous tools shall be covered by the individual Contractor or Subcontractor. Coverage for machinery, tools and equipment insurance shall include a provision which waives all of the Contractor's rights against the KRRC or Contractor Indemnitees for damages covered by such machinery, tools and equipment insurance.

11.2. GENERAL CORPORATE INSURANCE AND PROJECT SPECIFIC POLICIES

11.2.1 Corporate Insurance Policies Generally

For the insurance coverages required pursuant to Section 11.1.3 (Commercial Automobile Liability), Section 11.1.4 (Workers' Compensation and Employer's Liability), Section 11.1.6 (Watercraft and Aircraft Liability) and Section 11.1.7 (Contractors' Machinery, Tools and Equipment Insurance) of this Appendix, the Contractor may provide insurance coverage through its general corporate insurance policies, so long as such corporate policies meet the coverage limits and the other requirements set forth in Section 11.1 (Required Contractor Habitat Project Work Insurance) of this Appendix.

11.2.2 Project Specific Policies or Corporate Policies with Dedicated Project Limits for Professional Liability Insurance

The insurance coverage required by Section 11.1.1 (Professional Liability), shall be a project specific policy.

In the event that, during the Term of this Agreement, the Contractor puts in place a corporate professional liability policy that (a) provides coverage meeting the requirements set forth in Section 11.1.1 (Professional Liability); and (b) such replacement corporate professional liability policy contains dedicated project limits of at least \$15,000,000, then the requirement set forth in this subsection that the Contractor maintain a project specific insurance policy shall no longer be applicable. For these purposes, a corporate professional liability policy with dedicated project limits means a policy under which at least \$15,000,000 is available to pay claims related to the Project notwithstanding the erosion of coverage that results from other insured claims made against the Contractor or the Guarantor. The determination of whether the replacement corporate professional liability policy meets the elements of this subsection shall be made by the KRRC, acting reasonably.

11.2.3 Project Specific Policies or Corporate Policies with Dedicated Project Limits for Commercial General Liability and Excess Liability Insurance

The insurance coverages required by Section 11.1.2 (Commercial General Liability) and Section 11.1.5 (Excess Liability) of this Appendix shall be project specific policies (the "**Commercial Liability Policies**").

As of the Contract Date, the Contractor's general corporate insurance policies do not meet the requirements for the Commercial Liability Policies. In the event that, during the Term of this

Agreement, the Contractor puts in place new general corporate insurance policies that (a) provide coverage meeting the requirements for the Commercial Liability Policies; and (b) such replacement general corporate insurance policies contain dedicated project limits of at least (i) \$75,000,000 for excess liability and (ii) \$2,000,000 per occurrence, \$4,000,000 general aggregate, and \$4,000,000 products completed operations with project specific limits for commercial general liability, then the requirement set forth in this subsection that the Contractor maintain project specific insurance policies shall no longer be applicable. For these purposes a corporate insurance policy with dedicated project limits means a policy under which at least the amounts set forth in clause (b) of this subsection is available to pay claims related to the Project notwithstanding the erosion of coverage that results from other insured claims made against the Contractor or the Guarantor. The determination of whether the replacement corporate insurance policy meets the elements of this Section shall be made by the KRRC, acting reasonably.

11.2.4 KRRC Approval of General Corporate Policies

To assist the KRRC in the exercise of its approval rights for the Contractor's use of dedicated project limits under its general corporate insurance policies pursuant to this Section, the Contractor shall make redacted copies of such insurance policies available for review by the KRRC and its representatives, subject to the execution of an appropriate non-disclosure agreement.

11.3. INSURANCE CERTIFICATES

The insurance described in this Appendix, and any renewal thereof, shall be evidenced by certificates of insurance issued or countersigned by a duly authorized representative of the issuer and delivered to the KRRC and each Contractor Indemnatee. The certificates of insurance shall provide for 60 days' written notice to the KRRC and each Contractor Indemnatee of cancellation, non-renewal or reduction in limits by the insurance company, except 10 days' notice shall be provided in the event of cancellation, non-renewal or reduction in limits due to nonpayment of premium. Upon request of the KRRC or Contractor Indemnatee the Contractor shall deliver proof of payment of premiums for insurance required to be effected pursuant to this Appendix. Upon request by the KRRC, the Contractor shall also deliver to the KRRC a copy of the policies, or in lieu thereof, a copy of the declarations pages, main coverage forms and endorsements applicable to this Agreement; provided that the Contractor acting reasonably, may redact proprietary information from such copies. No review or approval of any insurance certificate or insurance policy by the KRRC shall derogate from or diminish the KRRC's rights under this Agreement.

11.4. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any of the policies of insurance required in this Appendix may provide that the amount payable in the event of any loss shall be reduced by a deductible amount to be paid by the Contractor, which deductible amount shall be commercially reasonable. Alternatively, any of the policies of insurance required in this Appendix may provide for a self-insured retention by the Contractor, which self-insured retention amount shall be commercially reasonable. The Contractor shall be a co-insurer to the extent of the amount deducted from the insurance monies paid in the event of any loss, or the amount of any self-insured retention, and such deductible or self-insured retention amount shall be included as part of the insurance monies payable and paid. Such deductibles and self-insured retentions shall be in accordance with those as are commercially available. In no event shall the KRRC be required to pay any deductible or self-insured retention amount for the insurance described in Section 11.1 (Required Contractor Habitat Project Work Insurance) of this Appendix.

11.5. ADDITIONAL INSURED

Using ISO endorsement CG 2010 (1985 version), CG 2033 and CG 2037 or equivalent substitutions, the Contractor shall name the KRRC, each Contractor Indemnitee, Del Norte County and Siskiyou County, and each of their respective officers, officials and employees, as “Additional Insureds” on all policies required in this Appendix; provided, however, no additional insured endorsement shall be required for the insurance required by Section 11.1.1 (Professional Liability) and Section 11.1.4 (Workers’ Compensation and Employer’s Liability) of this Appendix.

11.6. CHANGES IN INSURANCE COVERAGE

The Contractor shall use its best efforts to obtain such additional insurance as the KRRC may request from time to time, and the costs of such additional insurance shall be a pass-through cost to the KRRC.

11.7. COST OF INSURANCE

If the KRRC chooses to arrange for the insurance outlined in this Appendix, the KRRC may elect to obtain such insurance, provided that:

- written notice is received by the Contractor at least 90 days prior to the expiration date of the insurance placed by the Contractor;
- the KRRC may at any time during the Term, upon 90 days’ written notice, require the Contractor to assume the responsibility to obtain the Required Insurance;
- the KRRC names the Contractor and the Guarantor as additional insureds upon assumption of such responsibility; and
- the KRRC pays any cancellation penalty (or short-rate) arising out of canceling the Contractor provided coverage required this Appendix, prior to the expiration date.

The Contractor shall reduce its Habitat Restoration Work Price or Habitat Maintenance Services Fee, as applicable, in proportion to the costs of such insurance as a result of the Contractor no longer needs to provide such insurance.

11.8. QUALIFICATIONS OF INSURERS

The Contractor is required to obtain the insurance set forth in this Appendix with insurance companies that are licensed or allowed to transact business in each of the States and that carry a minimum rating of “A-VIII,” or equivalent, by A.M. Best’s key rating guide.

11.9. SUBCONTRACTORS

The Contractor shall be responsible for ensuring that all Subcontractors, which are working on the Habitat Project Work Area or otherwise, secure and maintain all insurance coverages (including workers’ compensation, general liability, automobile liability and umbrella liability insurance) and other financial sureties required by the law of each of the States in connection with their presence and other insurance commensurate with the scope of their services. The additional insured parties listed in Section 11.5 (Additional Insureds) of this Appendix shall also be listed as additional insured under any Subcontractor’s automobile liability policy.

11.10. WAIVER OF SUBROGATION

Each party to the Agreement shall waive the subrogation rights of its various insurance carriers in favor of the other party for the policies required in this Appendix.

11.11. NON-RECOURSE PROVISION

All insurance policies required in this Appendix shall provide that the insurers shall have no recourse against the KRRC or Contractor Indemnitees, as additional insureds, for payment of any premium or assessment and shall contain a severability of interest provision in regard to the Contractor's liability policies. The coverages provided by mutual coverage liability insurance policies required hereunder shall be the primary source of any restitution or other recovery for any injuries to or death of persons or loss or damage to property incurred as a result of an action or inaction of the Contractor or its Subcontractors, of their respective Suppliers, employees, agents, representatives, or invitees, that fall within these coverages and also within the coverages of any liability insurance or self-insurance or self-insurance program maintained by the KRRC.

11.12. INSURANCE SHALL BE PRIMARY AND NON-CONTRIBUTING

All insurance policies in this Appendix, except for the insurance described in Section 11.1.4 (Workers' Compensation and Employer's Liability) of this Appendix, shall be primary and non-contributing with any other insurance available to any insureds or additional insureds, including the KRRC and Contractor Indemnitees.

11.13. INSURANCE COVERAGE FORMS

Unless the KRRC approves of the use of the Contractor's general corporate insurance policies pursuant to Section 11.2 (Project Specific and General Corporate Insurance Policies) of this Appendix, the following forms shall be used with respect to the applicable insurance required in this Appendix:

- any commercial general liability insurance shall be written on an industry standard Commercial General Liability Occurrence form (CG 00 01) or equivalent;
- any comprehensive auto liability insurance shall be written on an industry standard Business Auto Liability policy form (CA 00 01) or equivalent; and
- any workers' compensation insurance shall be written on an industry standard Workers' Compensation and Employer's Liability policy form (WC 00 00 00) or equivalent, where applicable.

11.14. CONTRACTOR ACTIONS RESULTING IN CANCELLATION OF INSURANCE

The Contractor shall comply promptly with the requirements of all insurers. The Contractor shall not knowingly do or permit anything to be done that results in the cancellation or the reduction of coverage under any insurance policy relating to the Habitat Project Work.

APPENDIX 12
KEY PERSONNEL AND APPROVED SUBCONTRACTORS

APPENDIX 12

KEY PERSONNEL AND APPROVED SUBCONTRACTORS

12.1. PURPOSE

The purpose of this Appendix is to identify (1) the key management and supervisory personnel proposed to be used by the Contractor in performing the Contract Obligations and (2) those Subcontractors that the KRRC has approved for use by the Contractor in performing the Contract Obligations.

12.2. KEY PERSONNEL

12.2.1 Key Personnel Generally.

As referenced in Section 10.1 (Management) of this Agreement, certain key management and supervisory personnel were proposed by the Contractor and shall be used by the Contractor in connection with the performance of the Contract Obligations (the "Key Personnel"). The Key Personnel are identified in the Contractor's organization chart(s) as set forth in Attachment 12A to this Appendix. Any change in the Key Personnel shall be subject to review and approval of the KRRC in accordance with Section 10.1 (Management) of this Agreement. Resumes for the Key Personnel are included in Attachment 12B and establish the general level of qualifications for the role identified.

12.2.2 Key Personnel.

At a minimum, the Key Personnel shall include the following:

	Contractor Party	Position	Name
1.	Contractor	Contractor Contract Representative	[Insert Name]
2.	Contractor	Project Executive	[Insert Name]
3.	Contractor	Habitat Project Work Manager	[Insert Name]
4.	Contractor	Habitat Restoration Manager	[Insert Name]
5.	Contractor	Senior Supervisor	[Insert Name]
6.	[Subcontractor]	Safety Manager	[Insert Name]
7.	[Subcontractor]	QA/QC Manager	[Insert Name]
8.	[Subcontractor]	[Supply]	[Insert Name]

12.3. SUBCONTRACTORS

12.3.1 Required Subcontractors.

The Subcontractors with whom the KRRC requires the Contractor to enter into a Subcontract for the performance of certain aspects of the Project are the following:

	Subcontractor	Role
1.	[Insert Name/Entity]	[Insert Role]
2.	[Insert Name/Entity]	[Insert Role]

3.	[Insert Name/Entity]	[Insert Role]
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12.3.2 Approved Subcontractors.

The Subcontractors that the KRRC has approved as of the Habitat Project Work Implementation Contract Amendment Date, and the Contractor is permitted to engage for the Contract Obligations in the roles identified below, are the following:

	Subcontractor	Role
1.	[Insert Name/Entity]	[Insert Role]
2.	[Insert Name/Entity]	[Insert Role]
3.	[Insert Name/Entity]	[Insert Role]

ATTACHMENT 12A
KEY PERSONNEL ORGANIZATION CHART
[CONTRACTOR TO SUPPLY].

ATTACHMENT 12B
KEY PERSONNEL ROLES
[CONTRACTOR TO SUPPLY].

APPENDIX 13
CONTRACTOR-SUPPLIED INFORMATION

APPENDIX 13

CONTRACTOR-SUPPLIED INFORMATION

[TO BE IDENTIFIED AND AGREED TO BY THE KRRC AND THE CONTRACTOR.]

APPENDIX 14
DEDUCTIONS

APPENDIX 14

DEDUCTIONS

[TO BE SPECIFIED AND AGREED TO BY THE KRRC AND THE CONTRACTOR.]