

Attachment E

**“Project Agreement for Design, Construction, Demolition and Habitat Restoration Services
in Connection with the Lower Klamath River Project Dams
between
The Klamath River Renewal Corporation
and
Kiewit Infrastructure West Co.”
(Apr. 24, 2019)**

PROJECT AGREEMENT

FOR
DESIGN, CONSTRUCTION, DEMOLITION AND HABITAT RESTORATION SERVICES
IN CONNECTION WITH
THE REMOVAL OF THE LOWER KLAMATH RIVER DAMS

between

THE KLAMATH RIVER RENEWAL CORPORATION

and

KIEWIT INFRASTRUCTURE WEST CO.

Dated

April 24, 2019

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- B. Form of Performance Bond
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REFERENCE DOCUMENTS

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

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1. Project Implementation Work Limits ⁽¹⁾
2. Site Base Maps – Topographic and Bathymetric Surveys ⁽¹⁾
3. Geotechnical Data Report ⁽¹⁾
4. Phase 1 Environmental Site Assessment ⁽¹⁾
5. Phase 2 Environmental Site Assessment ⁽¹⁾
6. Draft Biological Existing Conditions Report (from Draft Biological Assessment) ⁽¹⁾
7. Definite Plan – Appendix L – Cultural Resources Plan ⁽¹⁾
8. Property Boundary Survey ⁽¹⁾
9. CAD Drawings Standards ⁽¹⁾
10. Cost Model Guidelines ⁽¹⁾
11. Existing Conditions Assessment Report ⁽²⁾
12. KRRRC Native Seed Collection Summary⁽¹⁾

COMPLIANCE DOCUMENTS

1. Environmental Compliance Plan ⁽²⁾
2. Oregon Final Clean Water Act Section 401 Water Quality Certification ⁽²⁾
3. California Draft Clean Water Act Section 401 Water Quality Certification ⁽²⁾
4. Klamath County Memorandum of Agreement ⁽¹⁾
5. Siskiyou County Memorandum of Agreement ⁽¹⁾

**[Note: (1) To be included in the Project Agreement on the Contract Date
(2) To be included in the Project Agreement on the GMP Contract Amendment Date or the Project Implementation Contract Amendment Date]**

HATCHERY WORK AND CITY OF YREKA WATERLINE WORK COMPLETE PLANS, DRAWINGS
AND SPECIFICATIONS

1. Hatchery Work Complete Plans, Drawings and Specifications
2. City of Yreka Waterline Work Complete Plans, Drawings and Specifications

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PROJECT AGREEMENT
FOR
DESIGN, CONSTRUCTION, DEMOLITION AND HABITAT RESTORATION SERVICES
IN CONNECTION WITH
THE REMOVAL OF THE LOWER KLAMATH RIVER DAMS

THIS PROJECT AGREEMENT (“Project Agreement”) is made and entered into as of April 24, 2019, between the Klamath River Renewal Corporation (the “KRRC”) and Kiewit Infrastructure West Co., a corporation organized and existing under the laws of the State of Delaware and authorized to do business in the State of California and the State of Oregon (the “Project Company”).

RECITALS

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

WHEREAS, in order to implement the terms of the Klamath Hydroelectric Settlement Agreement, the States of California and Oregon caused the KRRC to be 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 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 State of California bonds issued for this project.

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

WHEREAS, the KRRC has applied to FERC for the surrender of the dams’ licensed.

WHEREAS, the KRRC has determined to contract with a private entity on a progressive design-build basis to perform the design, construction, demolition and habitat restoration work necessary to carry out and complete the Project.

WHEREAS, the KRRC issued a request for qualifications on September 18, 2018, in order to shortlist firms whose proposals would be evaluated on a best value basis.

WHEREAS, based on the evaluation of the statements of qualifications submitted in response to the request for qualifications and using the criteria set forth in the request for qualifications, the KRRC shortlisted three firms to submit proposals.

WHEREAS, on December 4, 2018, the KRRC undertook the second phase of the competitive process by issuing to the shortlisted firms a request for proposals for the Project.

WHEREAS, proposals submitted in response to the request for proposals were received in February, 2019 from each of the shortlisted firms.

WHEREAS, the proposals were reviewed by the KRRC based on the evaluation criteria set forth in the request for proposals.

WHEREAS, the KRRC determined that the proposal submitted by the Project Company was the proposal that delivered the best value to the KRRC.

WHEREAS, in April 2019, negotiations were initiated with the Project Company, which negotiations have concluded with this Project Agreement.

WHEREAS, on April 18, 2019, the KRRC's board of directors authorized the execution and delivery of this Project Agreement.

WHEREAS, the governing body of the Project Company has duly authorized the execution and delivery of this Project Agreement.

WHEREAS, the parties intend, but are not obligated, to negotiate and enter into an amendment to this Project Agreement following the advancement of design furnished by the Project Company on a compensated basis, providing for a guaranteed maximum price and a guaranteed schedule for the project implementation work.

WHEREAS, following the expected execution of the definitive guaranteed maximum price amendment and definitive project implementation contract amendment to this Project Agreement and the receipt of all required governmental licenses, permits and approvals, the Project Company will proceed to complete the project design and undertake and complete the project construction, demolition and habitat restoration work.

WHEREAS, the KRRC desires to receive, and the Project Company desires to provide, design, construction, demolition and habitat restoration services under the terms of this Project Agreement.

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 Project 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 Project Implementation Work, including flood protection measures and downstream sediment removal, is to be performed, as more particularly described in Attachment 1B (Description of Adjacent and Related Lands) to Appendix 1 (Project and Project Site Description), and as to which the KRRC will, by the Project 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.

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

“Applicable Law” means (1) any 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 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.

“Approved Subcontractors” means the subcontractors identified in Appendix 10 (Key Personnel and Approved Subcontractors).

“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 Guaranteed Maximum Price” means the initial amount approved by the KRRC as the Guaranteed Maximum Price pursuant to Appendix 8 (Contract Price).

“Base Guaranteed Maximum Price Adjustment” means any adjustment to the Base Guaranteed Maximum Price made in accordance with and subject to the terms and conditions of this Project Agreement, including Appendix 8 (Contract Price).

“Base Preliminary Services” means those services designated as Base Preliminary Services in Appendix 2 (Preliminary Services).

“Baseline Date” means the Contract Date, except that:

(1) With respect to any Project Implementation Work authorized pursuant to an Early Work Package Amendment, the Baseline Date shall mean the Early Work Package Amendment Date; and

(2) Upon the execution and delivery of the Project Implementation Contract Amendment, the Baseline Date shall mean the Project Implementation Contract Amendment Date.

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

“Books and Records” has the meaning set forth in subsection 9.10(A) (Books and Records).

“Business Day” means a day other than a Saturday, Sunday or an official KRRC 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 KRRC and the State of California, acting through the California Natural Resources Agency (Agreement Number P11601-0), as amended, set forth as Reference Document 10 (California Proposition 1 Grant Funding Agreement).

“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.

“Change in Law” means any of the following acts, events or circumstances to the extent that compliance with the change materially expands the scope, interferes with, delays or increases the cost of performing the obligations of the Project Company:

(1) Except as provided below with respect to the exclusions from the definition of “Change in Law”, the adoption, amendment, promulgation, issuance, modification, repeal or written change in administrative or judicial interpretation of any Applicable Law on or after the Baseline Date, unless such Applicable Law was on or prior to the Baseline Date duly adopted, promulgated, issued or otherwise officially modified or changed in interpretation, in each case in final form, to become effective without any further action by any Governmental Body; or

(2) Except as provided below with respect to the exclusions from the definition of “Change in Law”, the order or judgment of any Governmental Body issued on or after the Baseline Date (unless such order or judgment is issued to enforce compliance with Applicable Law which was effective as of the Baseline Date) to the extent such order or judgment is not the result of willful or negligent action, error or

omission or lack of reasonable diligence of the Project Company; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

It is specifically understood, however, that none of the following shall constitute a “Change in Law”:

(1) Acts, events and circumstances with respect to Governmental Approvals to the extent the Project Company has assumed the permitting risk under Section 6.6 (Permitting Responsibilities and Schedule);

(2) Any Change in Law relating to Taxes, except for sales or use Taxes imposed in the United States on materials or equipment incorporated into the Project (or equivalent Taxes imposed by an international taxing jurisdiction);

(3) A change in the nature or severity of the actions typically taken by a Governmental Body to enforce compliance with Applicable Law that was in effect as of the Contract Date;

(4) Any increase in any fines or penalties provided for under Applicable Law in effect as of the Baseline Date; or

(5) Any Change in Law (including the enactment of any statute, or the promulgation of any regulation) the terms and conditions of which do not impose more stringent or burdensome requirements on the Project Company than are imposed by the Contract Standards in effect as of the Baseline Date.

“Change Order” means a written order issued by the KRRC and agreed to in writing by the Project Company prior to Project Final Completion making a Project Technical Requirements Change, a Base Guaranteed Maximum Price Adjustment, an adjustment to any Scheduled Milestone Substantial Completion Date or Milestone Longstop Date, or any other change to the terms and conditions of this Project Agreement. A Change Order shall be deemed to constitute a Contract Amendment.

“City of Yreka Waterline Work” means the construction and construction-related work to be performed as part of the Project Implementation Work in accordance with the City of Yreka Waterline Work Complete Plans, Drawings and Specifications prepared by the KRRC.

“City of Yreka Waterline Work Complete Plans, Drawings and Specifications” means the complete plans, drawings and specifications for the City of Yreka Waterline Work prepared on behalf of the KRRC and attached to this Project Agreement and identified as the “City of Yreka Waterline Work Complete Plans, Drawings and Specifications”.
[Note: To be included on the GMP Contract Amendment Date]

“Compliance Documents” means the documents identified as such in the Table of Contents to this Project Agreement.

“Contract Administration Memorandum” has the meaning set forth in subsection 17.4(B) (Contract Administration Memoranda).

“Contract Amendment” has the meaning set forth in subsection 17.5(A) (Amendments Generally).

“Contract Compensation” means the Preliminary Services Fee and the Contract Price.

“Contract Date” means the date this Project Agreement is executed and delivered by the parties hereto.

“Contract Documents” means:

- (1) This Project Agreement and all Appendices;
- (2) Any Early Work Package Amendment, the GMP Contract Amendment and the Project Implementation Contract Amendment;
- (3) Any Change Order, Unilateral Change Directive or other Contract Amendment;
- (4) The Project Technical Requirements;
- (5) Any Notice to Proceed;
- (6) Any Field Order;
- (7) Any Contract Administration Memorandum; and
- (8) The Issued for Project Implementation Specifications.

It is specifically understood, however, that neither the KHSa nor the Funding Agreements shall constitute “Contract Documents”.

“Contract Obligations” means everything required to be furnished and done by the Project Company for and relating to the Project Work pursuant to the Contract Documents.

“Contract Price” has the meaning set forth in Appendix 8 (Contract Price).

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

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

- (1) Applicable Law;
- (2) The Project Technical Requirements;
- (3) Good Dam Removal Practice;
- (4) The Insurance Requirements;
- (5) The Project Plans, as accepted by the KRRC pursuant to the terms and conditions of the Contract Documents; and
- (6) Any other standard, term, condition or requirement specifically provided in the Contract Documents to be observed by the Project Company.

Subsection 1.2(U) (Applicability, Stringency and Consistency of the Contract Standards) shall govern issues of interpretation related to the applicability, stringency and consistency of the Contract Standards.

“Cost Substantiation” means the process of providing evidence of actual costs in accordance with Section 9.8 (Cost Substantiation).

“Counties” means Siskiyou County and Klamath County.

“County Memoranda of Agreement” or **“County MOA’s”** means the Memoranda of Agreement between KRRC and each County relating to the Project, set forth as Compliance Document 4 (Klamath County Memorandum of Agreement) and Compliance Document 5 (Siskiyou County Memorandum of Agreement).

“CPUC” means the California Public Utilities Commission.

“CPUC Funding Agreement” means the agreement dated December 13, 2017 between KRRC and the CPUC providing funding for the Project, set forth as Reference Document 8 (CPUC Funding Agreement).

“Dam Removal and Initial Habitat Restoration Work” means the embankment dam removal; concrete dam and structures removal; the cofferdams construction; demolition of electrical systems; construction of disposal sites; construction of engineered habitat features; site hydroseeding; and invasive vegetation removal, as more particularly described in Sections 4.7 (Embankment Dam Removal), 4.8 (Concrete Dam and Structure Removal), 4.9 (Cofferdams), 4.10 (Electrical), 4.11 (Disposal Sites), 4.12 (Engineered Habitat Features), 4.13 (Plant Materials), 4.14 (Invasive Exotic Vegetation Removal) and 4.15 (Habitat Restoration) of Appendix 4 (Project Technical Requirements).

“Decommissioning” means PacifiCorp’s physical removal from a facility of any equipment and personal property that PacifiCorp determines has salvage value, and physical disconnection of the facility from PacifiCorp’s transmission grid.

“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 7.2.1 of the KHSA, set forth as Reference Document 6 (Definite Plan), as updated or amended from time to time.

“Deliverable Material” means the Preliminary Services Deliverable Material and the Project Implementation Work Deliverable Material.

“Design Professional Services” means that part of the Project Work consisting of the preparation of plans, Drawings and Specifications for the Project by licensed professional engineering, architectural and land surveying firms, as well as all other services required to be performed by licensed design professionals as part of the Preliminary Services and the Project Implementation Work for the design and engineering of the Project, including professional engineering, architectural and land surveying services.

“Design Professional Services Firm” means any person providing Design Professional Services.

“Differing Site Conditions” means (a) subsurface or latent physical conditions at the Project Site which differ materially from those indicated in the Geotechnical Data Report and the Existing Conditions Assessment Report, or (b) unknown physical conditions at the Project Site, of an unusual nature, which differ materially from those ordinarily encountered

and generally recognized as inherent in work of the character required herein; provided, however, that the term “Differing Site Conditions” excludes:

(1) Conditions otherwise reflected in the Contract Documents existing as of the Baseline Date; and

(2) Conditions of which the Project Company had knowledge as of the Baseline Date, including conditions that could reasonably have been known, discovered or revealed as a result of the examinations, investigations, explorations, tests or studies of the Project Site required to be performed by the Project Company as part of the Preliminary Services, including the development of the Existing Conditions Assessment Report and any additional Preliminary Services relating to the Geotechnical Data Report.

“Document Submittal Procedures” means the procedures for the submittal of Project Implementation Design Documents by the Project Company to the KRRC to be developed by the Project Company in accordance with the requirements set forth in Appendix 2 (Preliminary Services) and Appendix 7 (Project Implementation Work Review Procedures).

“Drawings” means drawings, diagrams, illustrations, schedules and other data that show the scope, extent and character of the Project Implementation Work, as prepared by or on behalf of the Project Company.

“Early Work Package” has the meaning set forth in subsection 5.7(A) (Early Work Packages).

“Early Work Package Amendment” has the meaning set forth in subsection 5.7(A) (Early Work Packages).

“Early Work Package Amendment Date” means the date that an Early Work Package Amendment is executed and delivered by the parties.

“Early Work Package Bonds” has the meaning set forth in subsection 16.2(A) (Early Work Package Bonds).

“Early Work Package Price” means the base price established in any Early Work Package for the portion of the Project Implementation Work to be performed thereunder.

“Early Work Package Submittals” has the meaning set forth in subsection 5.7(A) (Early Work Packages).

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

“Engineer-of-Record” means the professional engineer licensed in the State in which the Project Implementation Work is being performed and in good standing who is designated by the Project Company and acceptable to the KRRC, acting reasonably, as the engineer responsible for the preparation, signing, dating, sealing and issuing of the applicable Project Implementation Design Documents and all other engineering documents relating to all or a portion of the Project Implementation Work.

“Environmental Compliance Plan” means the Project Company’s plan for the management of environmental compliance activities and reporting of such results in accordance with the applicable Governmental Approvals during the Project Implementation

Period, to be developed as part of the Preliminary Services in accordance with the requirements in Appendix 2 (Preliminary Services).

“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 4.3 (Environmental Review).

“Environmental Site Assessments” means the Phase 1 Environmental Site Assessment and Phase 2 Environmental Site Assessment, set forth as Reliance Document 4 (Phase 1 Environmental Site Assessment) and Reliance Document 5 (Phase 2 Environmental Site Assessment).

“EPA” means the United States Environmental Protection Agency.

“Event of Default” means, with respect to the Project Company, those items specified in Section 12.2 (Events of Default by the Project Company) and, with respect to the KRRRC, those items specified in Section 12.5 (Events of Default by the KRRRC).

“Existing Conditions Assessment Report” means the report so designated to be prepared by the Project Company during performance of the Preliminary Services in accordance with the requirements in Appendix 2 (Preliminary Services).

“Expiration Date” means the last day of the final Warranty Period or the date on which Project Final Completion occurs, whichever is later.

“Extended Warranty Fee” has the meaning set forth in subsection 10.1(C) (Optional Extension of Warranty Periods).

“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 1 (Project and Project Site Description). For the purposes of this Project 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.

“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 Regulation 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 KRRC’s “Application for Surrender of License for Major Project and Removal of Project Works”, seeking FERC’s approval of an application 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 that are currently occupied by the Facilities.

“FERC License Transfer Order” means the final order or orders issued by FERC approving the KRRC and PacifiCorp’s “Joint Application for Approval of License Amendment and License Transfer”, seeking a separate license for the Facilities from other PacifiCorp owned facilities and to transfer the license for the Facilities from PacifiCorp to KRRC.

“Final Habitat Restoration Work” means the work necessary after the Dam Removal and Initial Habitat Restoration Work relating to completion of the irrigation system; plant establishment and maintenance; and the establishment of long term monitoring efforts, as more particularly described in Sections 4.15 (Habitat Restoration), 4.16 (Irrigation), 4.17 (Plant Establishment and Maintenance), and 4.18 (Plant Monitoring) of Appendix 4 (Project Technical Requirements).

“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.

“General Conditions Costs” has the meaning set forth in Appendix 8 (Contract Price).

“Geotechnical Data Report” means the geotechnical data report prepared by AECOM and set forth as Reliance Document 3 (Geotechnical Data Report).

“GMP Contract Amendment” has the meaning set forth in subsection 5.9(B) (Negotiation and Execution of the GMP Contract Amendment).

“GMP Contract Amendment Date” has the meaning set forth in subsection 5.9(B) (Negotiation and Execution of the GMP Contract Amendment).

“GMP Project Submittal” has the meaning set forth in Section 5.8 (GMP Project Submittal).

“Good Dam Removal Practice” means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good design, engineering, construction, demolition and habitat restoration practices as observed for the removal of hydroelectric dam facilities and related structures, improvements and equipment as followed in the States, including those standards set forth in Appendix 4 (Project Technical Requirements).

“Governmental Approvals” means any permit, license, authorization, consent, certification, exemption, ruling, entitlement, variance or approval issued by a Governmental Body of whatever kind and however described, which is required under Applicable Law to be obtained or maintained by any person with respect to the Project Implementation Work,

including the Project Company-Managed Governmental Approvals and the KRRC-Managed Governmental Approvals.

“Governmental Approvals Completion Period” has the meaning set forth in subsection 5.10(A) (Obtaining All Remaining 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 this Project Agreement or the Project.

“Guaranteed Maximum Price” or **“GMP”** has the meaning set forth in Appendix 8 (Contract Price).

“Guarantor” means Kiewit Infrastructure Group, Inc, a corporation organized and existing under the laws of the State of Delaware.

“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).

“Hatchery Work” means the construction and construction-related work to be performed as part of the Project Implementation Work in accordance with the Hatchery Work Complete Plans, Drawings and Specifications prepared by the KRRC.

“Hatchery Work Complete Plans, Drawings and Specifications” means the complete plans, drawings and specifications for the Hatchery Work prepared on behalf of the KRRC and attached to this Project Agreement and identified as the “Hatchery Work Complete Plans, Drawings and Specifications”. **[Note: To be included on the GMP Contract Amendment Date]**

“Hazardous Material” means any waste, substance, object or material deemed 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 Project Company’s plan for health and safety in implementing the Project Implementation Work, to be developed as part of the Preliminary Services in accordance with the Contract Standards and the requirements in Appendix 2 (Preliminary Services) and Appendix 5 (General Project Implementation Work Requirements).

“Health and Safety Representative” has the meaning set forth in subsection 6.14(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 Project 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 Project 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.

“Issued for Project Implementation Specifications” means the Drawings and Specifications which have been prepared by the Project Company and accepted by the KRRC in accordance with the Document Submittal Procedures as final Drawings and Specifications for the commencement of all or any portion of the Project Implementation Work.

“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, set forth as Reference Document 11 (Klamath Hydroelectric Settlement Agreement, as Amended).

“KHSA Indemnity” means an indemnity agreement or indemnity insurance policy satisfying the requirements of Section 7.1.3 and Appendix L of the KHSA.

“Klamath County” means Klamath County, Oregon.

“Known Regulated Site Conditions” means Regulated Site Conditions disclosed to the Project Company in the Reliance Documents and the Compliance Documents, or otherwise known to the Project Company as of the Baseline Date.

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

“KRRC Allowance for Base Guaranteed Maximum Price Adjustments” means the amount established by the KRRC for internal budgetary purposes as an allowance for the cost of potential Base Guaranteed Maximum Price Adjustments.

“KRRC Contract Representative” has the meaning set forth in subsection 17.6(B) (KRRC Contract Representative).

“KRRC Fault” means:

- (1) A breach by the KRRC of any of its obligations under this Project Agreement;
- (2) A breach of any representation or warranty by the KRRC under this Project Agreement;
- (3) Willful misconduct of the KRRC or a Project Company Indemnitee; or
- (4) A negligent act or omission of the KRRC or a Project Company Indemnitee.

“KRRC-Managed Governmental Approvals” means those Governmental Approvals for which the KRRC is the application manager and is responsible for obtaining, as designated in Table 3-2 of Appendix 3 (Governmental Approvals).

“KRRC Property” means any structures, improvements, equipment, or other real or personal property owned, leased, operated, maintained, or occupied by the KRRC.

“Legal Proceeding” means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Project Agreement, and all appeals therefrom.

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

“Loss-and-Expense” has the meaning set forth in subsection 15.1(A) (Indemnification-Related Defined Terms).

“Maintenance Bond” means the maintenance bond provided by the Project Company as described in and maintained pursuant to this Project Agreement and in the form set forth in Transaction Form D (Form of Maintenance Bond).

“Maintenance of Facilities Operations Plan” has the meaning set forth in subsection 6.11(A) (Maintenance of Facilities Operations).

“Material Subcontract” means any Subcontract for the Project Implementation Work with a contract value exceeding \$250,000.

“Material Subcontractor” means any Subcontractor or other contract or that is party to a Material Subcontract.

“Milestone Final Completion” means completion of a Project Implementation Work Element in compliance with the Contract Documents and the requirements of Section 7.7 (Milestone Final Completion).

“Milestone Longstop Date” means the date following any Scheduled Milestone Substantial Completion Date applicable to each Project Implementation Work Element set forth in Section 7.2 (Scheduled Milestone Substantial Completion Dates and Milestone Longstop Dates).

“Milestone Punch List” has the meaning set forth in subsection 7.6(A) (Milestone Punch List Requirements).

“Milestone Substantial Completion” means, with respect to each Project Implementation Work Element, achievement of the applicable Milestone Substantial Completion Date Conditions.

“Milestone Substantial Completion Date” means the date, as applicable, on which a Milestone Substantial Completion has been achieved or is deemed to have been achieved under Section 7.3 (Milestone Substantial Completion Date Conditions).

“Milestone Substantial Completion Date Conditions” means the preconditions for the achievement of a Milestone Substantial Completion by the Project Company, as set forth in Section 7.3 (Milestone Substantial Completion Date Conditions).

“Mobilization and Site Access Plan” means the Project Company’s plan for truck access routes and all mobilization activities for the performance of the Project

Implementation Work, to be developed as part of the Preliminary Services in accordance with the requirements in Appendix 2 (Preliminary Services).

“Monthly Progress Report” has the meaning set forth in Section 4.9 (Monthly Progress Reports).

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

“Non-Binding Mediation” means the voluntary system of dispute resolution through third-party mediation established by Article 11 (Dispute Resolution) for the resolution of any dispute arising under this Project Agreement.

“Notice of Milestone Final Completion” has the meaning set forth in subsection 7.7(B) (Notice and Report of Milestone Final Completion).

“Notice to Proceed” or **“NTP”** means a written notice issued by the KRRC Contract Representative authorizing the Project Company to commence performing a portion of the Project Work, as specified in the Notice to Proceed.

“OPUC” means the Oregon Public Utilities Commission.

“OPUC Funding Agreement” means the agreement dated January 24, 2017 between KRRC and the OPUC providing funding for the Project, set forth as Reference Document 9 (OPUC Funding Agreement).

“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.

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

“PacifiCorp Property” means the parcels of real property on which the core Project Implementation Work, including dam removal, is to be performed by the Project Company, generally constituting the approximately 8,000 acres of “Parcel B Lands” described in the KHSA and more particularly described in Attachment 1A (Description of PacifiCorp Property) to Appendix 1 (Project and Project Site Description).

“PacifiCorp Property Access Agreement” means the property access agreement to be entered into concurrently with the execution and delivery of this Project Agreement between the Project Company and PacifiCorp in the form set forth as Transaction Form E (Form of PacifiCorp Property Access Agreement).

“PacifiCorp Property Transfer Agreement” means the agreement providing for the transfer of fee title to the Project Site and any related real and personal property interests from PacifiCorp to the KRRC. **[Note: To be negotiated and executed on or before the Project Implementation Contract Amendment Date]**

“PacifiCorp Property Transfer Date” has the meaning set forth in subsection 4.4(C) (PacifiCorp Property Transfer Agreement).

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

“Payment Request” means a written submission by the Project Company in the form approved by the KRRC and accompanied by all required supporting documentation, requesting payment hereunder of any portion of the Contract Compensation.

“Performance Bond” means the performance bond provided by the Project Company to secure performance of any Project Implementation Work, including any Early Work Packages, as described in and maintained pursuant to this Project Agreement and in the form set forth in Transaction Form B (Form of Performance Bond).

“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 Project Company and against which the Project Company 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 Project Company, 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 (a) the ability of the Project Company to construct the Project in accordance with this Project Agreement, or (b) the ability of the KRRC to operate the Project;

(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 Project Company and against which the Project Company 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 (a) the ability of the Project Company to perform the Project Implementation Work in accordance with this Project Agreement, or (b) the operation of the Facilities until their decommissioning;

(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 (a) the Project Implementation Work by the Project Company in accordance with this Project Agreement, or (b) the operation of the Facilities until their decommissioning;

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

(7) Encumbrances which are created by a Change in 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 Project Company hereunder prior to the Project 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 Project Company to the KRRC in the performance of the Preliminary Services pursuant to this Project Agreement, including the Preliminary Services Design Documents.

“Preliminary Services Design Documents” means the Project Company’s plans, technical Specifications, Drawings and other documents prepared in connection with the Preliminary Services, constituting part of the Project Technical Requirements.

“Preliminary Services Fee” has the meaning set forth in Section 9.1 (Compensation for Preliminary Services) and Appendix 2 (Preliminary Services).

“Preliminary Services Period” means the period between the Contract Date and the Project 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 2 (Preliminary Services).

“Pre-Reservoir Drawdown Work” means the diversion tunnel improvements and gates; the roads, bridges and culverts improvements; the flood control improvements; and the City of Yreka Waterline Work, as more particularly described in Sections 4.3 (Diversion Tunnel Improvements and Gates), 4.4 (Roads, Bridges and Culverts Improvements), and 4.5 (Flood Control Improvements) of Appendix 4 (Project Technical Requirements).

“Procurement Management Plan” means the Project Company’s plan for managing its procurement processes during performance of the Project Implementation Work, to be developed as part of the Preliminary Services in accordance with the requirements in Appendix 2 (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 Project Agreement on behalf of the KRRC.

“Project” means the performance of the Project Implementation Work, and all other Contract Obligations required to be performed under this Project Agreement.

“Project Agreement” means this Project Agreement for Design, Construction, Demolition and Habitat Restoration Services in connection with the Removal of the Lower Klamath River Dams between the Project Company and the KRRC, including the Appendices and all other Contract Documents.

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

“Project Company Contingency” has the meaning set forth in Appendix 8 (Contract Price).

“Project Company Contract Representative” has the meaning set forth in subsection 17.6(A) (Project Company Contract Representative and Senior Supervisors).

“Project Company Fault” means:

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

“Project Company Fee” has the meaning set forth in Appendix 8 (Contract Price).

“Project Company Indemnification Act, Event or Circumstance” has the meaning set forth in subsection 15.1(B) (Indemnification-Related Defined Terms).

“Project Company Indemnatee” has the meaning set forth in subsection 15.1(B) (Indemnification-Related Defined Terms).

“Project Company Indemnity” means the indemnity obligations of the Project Company under Article 15 (Indemnification).

“Project Company-Managed Governmental Approvals” means those Governmental Approvals for which the Project Company is the application manager and is responsible for obtaining, as designated in Table 3-1 of Appendix 3 (Governmental Approvals).

“Project Company Person” means:

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

“Project Execution Plan” means the Project Company’s project execution plan for implementing the Project Implementation Work, to be developed as part of the Preliminary Services in accordance with the requirements in Appendix 2 (Preliminary Services).

“Project Final Completion” means completion of the Project Implementation Work in compliance with the Contract Documents and the requirements of Section 7.8 (Project Final Completion)

“Project Final Completion Services” means the Project Implementation Work, primarily involving long term habitat monitoring services, to be performed after Milestone Final Completion has been achieved for each Project Implementation Work Element, as more particularly described in Appendix 4 (Project Technical Requirements).

“Project Final Completion Services List” has the meaning set forth in Section 7.8(A) (Project Final Completion Services Requirements).

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

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

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

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

“Project Implementation Design Documents” means the Project Company’s plans, technical specifications, drawings, record drawings and other design documents prepared following the Project Implementation Contract Amendment Date (or in connection with an Early Work Package, the applicable Early Work Package Amendment Date) and based on and consistent with the Project Technical Requirements, in connection with the Project Implementation Work (other than the Hatchery Work and the City of Yreka Waterline Work), including:

- (1) Specifications, Drawings and all other work product generated through the performance of the Design Professional Services following the establishment of the Project Technical Requirements; and
- (2) All technical criteria, written descriptions and design data necessary for obtaining Governmental Approvals and performing Project Implementation Work, such as shop drawings, product data and samples, whether or not such documents are required to be prepared by licensed design professionals.

“Project Implementation Period” means the period beginning on the Project Implementation Contract Amendment Date and ending on the Expiration Date.

“Project Implementation and Quality Management Plan” means the Project Company’s plan for quality assurance and quality control in implementing the Project Implementation Work, to be developed as part of the Preliminary Services in accordance with the requirements set forth in Appendix 2 (Preliminary Services) and Appendix 6 (Project Implementation Work Quality Control Requirements).

“Project Implementation Schedule” means the Project Company’s critical path method completion schedule for the performance of the Project Implementation Work, as set

forth as set forth in Attachment 5A (Initial Project Implementation Schedule) to Appendix 5 (General Project Implementation Work Requirements) on the Project Implementation Contract Amendment Date and as updated and maintained by the Project Company in accordance with subsection 6.2(C) (Project Implementation Schedule and Reports).

“Project Implementation Work” means all Project Work other than the Preliminary Services.

“Project Implementation Work Costs” has the meaning set forth in Appendix 8 (Contract Price).

“Project Implementation 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 Project Company to the KRRC in the performance of the Project Implementation Work pursuant to this Project Agreement, including the Project Implementation Design Documents.

“Project Implementation Work Element” means any or all of the following elements of the Project Implementation Work, as applicable: Hatchery Work; Pre-Reservoir Drawdown Work; Dam Removal and Initial Habitat Restoration Work; and Final Habitat Restoration Work.

“Project Manager” has the meaning set forth in subsection 8.1(A) (Project Manager).

“Project Plans” means the Project Implementation and Quality Management Plan, the Document Submittal Procedures, the Health and Safety Plan, the Maintenance of Facilities Operations Plan, the Project Execution Plan, the Procurement Management Plan, the Related Projects Coordination Protocol, the Security Plan, the Subcontracting Plan, the Mobilization and Site Access Plan, the Environmental Compliance Plan and any sub-plan to the plans listed in this definition.

“Project Schedule” means the overall Project schedule, including the Preliminary Services Schedule and the Project Implementation Schedule.

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

“Project Technical Requirements” means the Specifications, Drawings, and other technical requirements for the performance of the Project Implementation Work set forth in Appendix 4 (Project Technical Requirements) developed by or on behalf of the Project Company through the performance of the Preliminary Services and established in any Early Work Package Amendment and the Project Implementation Contract Amendment, as applicable. **[Note: To be finalized and incorporated into Appendix 4 on the GMP Contract Amendment Date based on the GMP Project Submittal, and confirmed or revised in the Project Implementation Contract Amendment.]**

“Project Technical Requirements Change” means a change in the Project Technical Requirements made by a Change Order pursuant to Section 6.8 (Changes to the Project Technical Requirements at Project Company Request), or pursuant to Section 6.9 (Other Changes to the Project Technical Requirements), or by a Unilateral Change Directive pursuant to Section 6.10 (Unilateral Change Directives), (1) as a result of a Project Company request agreed to by the KRRC, (2) due to Uncontrollable Circumstances, (3) as a result of a term or condition imposed by a Change in Law, or (4) at the direction of the KRRC.

“Project Warranties” has the meaning set forth in subsection 10.1(A) (Project Warranties Defined).

“Project Work” means everything required to be furnished and done by the Project Company for and relating to the Project pursuant to the Contract Documents, including the Design Professional Services and the Project Implementation Work. Project Work includes the employment and furnishing of all labor, materials, equipment, supplies, tools, scaffolding, transportation, Utilities, insurance, temporary facilities and other things and services of every kind whatsoever necessary for the full performance and completion of the Project Company’s design, engineering, permitting, procurement, construction, demolition, removal, habitat restoration and related obligations with respect to the Project under the Contract Documents, including all completed structures, assemblies, fabrications, acquisitions and installations, all facilities demolition and debris and rubble disposal, and all of the Project Company’s administrative, accounting, recordkeeping, notification and similar responsibilities of every kind whatsoever under the Contract Documents pertaining to such obligations, including all work performed pursuant to Early Work Package Amendments, the Preliminary Services, the Project Implementation Work, and the Warranty Work. A reference to Project Work shall mean any part and all of the Project Work unless the context otherwise requires, and shall include all Project Work authorized by Change Order, Unilateral Change Directive or Contract Amendment.

“Proposal” means the proposal submitted by the Project Company on February 12, 2019 in response to the RFP.

“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 Materials” means the documents identified as such in the Table of Contents to this Project Agreement.

“Regulated Site Condition” means, and is limited to:

- (1) surface or subsurface structures, materials or conditions having historical, archaeological, cultural, religious, scientific or similar significance;
- (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; and
- (4) the presence of Regulated Substances anywhere in, on or under the Project Site (including presence in surface water, groundwater, soils or subsurface strata), but not including Regulated Substances used, stored or otherwise brought to the Project Site by the Project Company or any Subcontractor as provided in subsection 6.5(A) (Project Company Responsibilities and Indemnity).

“Regulated Substance” means (1) any oil, petroleum or petroleum product and (2) any pollutant, contaminant, hazardous substance, Hazardous Material, toxic substance, toxic pollutant, solid waste, municipal waste, industrial waste or hazardous waste that is defined as such by and is subject to regulation under any Applicable Law; except that de minimis quantities of any of the foregoing that are expressly exempted from regulation or remediation under Applicable Law shall not constitute a Regulated Substance hereunder.

“Related Projects” has the meaning set forth in subsection 6.11(B) (Related Projects Generally).

“Related Projects Coordination Protocol” means the protocol providing the framework for the coordination of the Project with the Related Projects, to be developed as part of the Preliminary Services in accordance with the requirements in Appendix 2 (Preliminary Services).

“Reliance Documents” means the documents identified as such in the Table of Contents to this Project Agreement.

“Relief Request Notice” has the meaning set forth in subsection 14.2(C) (Submittal of Relief Request).

“Request for Qualifications” or **“RFQ”** means the KRRC’s Request for Qualifications for the Klamath River Renewal Project issued on September 18, 2018, as amended.

“Request for Proposals” or **“RFP”** means the KRRC’s Request for Proposals for the Klamath River Renewal Project issued on December 4, 2018, as amended.

“Required Insurance” means the insurance policies and coverage required to be provided by the Project Company under this Project Agreement, as set forth in Section 13.1 (Insurance) and Appendix 9 (Insurance Requirements).

“Reservoir Drawdown Work” means the drawdown of the reservoirs impounded by the Facilities, as more particularly described in Section 4.6 (Reservoir Drawdown) of Appendix 4 (Project Technical 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 KRRC 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 KRRC 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 KRRC’s view, in either case, be reasonably likely to materially affect the ability of the Project Company to perform its obligations under this Project 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.

“Schedule of Values” means the detailed, itemized list of prices and costs that establishes the value of each part or component of the Project Implementation Work, to be developed by the Project Company in accordance with the Contract Standards as part of the GMP Project Submittal and to serve as the basis for progress payments of the Contract Price during the Project Implementation Period.

“Scheduled Milestone Substantial Completion Date” means the date for achieving the Milestone Substantial Completion Date applicable to each Project Implementation Work Element following the Project Implementation Contract Amendment Date, as such date may be adjusted on account of the occurrence of an Uncontrollable Circumstance.

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

“Security Plan” means the Project Company’s plan for security at the Project Site in implementing the Project Implementation Work, to be developed as part of the Preliminary Services in accordance with the Contract Standards and the requirements in Appendix 2 (Preliminary Services) and Appendix 5 (General Project Implementation Work Requirements).

“Senior Supervisors” has the meaning set forth in subsection 17.6(A) (Project Company Contract 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.

“Shared Savings Amount” has the meaning set forth in Appendix 8 (Contract Price).

“Siskiyou County” means Siskiyou County, California.

“Site Base Maps” means the site base maps provided in the RFP and set forth as Reliance Document 2 (Site Base Maps – Topographic and Bathymetric Surveys).

“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 8.3(H) (SLTBE Goals).

“Specifications” means the documents prepared by or on behalf of the Project Company comprising written technical descriptions of materials, equipment, construction systems, standards, and workmanship for the Project Implementation 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 Project Company, or a Subcontractor of the Project Company of any tier, with one or more persons in connection with the carrying out of the Project Company’s obligations under this Project Agreement, whether for the furnishing of labor, materials, equipment, supplies, services or otherwise, including contracts for Project Implementation Work, Design Professional Services and Supplies.

“Subcontracting Plan” means the Project Company’s plan for entering into Subcontracts, to be developed as part of the Preliminary Services in accordance with the requirements in Appendix 2 (Preliminary Services).

“Subcontractor” means any person, other than the Project Company, that enters into a Subcontract, including any subcontractors performing Project Work, Design Professional Services Firms and Suppliers.

“Subcontractor Default Insurance” means a contractor default insurance (CDI) policy insuring against the default of some or all of the Subcontractors.

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

“Supplies” means materials, equipment or other supplies furnished in connection with the Project Implementation Work.

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

“Surrender Application” means the Application for Surrender of License for Major Project and Removal of Project Works 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 last day of this Project Agreement resulting from a termination under any provision hereof.

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

“Unallowable Costs” has the meaning set forth in Appendix 8 (Contract Price).

“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 Project Company’s obligations under this Project 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 Project Agreement on the part of the Project Company:

- (1) A Change in Law;
- (2) Errors, omissions or insufficiencies relating to certain information provided to the Project Company by or on behalf of the KRRC, as and to the extent provided in subsection 4.5(B) (Reliance by Project Company on the Reliance Documents);
- (3) The existence of a Differing Site Condition, as and to the extent provided in Section 6.4 (Differing Site Conditions);
- (4) The existence of an Unknown Regulated Site Condition, as and to the extent provided in Section 6.5 (Regulated Site Conditions);
- (5) A delay in the issuance of a Project Company-Managed Governmental Approval, as and to the extent provided in subsection 6.6(G) (Allowable Relief in Connection with Delays in the Issuance of Project Company-Managed Governmental Approvals);
- (6) The imposition of any unanticipated terms and conditions on any Governmental Approvals resulting in a material change to the Project Technical Requirements; as and to the extent provided in subsection 6.9(C) (Changes to Terms and Conditions of Governmental Approvals);
- (7) Acts, events or circumstances associated with the Separate Contractors, as and to the extent provided in subsection 6.11(E) (Interrelated Work);
- (8) Naturally occurring events, including unusually severe and abnormal climatic conditions determined in accordance with Section 14.5 (Unusually Severe and Abnormal Climatic Events), landslides, underground movement, earthquakes, fires, tornadoes, hurricanes, floods, lightning, epidemics and other acts of God;
- (9) Explosion, terrorism, sabotage or similar occurrence, acts of a declared public enemy, extortion, war, blockade or insurrection, riot or civil disturbance;
- (10) Labor disputes, strikes, slowdowns, stoppages, boycotts or disruption affecting a specific trade on a national or regional level, to the extent not caused by Project Company Fault;
- (11) The failure of any Subcontractor (other than the Project Company or any Affiliate of the Project Company) to furnish services, materials or equipment on the dates agreed to, but only if such failure is the result of an event which would constitute an Uncontrollable Circumstance if it affected the Project Company directly, and the

Project Company is not able after exercising all reasonable efforts to obtain timely substitutes;

(12) Any failure of title to the Project or any placement or enforcement of any Encumbrance on the Project not consented to in writing by, or arising out of any action, omission or agreement entered into by, the Project Company, other than Permitted Encumbrances;

(13) 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;

(14) An act, event or circumstance occurring that (1) directly impacts the Suppliers or vendors of the Project Company or with respect to the performance of the Project Implementation Work, respectively, and (2) would otherwise constitute an Uncontrollable Circumstance affecting the Project Company directly, as determined in accordance with Article 14 (Uncontrollable Circumstances);

(15) With respect to the Project Company, any KRRC Fault or Change Order not made due to Project Company Fault; or

(16) Any other act, event or circumstance specifically identified herein as providing a basis for Uncontrollable Circumstance relief.

“Unilateral Change Directive” has the meaning set forth in Section 6.10 (Unilateral Change Directives).

“Unknown Regulated Site Conditions” means Regulated Site Conditions that are not Known Regulated Site Conditions.

“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.

“Warranty Period” has the meaning set forth in subsection 10.1(B) (Term of the Project Warranties).

“Warranty Work” means all work and services required to be performed or provided by the Project Company pursuant to the Project Warranties in accordance with Article 10 (Project Warranties).

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

SECTION 1.2. INTERPRETATION.

This Project Agreement shall be interpreted according to the following provisions, except to the extent the context or the express provisions of this Project 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 Sections of this Project 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 Project 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 Project Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Project Agreement. Without limiting the generality of the foregoing, this Project Agreement shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions, including those contained in the RFQ, the submittal made by the Project Company in response thereto, the RFP, the Proposal, and any amendments or supplements to any such documents.

(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, specifications, schedules, or otherwise) shall be construed to require the Project Company 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 construction materials or workmanship, the Project Company shall use only workmanship and new materials of a quality consistent with that of construction 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, codes and specifications are to the most recently published professional and technical standards, codes and specifications of the institute, organization, association, authority or society specified, all as in effect as of the Baseline Date. Unless otherwise specified to the contrary, all such professional and technical standards, codes and specifications shall apply as if incorporated in the Contract Documents. If any material revision to such professional and technical standards, codes and specifications occurs after the Baseline Date, and prior to completion of the applicable Project Implementation Work, the KRRC shall have the right, through a Unilateral Change Directive or a Change Order, to direct the Project Company to perform the applicable Project Implementation Work in accordance with the revised professional and technical standard, code, or specification, subject to the Project Company’s rights under this Project Agreement with respect to Unilateral Change Directives and Change Orders at the direction of the KRRC. Nothing in this Section shall limit the Project Company’s obligation to comply with Applicable Law as in effect during the Term.

(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 Project Agreement.

(R) Party Bearing Cost of Performance. All obligations undertaken by each party hereto 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 Guaranteed Maximum Price.

(S) Good Dam Removal Practice. Good Dam Removal Practice shall be utilized hereunder, among other things, to implement and in no event displace or lessen the stringency of, the Contract Standards.

(T) 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 and Change Orders 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 or Change Order. All terms and conditions of such other Contract Documents that are not expressly modified or deleted by a Contract Amendment or Change Order, however, shall remain in effect. Subject to the foregoing terms in this Section, subsection (U) (Applicability, Stringency and Consistency of Contract Standards) of this Section shall govern matters of interpretation related to the applicability, stringency 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 17.4 (Contract Administration).

(U) Applicability, Stringency and Consistency of Contract Standards. The Project Company 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 Project Company hereunder, each such applicable Contract Standard shall be complied with. In the event there are different levels of stringency among such applicable Contract Standards, the most stringent of the applicable Contract Standards shall govern; provided, however, that Contract Standards established pursuant to the Project Technical Requirements shall have precedence and govern over any more stringent applicable Contract Standard. Except as otherwise provided in the preceding sentence with regard to Contract Standards established pursuant to the Project Technical Requirements, in the event of any inconsistency among the Contract Standards, the KRRC's determination, acting reasonably, as to the applicable standard shall be binding.

(V) Delivery of Documents in Digital Format. In the Contract Documents, the Project Company is obligated to deliver reports, records, designs, plans, Drawings, Specifications, proposals and other documentary submittals in connection with the performance of its duties hereunder. The Project Company agrees that all such documents shall be submitted to the KRRC both in printed form (in the number of copies indicated) and, at the KRRC's request, in digital 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 Project Agreement. In the event that a conflict exists between the signed or the signed and stamped hard copy of any document and the digital copy thereof, the signed and stamped hard copy shall govern.

(W) Severability. Each provision of this Project Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Project 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 Project 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 Project 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 Project Agreement as nearly as possible to its original intent and effect.

(X) Drafting Responsibility. The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Project 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.

(Y) No Third-Party Rights; States and PacifiCorp Excepted. This Project Agreement is exclusively for the benefit of the KRRC and the Project Company, and for the States and PacifiCorp, which shall be third party beneficiaries hereof as provided by KHSa Section 7.1.3 and Appendix L and as expressly provided for in Article 15 (Indemnification) and Appendix 9 (Insurance Requirements). The Project Agreement shall not provide any other third parties with any remedy, claim, liability, reimbursement, cause of action or other rights.

(Z) 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 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 Project Agreement. When a party does not have “discretion” it means that the party shall act reasonably.

(AA) Counterparts and Delivery by Electronic Mail. This Project Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Project Agreement. Any party may deliver an executed copy of this Project Agreement by electronic mail and such counterpart shall be deemed effective upon receipt, but that party will promptly deliver via mail or courier to the other parties an originally executed copy of this Project Agreement.

(BB) Governing Law. This Project 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.

(CC) 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 Project Agreement.

(DD) 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.

(EE) 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

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 Project Agreement.

(B) Due Authorization and Binding Obligation. This Project 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 Project 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.

(D) No Governmental 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 Project Agreement by the KRRC, except such as have been duly obtained or made.

(E) No Litigation. There is no Legal Proceeding, at law or in equity, before or by any court, arbitral tribunal or other Governmental Body pending or, to the best of the KRRC's knowledge after due inquiry, overtly threatened or publicly announced 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 Project Agreement by the KRRC or the validity, legality or enforceability of this Project Agreement against the KRRC, or any other agreement or instrument entered into by the KRRC in connection with the transactions contemplated hereby, or on the ability of the KRRC to perform its obligations hereunder or under any such other agreement or instrument.

SECTION 2.2. REPRESENTATIONS AND WARRANTIES OF THE PROJECT COMPANY.

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

(A) Existence and Powers. The Project Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware 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 Project Agreement.

(B) Due Authorization and Binding Obligation. This Project Agreement has been duly authorized, executed and delivered by all necessary corporate action of the Project Company and constitutes a legal, valid and binding obligation of the Project Company,

enforceable against the Project Company 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 Project Company of this Project Agreement nor the performance by the Project Company of its obligations in connection with the transactions contemplated hereby nor the fulfillment by the Project Company of the terms or conditions hereof (1) conflicts with, violates or results in a breach of any constitution, law, governmental regulation, by-laws or certificates of incorporation applicable to the Project Company or (2) conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument to which the Project Company or any of its Affiliates is a party or by which the Project Company 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 Project Company has no commitments, obligations, or impediments of any kind that would have a material and adverse impact on the ability of the Project Company to perform the Contract Obligations in accordance with the Contract Standards. The Project Company covenants that it will not enter into any such commitment throughout the Term.

(E) 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 Project Agreement by the Project Company except as such have been duly obtained or made.

(F) Licensing and Registration Requirements. The Project Company possesses all licenses required under Applicable Law to perform the services required of the Project Company under this Project Agreement and is not in violation of any of the terms or conditions of such licenses. The Project Company is registered with all appropriate Governmental Bodies to the extent necessary to perform all services required of the Project Company under this Project Agreement.

(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 or, to the best of the Project Company's knowledge after due inquiry, overtly threatened or publicly announced against the Project Company, 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 Project Agreement by the Project Company or the validity, legality or enforceability of this Project Agreement against the Project Company, or any other agreement or instrument entered into by the Project Company in connection with the transactions contemplated hereby, or on the ability of the Project Company to perform its obligations hereunder or under any such other agreement or instrument.

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

(I) Applicable Law Compliance. To the best of its knowledge after due inquiry, the Project Company 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 Project Company or any of its Affiliates.

(J) Information Supplied by the Project Company. The information supplied and representations and warranties made by the Project Company in all submittals made in response to the RFQ and RFP with respect to the Project Company (and to its knowledge after due inquiry, all information supplied in such submittals with respect to any Affiliate or Subcontractor) are true, correct and complete in all material respects.

(K) Intellectual Property. The Project Company owns, or has sufficient rights to use, all Intellectual Property necessary for the Project without any material conflict with the rights of others.

(L) Practicability of Performance. Subject to, and in accordance with, the terms of this Project Agreement, the Project Company assumes the risk of the practicability and possibility of performance of the Contract Obligations in compliance with the requirements of the Contract Standards on the scale, within the time for completion, and in the manner required hereunder, 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 Project Agreement shall become effective, and the term hereof (the “**Term**”) shall commence, on the Contract Date. The Term shall continue to the Expiration Date or, if this Project Agreement is earlier terminated by either party in accordance with their respective termination rights under Article 12 (Breach, Default, Remedies and Termination), to the Termination Date.

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

(1) Limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination; or

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

SECTION 3.2. SURVIVAL.

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

(1) Article 2 (Representations and Warranties);

(2) Section 4.8 (Deliverable Material);

(3) Subsection 5.9(I) (Elective Continuance of the Project by the KRRC on Other Bases Using the Lead Design Subcontractor);

(4) Subsection 5.9(J) (Elective Continuance of the Project by the KRRC with Other Contractors)

(5) Section 9.9 (Interest on Overdue Obligations);

(6) Section 9.10 (Retention and Audit of Books and Records);

(7) Section 10.3 (Project Warranties Not Exclusive);

(8) Article 11 (Dispute Resolution);

(9) Article 12 (Breach, Default, Remedies and Termination), as applicable to the obligations of the parties following the Termination Date;

(10) Article 15 (Indemnification), including all of the indemnities, limitations and releases set forth therein;

(11) Section 17.7 (Property Rights);

(12) Attachment 8C (Schedule of Values and Project Company Contingency) of Appendix 8 (Contract Price) regarding Subcontractor and Surety recoveries;

(13) Appendix 9 (Insurance Requirements);

(14) All provisions of this Project Agreement with respect to payment obligations of the Project Company or the KRRC accrued prior to the Termination Date;

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

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

ARTICLE 4

GENERAL PERFORMANCE REQUIREMENTS

SECTION 4.1. PROJECT SCOPE.

(A) Project Scope Generally. The Project and the Project Site are generally described in Appendix 1 (Project and Project Site Description). The Project Company recognizes that the Project will ultimately be defined by the Project Technical Requirements, which will be developed by the Project Company as part of the Preliminary Services and included in this Project Agreement as Appendix 4 (Project Technical Requirements) as part of the GMP Contract Amendment. The Project Company further recognizes that the KRRC may provide for the design and construction of certain Related Projects through Separate Contractors, and such Related Projects are not included within the scope of the Project Implementation Work, except as specifically provided in Section 6.11 (Interface and Coordination).

(B) Pricing Established on the Contract Date. The parties acknowledge and agree that the Project Company Fee and the maximum limit on the price payable for the Preliminary Services, were proposed by the Project Company as part of the Proposal, negotiated by the parties prior to the Contract Date and included in this Project Agreement as executed on the Contract Date, and shall not be the subject of: (1) any Early Work Package Submittal or any Early Work Package Amendment; (2) the GMP Project Submittal or the GMP Contract Amendment; or (3) the Project Implementation Contract Amendment.

(C) Pricing to be Established Subsequent to the Contract Date. The parties further acknowledge and agree that all other elements of pricing provided for in this Project Agreement are to be negotiated by the parties subsequent to the Contract Date, based in part on the information in the Proposal, in connection with establishing an Early Work Package Amendment, the GMP Contract Amendment and the Project Implementation Contract Amendment in accordance with the terms and conditions of this Project Agreement. These elements include any Base Early Work Package Price and the Base Guaranteed Maximum Price, which is to be: (1) negotiated and included in the GMP Contract Amendment based on the estimates and assumptions set forth with respect thereto in the Proposal, as modified by the Project cost model updates made during the performance of the Preliminary Services; and (2) modified, if necessary, in the Project Implementation Contract Amendment.

(D) Expected Amendments to this Project Agreement Prior to Commencement of the Project Implementation Work. As of the Contract Date, the parties expect (but without obligation) to enter into the following Contract Amendments to this Project Agreement prior to the commencement of the Project Implementation Work:

(1) an Early Work Package Amendment, providing for the purchase of gates necessary to be installed as part of the Pre-Reservoir Drawdown Work;

(2) the GMP Contract Amendment, establishing the Base Guaranteed Maximum Price, the Scheduled Milestone Substantial Completion Dates and the Milestone Longstop Dates, following the negotiation of the GMP Project Submittal; and

(3) the Project Implementation Contract Amendment, following the receipt of all Governmental Approvals necessary to commence the Project Implementation Work.

Other Contract Amendments may also be entered into by agreement of the parties as appropriate.

(E) Estimated Guaranteed Maximum Price. As of the Contract Date, the estimated Base Guaranteed Maximum Price is \$250,000,000. This estimate is based on all relevant information available to the parties as of the Contract Date, including the cost estimating information contained in the Reference Documents and discussions between the parties as to the assumptions and qualifications contained therein. It does not reflect estimates as to potential Base Guaranteed Maximum Price Adjustments, which will be estimated by the parties and determined and accounted for by the KRRC in connection with the GMP Contract Amendment and the Project Implementation Contract Amendment. The estimated Guaranteed Maximum Price as set forth in this subsection is for planning purposes only, as of the Contract Date.

(F) Estimated Scheduled Milestone Substantial Completion Dates. As of the Contract Date, the estimated Scheduled Milestone Substantial Completion Dates, based on (1) the issuance of the FERC Surrender Order in the first quarter of 2021, and (2) an estimated Preliminary Services Period (including the negotiation of the GMP Contract Amendment and Project Implementation Contract Amendment) concluding no later than April 15, 2021 are:

Project Implementation Work Element	Estimated Scheduled Milestone Substantial Completion Dates	Estimated Milestone Longstop Dates
1. Hatchery Work	August 15, 2021	September 15, 2021
2. Pre-Reservoir Drawdown Work	October 31, 2021	November 30, 2021
3. Reservoir Drawdown Work	February 15, 2022	March 15, 2022
4. Dam Removal Work and Initial Habitat Restoration Work	October 31, 2022	November 30, 2022
5. Final Habitat Restoration Work	October 31, 2023	November 30, 2023

The estimated Scheduled Milestone Substantial Completion Dates and estimated Milestone Longstop Dates set forth in this subsection are for planning purposes only, as of the Contract Date.

(G) Estimate Updates. The Project Company shall be responsible for updating and refining the estimated Guaranteed Maximum Price, estimated Scheduled Milestone Substantial Completion Dates and estimated Milestone Longstop Dates as part of the Preliminary Services. Ultimately, the parties intend to negotiate and agree on the definitive Scheduled Milestone Substantial Completion Dates and definitive Milestone Longstop Dates in accordance with Section 7.2 (Scheduled Milestone Substantial Completion Dates and Milestone Longstop Dates), and to incorporate the agreed-upon Base Guaranteed Maximum Price, Scheduled Milestone Substantial Completion Dates and Milestone Longstop Dates in the GMP Contract Amendment, to be confirmed or revised in the Project Implementation Contract Amendment.

(H) KHSA Indemnity. The parties acknowledge that the KHSA requires that the KRRC provide a special indemnity of the Project Company Indemnitees by a corporate indemnitor, that the Project Company Indemnity provided hereunder does not constitute such KHSA indemnity, and that the provision of such KHSA indemnity will be required as a condition to entering into the Project Implementation Contract Agreement. The Project Company shall reasonably assist the KRRC in meeting its obligations to provide the KHSA indemnity agreement.

SECTION 4.2. PROJECT COMPANY RESPONSIBILITIES GENERALLY.

(A) Reliance. The Project Company acknowledges and agrees that the KRRC is entering into this Project Agreement in reliance on the Project Company's expertise with respect to the performance of the Contract Obligations. The Project Company 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 corporate obligations, including its obligations under the KHSAs, the Funding Agreements and the FERC License Orders. The Project Company agrees that it will be relieved of its performance obligations under this Project Agreement solely to the extent provided in Section 14.1 (Uncontrollable Circumstances Generally) with respect to the occurrence of Uncontrollable Circumstances.

(B) Scope of the Contract Obligations. The Contract Obligations are divided into the Preliminary Services, the Project Implementation Work and the Warranty Work, each as more particularly described in Article 5 (Preliminary Services and Early Work Packages), Article 6 (Project Implementation Work), and Article 10 (Project Warranties). The Project Company recognizes that, notwithstanding this division, the Contract Obligations may overlap and agrees to perform all Contract Obligations in accordance with the Contract Standards. In no event shall the Project Company commence the Project Implementation Work prior to the Project Implementation Contract Amendment Date and the issuance of a Notice to Proceed with Project Implementation Work in accordance with Section 6.3 (Project Implementation Commencement Date) or, in respect of any Early Work Package, the execution of an Early Work Package Amendment and the issuance of the associated Notice to Proceed in accordance with subsection 5.7(I) (Commencement of Early Work Package). As of the Contract Date, the complete Project Technical Requirements have not yet been developed. The Project Company shall have responsibility for the further development and finalization of the Project Technical Requirements as part of the Preliminary Services. Following the issuance of a Notice to Proceed with the Project Implementation Work, the Project Company shall be solely responsible for undertaking and completing the Project Implementation Work in accordance with the Contract Documents, including supervision, coordination and administration of all Design Professional Services, and all other work reasonably inferable from the Contract Documents.

(C) Compliance with Funding Requirements. The Project Company shall comply with all applicable Funding Requirements, prevailing wage requirements, and State audit requirements. The Project Company 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 change in prevailing wage or other requirements) effective following the Project Implementation Contract Amendment Date, the Project Company shall be entitled to a Base Guaranteed Maximum Price Adjustment to account for any additional cost of compliance. The Project Company shall, upon request, provide the KRRC with an acknowledgement of compliance with any Funding Requirement, together with appropriate supporting documentation not already in the KRRC's possession.

(D) Cooperation. The Project Company agrees to 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 and any Separate Contractor. The Project Company 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 agrees to use all reasonable efforts to work with all such other persons toward fostering such an environment.

(E) Responsibility for Personnel and Subcontractors. All obligations of the Project Company under this Project Agreement shall be performed by Project Company employees, agents or Subcontractors (subject to the limitations set forth in Article 8 (Management, Labor and Subcontractors)) who are qualified to perform the specific services and meet all licensing and certification requirements of Applicable Law. The Project Company shall be fully responsible, in accordance with the terms and conditions of this Project Agreement, for all Contract Obligations performed by its employees, agents or Subcontractors.

SECTION 4.3. 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 Project Implementation Contract Amendment 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 Project Implementation Contract Amendment Date.

(C) Assistance with Environmental Review. Pursuant to Section 2.7 (Potential Additional Preliminary Services) of Appendix 2 (Preliminary Services), the KRRC shall have the option to request that the Project Company, as an Additional Preliminary Services Service, perform services related to the preparation of the EIR and the NEPA Compliance Document.

(D) 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 Environmental Compliance Plan constituting a Compliance Document as part of the GMP Contract Amendment, and confirmed or revised as part of the Project Implementation Contract Amendment.

SECTION 4.4. ACCESS TO AND SUITABILITY OF THE PROJECT SITE.

(A) Familiarity with the Project Site. Following the Contract Date and prior to the Project Implementation Contract Amendment Date, the Project Company's agents and representatives, as part of the Preliminary Services, shall inspect and become familiar with the Project Site (and any Related Projects), its physical condition relevant to the obligations of the Project Company pursuant to this Project Agreement, including surface conditions, normal and usual soil conditions, roads, Utilities, topographical conditions and air and water quality conditions and shall review the Geotechnical Data Report, conduct additional geotechnical investigations and develop the Existing Conditions Assessment Report. As of the Project Implementation Contract Amendment Date, the Project Company shall be familiar with all local and other conditions which may be material to the Project Company's performance of the Project Implementation Work (including transportation; seasons and climate; access, availability, disposal, handling and storage of materials and equipment; and availability and quality of labor and Utilities); the Project Company shall have received and reviewed all information regarding the Project Site provided to or developed by it in connection with the Preliminary Services pursuant to this Project Agreement; and the Project Company shall have made all other site investigations that it deems necessary to make a determination as to the

suitability of the Project Site and to submit its GMP Project Submittal to the KRRC in accordance with Section 5.8 (GMP Project Submittal). Subject to and in accordance with subsection 5.9(K) (Project Company Representations in a GMP Contract Amendment), the Project Company's GMP Project Submittal shall serve as a representation by the Project Company that, based on the foregoing and in its capacity as a Project Implementation Work Services provider, that the Project Site constitutes an acceptable and suitable site for the Project Implementation Work in accordance herewith, and that the Project Implementation Work can be performed on the Project Site within the Guaranteed Maximum Price and in accordance with the Contract Standards, including the schedule requirements of this Project Agreement.

(B) Independent Verification of KRRC-Provided Project Site Information. The Project Company acknowledges that, except as otherwise provided in subsection 4.5(B) (Reliance by Project Company on the Reliance Documents), it is responsible for the independent verification and confirmation of any Project Site information, supplied to it by or on behalf of the KRRC, and upon which it elects to rely in connection herewith. Except to the extent specifically provided in Section 4.5 (Information Provided by or on Behalf of the KRRC), Section 6.4 (Differing Site Conditions) and Section 6.5 (Regulated Site Conditions), no error or omission in any Project Site information supplied to the Project Company by or on behalf of the KRRC shall constitute an Uncontrollable Circumstance, or relieve the Project Company from the Contract Obligations or entitle the Project Company to any increase in compensation hereunder. Notwithstanding any factual statement, conclusion, or any language or recommendation contained in any information supplied to the Project Company by or on behalf of the KRRC, the Project Company assumes full responsibility for inspecting the Project Site and for the means and methods of construction, demolition and habitat restoration that it employs when performing the Project Implementation Work.

(C) PacifiCorp Property Transfer Agreement. As of the Contract Date, the KRRC and PacifiCorp are negotiating the terms of the PacifiCorp Property Transfer Agreement. The parties acknowledge and agree that the execution and delivery of the PacifiCorp Property Transfer Agreement sufficient for the purposes of this Project Agreement is a condition to the occurrence of the Project Implementation Contract Amendment Date, and that the execution and delivery of the PacifiCorp Property Transfer Agreement is expected to occur following the issuance of the FERC License Transfer Order.

(D) Access to the PacifiCorp Property Prior to the PacifiCorp Property Transfer Date. Prior to the PacifiCorp Property Transfer Date, the PacifiCorp Property and the Facilities will be owned by PacifiCorp. The Project Company shall, within 15 days following the Contract Date, execute the PacifiCorp Property Access Agreement for the purpose of performing the Preliminary Services through the PacifiCorp Property Transfer Date and shall comply with its terms through the PacifiCorp Property Transfer Date and thereafter as provided therein.

(E) Access to the Adjacent and Related Lands Prior to and Following the PacifiCorp Property Transfer Date. Prior to and following the PacifiCorp Property Transfer Date, the Project Company shall have access to the Adjacent and Related Lands to the extent and on such terms as such access is allowed under access agreements negotiated with the owners of the Adjacent and Related Lands in furtherance of the Project.

(F) Access to the Project Site Following the PacifiCorp Property Transfer Date. The execution of this Project Agreement shall be deemed to constitute the granting of a license to the Project Company to access the Project Site, following the PacifiCorp Property Transfer Date, for the purposes of performing the Contract Obligations, including such additional surface, subsurface and geotechnical studies or tests required to be performed as

part of the Preliminary Services and as deemed necessary by the Project Company prior to the commencement of Project Implementation Work in accordance with Good Dam Removal Practice. Such access shall be subject to the KRRC's prior approval, which shall not be unreasonably withheld, as to time and scope, and shall be subject to all KRRC procedures and requirements regarding Project Site security. The Project Company shall perform all such activities in accordance with the Contract Standards, including the specific requirements set forth in Appendix 2 (Preliminary Services) and Appendix 5 (General Project Implementation Work Requirements), and shall provide the KRRC with all reports or analyses generated by such activities promptly after such reports or analyses are generated. Except to the extent provided in Section 6.5 (Regulated Site Conditions) with respect to Regulated Site Conditions, the Project Company shall assume all risks associated with such activities and shall indemnify, defend and hold harmless the Project Company Indemnitees in accordance with and to the extent provided in Article 15 (Indemnification) from and against all Loss-and-Expense resulting therefrom. Following the issuance of a Notice to Proceed for an Early Work Package in accordance with subsection 5.7(I) (Commencement of Early Work Package) and the Notice to Proceed with the Project Implementation Work in accordance with Section 6.3 (Project Implementation Commencement Date) and for the duration of the Term, the Project Company shall have all Project Site access rights as are necessary for the performance of the Project Implementation Work in accordance with the Contract Documents and such access rights shall not be subject to prior KRRC approval. Notwithstanding any of the foregoing, the Project Company shall at all times comply with the Project Site access requirements and restrictions set forth in the Contract Documents, including Appendix 5 (General Project Implementation Work Requirements) and, when applicable, the PacifiCorp Property Access Agreement attached hereto as Transaction Form E (Form of PacifiCorp Property Access Agreement), and shall coordinate the Project Implementation Work and interface with all Separate Contractors in accordance with Section 6.11 (Interface and Coordination).

SECTION 4.5. 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 Project Company by or on behalf of the KRRC in connection with this Project Agreement except as specifically provided in subsection (B) (Reliance by Project Company 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 Project Company shall assess all risks related to the Project and independently verify and confirm all information supplied to it by or on behalf of the KRRC and upon which the Project Company elects to rely in connection herewith. Except as otherwise provided in subsection (B) (Reliance by Project Company on the Reliance Documents) of this Section and as may reasonably be requested by the Project Company, agreed upon by the KRRC in its discretion, and expressly established in the GMP Contract Amendment, the Project Implementation Contract Amendment or any Early Work Package Amendment, the Project Company shall have no right to relief hereunder or to make any claim against the KRRC, or to seek any adjustment to the Contract Compensation or the Scheduled Milestone Substantial Completion Dates as the result of any error, omission or insufficiency relating to any information provided to the Project Company by or on behalf of the KRRC in connection with this Project Agreement.

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

material and adverse impact on the Project Company's cost or time for performance under this Project Agreement, then the Project Company shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in Article 14 (Uncontrollable Circumstances).

SECTION 4.6. COMPLIANCE WITH APPLICABLE LAW.

(A) Compliance with Applicable Law Generally. The Project Company shall, and shall cause all Subcontractors to, perform the Contract Obligations in accordance with Applicable Law, including the Governmental Approvals, and all other applicable Contract Standards. The Project Company shall provide all notices required by Applicable Law and the 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 Project Company's and all Subcontractors' obligations to comply with Applicable Law (whether or not specifically incorporated or referenced in the Contract Documents).

(B) Compliance with the Terms and Conditions in Governmental Approvals. The Project Company shall comply with all terms, conditions and requirements of all Governmental Approvals required to be made, obtained or maintained under Applicable Law in connection with the performance of the Contract Obligations, including the KRRC-Managed Governmental Approvals. The Project Company shall report to the KRRC, immediately upon obtaining knowledge thereof, all violations of the terms and conditions of any Governmental Approval or Applicable Law pertaining to the Project. The KRRC, in its capacity as the counterparty to the Project Company under this Project Agreement, shall have the right independently to enforce compliance with this Project Agreement regarding the requirements of any Governmental Approval regardless of whether a concurrent or different regulatory enforcement action has been undertaken by any other Governmental Body. Except to the extent caused by an Uncontrollable Circumstance, any violations of or noncompliance with any Governmental Approval caused by the Project Company violating or not being in compliance with a Governmental Approval shall be at the sole risk of the Project Company.

(C) Fines, Penalties, Indemnification and Remediation. In the event that the Project Company or any Subcontractor fails at any time to comply with Applicable Law (including the FERC License Orders and all other Governmental Approvals) with respect to the Project Implementation Work, the Project Company 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) immediately 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 Project Company Indemnitees in accordance with and to the extent provided in Article 15 (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 a failure of the Project Company to comply with Applicable Law.

(D) Assignment of Anti-Trust Claims. In accordance with California Public Contract Code Section 7103.5, in entering into this Project Agreement, the Project Company 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 Project Agreement. The assignment shall be made and become effective at the

time the Agency tenders final payment to the Project Agreement for the Project Implementation Work, without further acknowledgement by the parties.

SECTION 4.7. ENGAGEMENT OF THE PROGRAM MANAGER AND OTHER KRRC REPRESENTATIVES.

The Project Company shall fully 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 Drawings, plans and Specifications for compliance with the Contract Documents;
- (2) Reviewing proposed changes to the Project Technical Requirements;
- (3) Determining the completion of specified portions of the Project Implementation Work and reviewing the release of funds to the Project Company pursuant hereto;
- (4) Reviewing and monitoring Project Implementation Work progress, scheduling, payments and procedures;
- (5) Inspecting Project Implementation Work undertaken by the Project Company to determine whether any Project Design Requirement has been satisfied;
- (6) Assisting the KRRC in reviewing the validity of the Project Company's written notice that an Uncontrollable Circumstance has occurred; and
- (7) Reviewing and advising the KRRC with respect to material changes to the Project 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 Project Implementation Work or to require or approve changes to the Project Technical Requirements or the Project Company's plans, Drawings and Specifications made in accordance therewith. Any 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 the health and safety from inspecting the Project or otherwise exercising any power permitted under Applicable Law.

SECTION 4.8. DELIVERABLE MATERIAL.

(A) KRRC Ownership and Use of Deliverable Material. The Project Company hereby assigns to the KRRC 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. All such documents and information, including all ideas or methods represented by such information, may be used as the KRRC determines and shall be delivered to the KRRC at no additional cost to the KRRC as required hereunder, upon request, upon Project Final Completion or upon termination of this Project Agreement. 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 Project Company shall have no liability therefor.

(B) Project Company Use of Deliverable Material. The Project Company may make and retain copies of the Contract Documents and Deliverable Material for information, reference and use by Project Company Persons solely with respect to the performance of the Project Implementation Work. No Project Company Person may use the Contract Documents or Deliverable Material for any other purpose without the prior written consent of the KRRC. No conference presentations or other marketing materials (which do not include information the Project Company may utilize in response to solicitations for future contracts or work) regarding the Project shall be made by any Project Company Person without the prior written consent of KRRC.

SECTION 4.9. MONTHLY PROGRESS REPORTS.

The Project Company shall provide the KRRC and the Program Manager with monthly written reports ("**Monthly Progress Report**") during the Term prepared in accordance with the Contract Standards, covering the Project and addressing work performed during the past month, percentage of work completion and compliance with the Project Schedule. The Project Company shall describe Project issues, problems or concerns that the KRRC should be made aware of and how the Project Company proposes to address them in each Monthly Progress Report. The Monthly Progress Report shall include a description of the work planned for the next three months and an update on the Project Company's progress in meeting the SLTBE Goals. The KRRC's and the Program Manager's receipt or acceptance of the Monthly Progress Report (or any revised Monthly Progress Report) shall not bind the KRRC in any manner. Thus, the KRRC's and the Program Manager's receipt or acceptance of the Monthly Progress Report (or any revised Monthly Progress Report) shall not imply KRRC approval or consent to any of the matters set forth therein and shall not limit or otherwise affect the Project Company's obligations to achieve each Milestone Substantial Completion by the Scheduled Milestone Substantial Completion Dates and each Milestone Final Completion by the date specified in Section 7.7 (Milestone Final Completion).

ARTICLE 5

PRELIMINARY SERVICES, EARLY WORK PACKAGES AND GMP AND PROJECT IMPLEMENTATION CONTRACT AMENDMENTS

SECTION 5.1. SCOPE OF THE PRELIMINARY SERVICES.

(A) Generally. The Project Company shall render and perform the Preliminary Services to and for the KRRC in accordance with Appendix 2 (Preliminary Services) and the terms and conditions of this Project Agreement. The Project Company'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, and the performance of all services reasonably inferable from this Project Agreement. All Preliminary Services shall be performed in accordance with the Contract Standards, as applicable.

(B) Preliminary Services Tasks; Notices to Proceed. The Project Company acknowledges that the Preliminary Services are divided into discrete Preliminary Services Tasks associated with the advancement of the Preliminary Services. The Project Company shall commence performing the Preliminary Services only upon the issuance by the KRRC of a Notice to Proceed with the Preliminary Services. Upon the issuance of such Notices to Proceed, the Project Company 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 KRRC may at its discretion, and currently intends to, issue multiple Notices to Proceed simultaneously. The Project Company shall be compensated for Preliminary Services in accordance with Section 9.1 (Compensation for Preliminary Services). In no event shall the Project Company be entitled to compensation for the performance of the Preliminary Services prior to the issuance by the KRRC of a Notice to Proceed with the 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 Project Company to perform a substantial majority of the Preliminary Services Tasks. The parties further acknowledge and agree that the Preliminary Services Schedule assumes (1) that the issuance of the first Preliminary Services Notice to Proceed will occur on the Contract Date and that such Notice to Proceed will include authorization for portions of work contemplated by Task Orders #1, #2, #3, #4, #5 and #6 in order to do critical preparatory work for the FERC License Orders; and (2) that the PacifiCorp Property Access Agreement will be effective within 14 days following the Contract Date, so that the work contemplated by the first Preliminary Services Task Notice to Proceed can be completed in accordance with the Preliminary Services Schedule. 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. In the event of a delay of the effectiveness of the PacifiCorp Property Access Agreement beyond the effective date assumed in this subsection, the relief provisions set forth in subsection (D) (Uncontrollable Circumstances Relief Inapplicable During the Preliminary Services Period) of this Section shall apply.

(D) Uncontrollable Circumstance Relief Inapplicable During the Preliminary Services Period. The Uncontrollable Circumstance relief provisions of this Project Agreement apply only during the Project Implementation Period, except to the extent that an Early Works Package is entered into. Preliminary Services to be provided hereunder are in the nature of professional services being provided on a time and materials basis subject to a not-to-exceed

limit. 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 appropriate adjustments to the Preliminary Services schedule and compensation provided for in Appendix 2 (Preliminary Services) to this Project Agreement.

(E) Adjustments to the Preliminary Services Fee for Restoration Work. The parties acknowledge and agree that the Project Company's Preliminary Services Fee includes an allocation of \$6,000,000 for Preliminary Services relating to habitat restoration work. The parties currently expect the Project Company, at the KRRC's request, to execute a subcontract with Resource Environmental Services, LLC for the performance of such habitat restoration work. To the extent that the Preliminary Services to be provided by Resource Environmental Services, LLC exceeds the allocation described in this subsection, the parties will negotiate an appropriate adjustment to the Preliminary Services Fee.

(F) KRRC to Provide Assurance of Funding. In order to assure the Project Company that the Funders are funding the KRRC in a manner consistent with the KRRC's payment obligations to the Project Company during the Preliminary Services Period, the KRRC shall, when requested by the Project Company, provide bank or other asset balance statements. The KRRC shall not be required to provide such bank or other asset balance statements 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 2 (Preliminary Services) at any time, in its discretion, by written notice to the Project Company, 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 an Uncontrollable Circumstance or any other reason determined by the KRRC.

(B) Additional Preliminary Services. Except as otherwise specifically provided in this Section, the Project Company 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 Change Order or a Contract Amendment. The Project Company 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 Project Company 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 Change Order or a Contract Amendment, the Project Company 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 14 (Uncontrollable Circumstances) if the Project Company demonstrates that the costs claimed (1) resulted from time or expenses actually incurred in performing the Preliminary Services, (2) were incurred by Project Company as a direct result of the delay and not otherwise within the

scope of the Preliminary Services, and (3) are documented to the KRRC's reasonable satisfaction.

(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 Project Company's Preliminary Services Deliverable Material. All such work or services shall constitute Base Preliminary Services and shall be performed at no 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 Project Company. 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 shall result in an appropriate reduction in the Preliminary Services Fee and an adjustment to the Preliminary Services Schedule, as appropriate, which shall be reflected in a Change Order or a Contract Amendment.

SECTION 5.3. PRELIMINARY SERVICES SCHEDULE.

The Preliminary Services Schedule is set forth in Attachment 2A (Preliminary Services Schedule) of Appendix 2 (Preliminary Services) and shall be updated as provided in Appendix 2 (Preliminary Services). The Project Company agrees to complete the Preliminary Services in a diligent, efficient and timely manner in accordance with the Preliminary Services Schedule. The Project Company acknowledges and agrees that any delays in the Project Company's completion of its Preliminary Services under this Project Agreement or performance beyond the number of days agreed to herein for completion of a Preliminary Services Task will cause injury and damage to the KRRC. The KRRC reserves the right to extend the Preliminary Services Schedule as the KRRC 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 April 15, 2020 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 by the KRRC and the Project Company.

SECTION 5.4. SUSPENSION OF PRELIMINARY SERVICES.

The KRRC may, for any reason through a written notice executed by the KRRC Contract Representative, order the Project Company to suspend performance of the Preliminary Services. Prior to any resumption of work at the KRRC's direction, the Project Company shall notify the KRRC Contract Representative of any additional time and costs the Project Company 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, or such claim shall conclusively be deemed to have been waived. If the Project Company establishes that the suspension of the Preliminary Services had a material and adverse effect on the Project Company's time or costs for the performance of the Preliminary Services, the Project Company shall be entitled to time and cost relief, as appropriate and determined by the KRRC acting reasonably and subject to the Project Company's duty to mitigate in Section 17.8 (General Duty to Mitigate).

SECTION 5.5. COORDINATION WITH THE KRRC.

(A) Meetings and Reports Generally. The Project Company shall hold periodic meetings and conferences with the KRRC during the Preliminary Services to verify and confirm that the development of the Project (1) has the full benefit of the KRRC's experience and knowledge of existing needs and facilities, (2) is consistent with the KRRC's current policies and standards, and (3) is proceeding in accordance with the Preliminary Services Schedule. The Project Company 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 Section 4.9 (Monthly Progress Reports) and Appendix 2 (Preliminary Services). The Monthly Progress Report shall present Project budget information and indicate amounts billed by Preliminary Services Task by the Project Company for the past month, cumulatively to date and the amount of funds remaining. 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 Project Company requires. The Project Company shall indicate any Governmental Body or Utility requirements and issues that 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 Project Company'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 Project, as reasonably requested in writing by the Project Company, at no cost to the Project Company. Except as otherwise provided in Section 4.5 (Information Provided by or on Behalf of the KRRC), all such information is provided to the Project Company for the sole purpose of the Project Company's convenience and for use in relation to the performance of the Preliminary Services and may not be relied upon by the Project Company. The Project Company shall promptly notify the KRRC in writing when it reasonably believes or suspects that information provided by the KRRC is not accurate or cannot be checked. Any and all information provided by the KRRC shall remain the property of the KRRC and shall be returned 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 4.5 (Information Provided by or on Behalf of the KRRC), the Project Company shall be responsible for obtaining and verifying all information required as further described in Appendix 2 (Preliminary Services) in order to properly design the Project so that it is designed, constructed and performs in accordance with Applicable Law and the Contract Standards.

SECTION 5.6. PROJECT DESIGN.

(A) Design Considerations. The design for the Project undertaken and performed by the Project Company shall:

(1) Be 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, as of the date of this Project Agreement, and the Project Company shall appoint a design team that:

(a) Is so qualified;

(b) Includes (as required by Applicable Law) licensed or registered professional engineers and architects; and

(c) Has sufficient expertise and experience to expeditiously and efficiently perform all of the design in a proper and professional manner to the standard set out in this Project Agreement; and

(2) Include specific consideration of constructability, demolition and debris removal, and habitat restoration cost issues at all stages of design, as appropriate.

(B) Project Company Assumption of Full Design Liability. The Project Company acknowledges and agrees that, as provided in Section 6.7 (Final Design Responsibilities and Risk Assumption), if and when a GMP Contract Amendment and a Project Implementation Contract Amendment are executed by the parties (and with respect to any Early Work Package work, when an Early Work Package Amendment is executed by the parties), the Project Company will have the sole and exclusive responsibility and liability for the performance of the Project Implementation Work (except for the design of the Hatchery Work and the City of Yreka Waterline Work, which have been furnished by the KRRC) in accordance with and subject to the terms and conditions of the Contract Documents. Accordingly, the Project Company shall not propose or agree to any element of the Project Technical Requirements or other work product to be incorporated in any GMP Contract Amendment, Project Implementation Contract Amendment or Early Work Package Amendment that would, in its reasonable judgment, be inconsistent with the assumption of such responsibility and liability.

SECTION 5.7. EARLY WORK PACKAGES.

(A) Early Work Packages. The parties anticipate that there may be one or more elements of the Project Implementation Work that are ready for commencement before it is appropriate to arrive at an overall agreed-upon Base Guaranteed Maximum Price in accordance with Section 5.8 (GMP Project Submittal). The Project Company shall recommend such phases or elements of the Project Implementation Work ("**Early Work Packages**") to the KRRC Contract Representative, as appropriate, through the performance of the Preliminary Services, based on Early Work Package submittals ("**Early Work Package Submittals**"). The KRRC shall have the discretion to authorize the commencement of Project Implementation Work associated with an Early Work Package pursuant to this Section. The agreement of the parties as to an Early Work Package shall be effectuated through a Contract Amendment authorizing the Project Implementation Work associated with the Early Work Package and specifying the terms and conditions of compensation payable to the Project Company and the completion dates associated with such Project Implementation Work (an "**Early Work Package Amendment**"). All work performed pursuant to an Early Work Package Amendment shall constitute Project Implementation Work hereunder and shall be performed in accordance with the Contract Standards. Neither the KRRC nor the Project Company shall have any obligation to enter into an Early Work Package Amendment. All Early Work Package Amendments agreed upon in accordance with this Section shall be taken into consideration in the preparation of the GMP Project Submittal submitted in accordance with Section 5.8 (GMP Project Submittal). The Project Company shall furnish Early Work Package Bonds with penal sums equal to the Early Work Package Price applicable to the Early Work Package, in compliance with the requirements set forth in Section 16.2 (Bonds) prior to the KRRC's issuance of a Notice to Proceed for the Early Work Package in accordance with subsection (I) (Commencement of Early Work Package) of this Section.

(B) Early Work Package Submittals. An Early Work Package Submittal shall include and be based upon the applicable Project Technical Requirements, and all other specifications, information, analysis, findings and reports developed by the Project Company

during the performance of the Preliminary Services as developed to the date of submittal, and shall be prepared in accordance with the Contract Standards. An Early Work Package Submittal shall include the following:

Price Submittal:

- (1) A proposed lump sum or guaranteed maximum Early Work Package Price, as authorized by the KRRC, including the terms and conditions of payment, focused solely on the Project Implementation Work associated with the Early Work Package and prepared in accordance with subsection (F) (Complete Early Work Package Pricing) of this Section, together with a description of how such Early Work Package Price will impact overall Project costs;
- (2) A proposed lump sum fee attributable to profit, mark-up and general and indirect overhead with respect to the Project Implementation Work associated with the Early Work Package, based upon the percentages set forth in Section 8.5 (Project Company Fee) of Appendix 8 (Contract Price);
- (3) A proposed schedule of values developed in accordance with the Contract Standards (including Attachment 8C (Schedule of Values and Project Company Contingency) to Appendix 8 (Contract Price)), to be negotiated and incorporated in the Early Work Package Amendment;
- (4) A cash flow forecast based on the schedule for completion of the Project Implementation Work associated with the Early Work Package and the schedule of values proposed for the Early Work Package, to be negotiated and incorporated in the Early Work Package Amendment; and
- (5) If applicable and requested by the KRRC, a list of any proposed allowance items, alternate prices and unit prices;

Technical Submittal:

- (1) Proposed Project Technical Requirements to be negotiated and incorporated in the Early Work Package Amendment;
- (2) A detailed description of the Project Implementation Work associated with the Early Work Package Submittal and the associated Project Technical Requirements; and
- (3) The final and complete list of required Governmental Approvals for the Early Work Package, including application dates and assumed issuance dates, to be negotiated and incorporated in the Early Work Package Amendment.

Commercial Terms Submittal:

- (1) A proposed schedule for completion of the Project Implementation Work associated with the Early Work Package, together with a description of how such work will impact the Project Schedule;
- (2) The proposed scheduled completion dates (expressed as the number of calendar days following the Early Work Package Amendment Date) by which completion

of the Project Implementation Work associated with the Early Work Package shall occur, to be negotiated and included in the Early Work Package Amendment;

(3) A proposed delay liquidated damages amount, to be negotiated and included in the Early Work Package Amendment; and

(4) The proposed longstop dates (expressed as the number of calendar days following the proposed scheduled completion date), after which an event of default of the Project Company shall occur if the Project Implementation Work associated with the Early Work Package shall not have been completed, to be negotiated and included in the Early Work Package Amendment;

Additional Information Submittal:

(1) A proposed Subcontracting Plan and a Procurement Management Plan for the Early Work Package;

(2) The names of additional proposed Subcontractors (other than any existing Approved Subcontractors) and descriptions of their roles for approval by the KRRC as Approved Subcontractors;

(3) A letter from a Surety qualified under Section 16.2 (Bonds) confirming the intent of the Surety to provide the Early Work Package Bonds required under such Section on the Early Work Package Amendment Date;

(4) A list of any assumptions, clarifications or qualifications made by the Project Company in providing the Early Work Package Submittal that are material to any part thereof, including a statement as to what information supplied by the KRRC (if any) the Project Company proposes to use as the basis of any portion of its Early Work Package Submittal; and

(5) Any other information reasonably requested by the KRRC prior to the due date for the Early Work Package Submittal as necessary or appropriate to negotiate and complete the Early Work Package Amendment.

(C) Early Work Package Submittal Revisions. The Project Company shall provide the KRRC with at least seven days' notice prior to submitting an Early Work Package Submittal for review. The KRRC shall act reasonably in considering any proposed Early Work Package in light of the schedule requirements under this Project Agreement. In the event the Early Work Package Submittal does not comply with the Contract Standards, the KRRC may provide written notice to the Project Company of any additions, corrections or revisions required to achieve such compliance. In such event, the Project Company, without any increase in the Preliminary Services Fee, shall promptly take all necessary rectification action, making multiple re-submittals if required.

(D) Negotiation and Execution. If the KRRC agrees to authorize the commencement of a portion of the Project Implementation Work under an Early Work Package Submittal, the Project Company and the KRRC shall negotiate and enter into an Early Work Package Amendment. An Early Work Package Amendment at a minimum shall incorporate and definitively address all of the items identified in subsection (B) (Early Work Package Submittals) of this Section, and shall contain any other commercial terms and conditions specific to the Early Work Package, including the rights of the KRRC to terminate the work

being performed pursuant to the Early Work Package Amendment and the right of the KRRC to direct the Project Company to continue performance of the Early Work Package in the event the parties do not enter into a GMP Contract Amendment or a Project Implementation Contract Amendment. Early Work Packages may be structured in a manner that provides for the commencement of the related Project Implementation Work at any time determined by the parties.

(E) Compensation for Early Work Package Submittal and Finalization of Early Work Package Amendment. The Preliminary Services are anticipated to include the preparation of one Early Works Package Submittal as described in subsection (J) (Expected Early Work Package). Accordingly, the Project Company shall be entitled to receive the Preliminary Services Fee for the Preliminary Services performed in connection with the preparation of such Early Work Package Submittal. For any other Early Work Package Submittals that may be requested by the KRRC, however, the Project Company shall be entitled to be reimbursed for the cost of preparing such additional Early Work Package Submittals, as such costs will constitute costs of performing Additional Preliminary Services. The Project Company shall not, however, be entitled to compensation for discussing, refining, negotiating and finalizing any Early Work Package Amendment.

(F) Complete Early Work Package Pricing. It is the intention of the parties that each Early Work Package Submittal, and any associated Early Work Package Amendment, include complete pricing for the Project Implementation Work to be performed thereunder, including: (1) a reasonable lump sum fee attributable to profit, mark-up and general and indirect overhead with respect to such Project Implementation Work based upon the percentages set forth in Section 8.5 (Project Company Fee) of Appendix 8 (Contract Price); and (2) pricing based on a contingency amount for such Project Implementation Work, to be administered in the same manner as the Project Company Contingency.

(G) Compensation Payable in Connection with Early Work Packages. The KRRC shall pay the Early Work Package Price to the Project Company for Project Implementation Work properly performed and completed pursuant to the terms of the Early Work Package Amendment in accordance with, and subject to the limitations contained in Appendix 8 (Contract Price), notwithstanding the fact that no GMP Contract Amendment or Project Implementation Contract Amendment will be in effect at the time the parties execute an Early Work Package Amendment.

(H) Project Company Representations in an Early Work Package Amendment. The execution of any Early Work Package Amendment will be deemed to constitute representations by the Project Company, with respect to the Early Work Package, to the same effect as the representations made in subsection 5.9(K) (Project Company Representations in a GMP Contract Amendment) with respect to the GMP Contract Amendment, with references to Project Implementation Work referring to the Early Work Package and references to the Base Guaranteed Maximum Price referring to the Early Work Package Price.

(I) Commencement of Early Work Package. If the parties agree to an Early Work Package Amendment, the KRRC shall issue a limited Notice to Proceed with the Project Implementation Work associated with the Early Work Package, subject to this Section. Notwithstanding the issuance of a limited Notice to Proceed with an Early Work Package, the Project Company shall not commence any Project Implementation Work at the Project Site in connection with such Early Work Package until the Project Company has satisfied the following requirements:

(1) The Project Company shall have provided Early Work Package Bonds for the Early Work Package, and certified that such Early Work Package Bonds are in full force and effect and in compliance with the requirements set forth in Section 16.2 (Bonds).

(2) The Project Company shall have provided the KRRC with certificates for all Required Insurance in accordance with Section 13.1 (Insurance) and certified that all such policies are in full force and effect and in compliance with the requirements of Section 13.1 (Insurance) and Appendix 9 (Insurance Requirements).

(3) The Project Company shall have provided the KRRC with a Subcontracting Plan and a Procurement Management Plan for the Early Work Package, which plans shall be subject to the KRRC's approval, acting reasonably.

(4) The Project Company shall have satisfied all requirements of Applicable Law with respect to the commencement of Project Implementation Work and shall have obtained all Governmental Approvals required for the commencement of the Project Implementation Work of the Early Work Package and provided copies of such Governmental Approvals to the KRRC. All such Governmental Approvals shall be in full force and effect.

(5) The Project Company shall have provided the KRRC with the final, approved Health and Safety Plan in accordance with the Contract Standards.

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

(J) Expected Early Work Package. As of the Contract Date, the parties expect that the only Early Work Package that will be required will be an Early Work Package relating to the design, fabrication and delivery of the new gates that are required to be installed to allow for Reservoir Drawdown Work.

SECTION 5.8. GMP PROJECT SUBMITTAL.

(A) Preliminary Services and GMP Project Submittal. As part of the Preliminary Services, the Project Company is obligated to develop the design of the Project to a level sufficient to make the GMP Project Submittal. The GMP Project Submittal shall be completed and submitted to the KRRC on a timely basis as required under Appendix 2 (Preliminary Services), and shall remain a firm offer by the Project Company for at least 90 days. As provided in Appendix 2 (Preliminary Services), the parties may agree to have a GMP Project Submittal at an earlier or later stage of design development than as contemplated in Appendix 2 (Preliminary Services). The GMP Project Submittal shall include and be based upon the Project Technical Requirements and all other information, analysis, findings and reports developed by the Project Company during the performance of the Preliminary Services, and shall be prepared in accordance with the Contract Standards. The GMP Project Submittal shall exclude the Project Company Fee which was proposed in the Proposal, negotiated and included in this Project Agreement on the Contract Date. Without limiting the requirements of Appendix 2 (Preliminary Services), the GMP Project Submittal shall include a price submittal, a technical submittal, a commercial terms submittal and an additional information submittal, as follows:

Price Submittal:

(1) A proposed Base Guaranteed Maximum Price, to be negotiated and incorporated in Section 8.6.2 (Base Guaranteed Maximum Price) of Appendix 8 (Contract Price), together with all supporting information required by subsection (B) (Derivation of Proposed Base Guaranteed Maximum Price) of this Section;

(2) The proposed General Conditions Costs, which will be part of the proposed Project Implementation Work Costs. The proposed General Conditions Costs shall be prepared with reference to the estimated general conditions costs set forth in the Project Company's Proposal;

(3) A proposed professional personnel rate schedule for inclusion as Attachment 8B (Professional Personnel Rate Schedule).

(4) A proposed Schedule of Values and a proposed Project Company Contingency (including the maximum percentage thereof available for the correction of defective, damaged, or non-conforming Project Implementation Work and damaged KRRC Property or private property and for design errors or omissions), to be prepared in accordance with, negotiated and incorporated as part of Attachment 8C (Schedule of Values and Project Company Contingency) to Appendix 8 (Contract Price);

(5) A cash flow forecast based on the Project Implementation Schedule, Schedule of Values and proposed Base Guaranteed Maximum Price, to be negotiated and incorporated in Appendix 8 (Contract Price);

(6) If applicable and requested by the KRRC, a list of any proposed allowance items, alternate prices and unit prices; and

(7) A recommended KRRC Allowance for Base Guaranteed Maximum Price Adjustments.

Technical Submittal:

(1) Proposed Project Technical Requirements, to be negotiated and incorporated in and to constitute Appendix 4 (Project Technical Requirements) of this Project Agreement;

(2) The final and complete list of required Governmental Approvals (both for KRRC-Managed Governmental Approvals and Project Company-Managed Governmental Approvals) for the Project (including Governmental Approval Application Dates and Assumed Approval Issuance Dates, all as required by subsection 6.6(A) (Preliminary Services Relating to Permitting), to be negotiated and incorporated in Appendix 3 (Governmental Approvals);

(3) A description of any Change in Law that has occurred between the Contract Date and the date of the GMP Project Submittal;

(4) A proposed Maintenance of Facilities Operations Plan prepared in accordance with the requirements of subsection 6.11(A) (Maintenance of Facilities Operations) and Appendix 5 (General Project Implementation Work Requirements), to be

negotiated and incorporated in Attachment 5C (Maintenance of Facilities Operations Plan) to Appendix 5 (General Project Implementation Work Requirements); and

- (5) An updated and finalized description of the Project Site.

Commercial Terms Submittal:

(1) Proposed Scheduled Milestone Substantial Completion Dates, to be negotiated and included in Section 1.1 (Definitions);

(2) A proposed Project Implementation Schedule, to be negotiated and included in Attachment 5A (Initial Project Implementation Schedule) to Appendix 5 (General Project Implementation Work Requirements);

(3) A proposed penal sum of the Maintenance Bond (expressed as a percentage of the Guaranteed Maximum Price), to be negotiated and inserted in subsection 16.2(F) (Maintenance Bond); and

(4) Any proposed changes to the Required Insurance described in Section 9.3 (Insurance During the Project Implementation Period) for the KRRC and its insurance advisor to consider.

Additional Information Submittal:

(1) In the event that any Early Work Package Amendments have been executed prior to the date of the GMP Project Submittal, a proposal as to the manner in which the technical, price, schedule and other terms and conditions contained in the Early Work Package Amendments will be incorporated and taken account of in the GMP Contract Amendment, with the objective that the GMP Contract Amendment will contain and supersede all of the terms and conditions of any Early Work Package Amendments;

(2) The names of additional proposed Subcontractors (other than any existing Approved Subcontractors) and descriptions of their roles for approval by the KRRC as Approved Subcontractors;

(3) A letter from a Surety qualified under Section 16.2 (Bonds) confirming the intent of the Surety to amend the existing Early Work Package Bonds or provide a new Performance Bond and Payment Bond as required under such Section on the GMP Contract Amendment Date;

(4) A list of any assumptions, clarifications or qualifications made by the Project Company in providing its GMP Project Submittal that are material to any part thereof, including a statement as to what information supplied by the KRRC (if any) the Project Company proposes to use as the basis of any portion of its GMP Project Submittal; and

(5) Any other information reasonably requested by the KRRC prior to the due date for the GMP Project Submittal as necessary or appropriate to negotiate and complete the GMP Contract Amendment.

(B) Derivation of Proposed Base Guaranteed Maximum Price. The GMP Project Submittal shall include a detailed and comprehensive description of how the proposed Base Guaranteed Maximum Price was derived and the material factors on which it was based, including any Early Work Packages, all in compliance with the requirements for establishing the Base Guaranteed Maximum Price set forth in Appendix 2 (Preliminary Services), together with any other related information required pursuant to this Section. All costs, bids, quotes, estimates and other information supporting the GMP Project Submittal shall be made available to the KRRC upon request. The proposed Base Guaranteed Maximum Price and the other elements of the GMP Project Submittal shall be based upon the risk allocation established by this Project Agreement as of the Contract Date.

(C) Continuance of Preliminary Services Following GMP Project Submittal. Following submittal of the GMP Project Submittal and prior to the GMP Contract Amendment Date, it is the expectation of the parties that the Preliminary Services will continue and the terms of continuance of such work will be determined by the parties on or about the date of the GMP Project Submittal. In such event, the Project Company shall be entitled to receive the Preliminary Services Fee for the Preliminary Services performed following submittal of the GMP Project Submittal through the GMP Contract Amendment Date. It is the further expectation of the parties that, as provided in subsection Section 5.10(A) (Obtaining All Remaining Governmental Approvals), the Preliminary Services will continue to be performed following the GMP Contract Amendment Date through the Governmental Approvals Completion Period.

(D) Early Definitive Project Submittal. The parties may agree, each in its discretion, that the GMP Project Submittal may be made, and the GMP Contract Amendment negotiated, prior to the 60% design stage.

SECTION 5.9. GMP CONTRACT AMENDMENT.

(A) Non-Compliant GMP Project Submittal. In the event the GMP Project Submittal does not comply with the requirements of this Project Agreement, the KRRC shall provide written notice to the Project Company of any additions, corrections or revisions required to achieve such compliance. In such event, the Project Company, at its cost and expense and without any increase in the Preliminary Services Fee, shall promptly take all necessary rectification action, making multiple re-submittals if required. The failure of the Project Company to furnish the Preliminary Services and provide the GMP Project Submittal in accordance with the Contract Standards shall be a material breach of this Project Agreement.

(B) Negotiation and Execution of the GMP Contract Amendment. The KRRC and the Project Company acknowledge and agree that each intends to negotiate and enter into a Contract Amendment for the performance of all Project Implementation Work necessary to achieve Project Final Completion (the “**GMP Contract Amendment**”) based on the GMP Project Submittal and the completion of the other Preliminary Services. The principles for negotiating the Base Guaranteed Maximum Price are set forth in subsection (E) (Base Guaranteed Maximum Price Negotiating Principles) of this Section. The GMP Contract Amendment at a minimum shall incorporate and definitively address all of the items identified in subsection 5.8(A) (Preliminary Services and GMP Project Submittal). In the event the parties elect to execute the GMP Contract Amendment, the date of execution and delivery thereof shall constitute the “**GMP Contract Amendment Date**” hereunder, and thereupon the Project Implementation Period shall commence.

(C) Potential Lump Sum Pricing. The parties acknowledge and agree that they may elect to enter into a GMP Contract Amendment that is based upon a fixed lump sum

price for completion of the Project Implementation Work in lieu of a Base Guaranteed Maximum Price, and that such GMP Contract Amendment shall include modifications to the terms and conditions specified herein necessary to effectuate payment for Project Implementation Work based upon the fixed lump sum price.

(D) Consideration of Early Work Package Amendments in Negotiating the GMP Contract Amendment. In the event that any Early Work Package Amendments have been executed prior to the date of the GMP Contract Amendment Date, it is the intent of the parties that in negotiating and executing the GMP Contract Amendment, the GMP Contract Amendment will take account of and supersede all of the terms and conditions of any Early Work Package Amendments, so that the entirety of the agreement between the parties is contained in a single GMP Contract Amendment that specifies all terms and conditions for the Project. In negotiating the GMP Contract Amendment, the KRRC shall duly consider the proposal of the Project Company contained in the GMP Project Submittal relating to the incorporation of any Early Work Package Amendments into the GMP Contract Amendment.

(E) Base Guaranteed Maximum Price Negotiating Principles. Each party acknowledges that it intends to negotiate the Base Guaranteed Maximum Price taking into account the following:

(1) Cost to Complete. The reasonably estimated costs of completing the Project Implementation Work and achieving Milestone Substantial Completion by the Scheduled Milestone Substantial Completion Dates and Project Final Completion in accordance with the Contract Standards and the cost elements set forth in Appendix 2 (Preliminary Services). Considerations of risk shall be taken into account separately, pursuant to item (2) below. Such costs shall be the basis of the items constituting the Schedule of Values.

(2) Indeterminable Costs Associated with Risks Transferred to the Project Company. An amount reasonably attributable to indeterminable costs that, considered individually and valued in the aggregate based on agreed-upon probability-of-occurrence models adapted specifically to the Project, may be incurred by the Project Company should the risks assumed by the Project Company in performing the Project Implementation Work occur. Such risks shall exclude the risk of Uncontrollable Circumstances, which have been retained by the KRRC hereunder, and for which the Project Company will receive additional compensation as well as schedule and performance relief under Article 14 (Uncontrollable Circumstances) should such risks occur. The projected cost of any such risks assumed by the Project Company shall be the basis of establishing the Project Company Contingency, and such risks shall be identified in the risk register prepared as part of the Preliminary Services. These include:

- (a) The risk of Subcontractor delay or non-performance;
- (b) The risk of having to correct Project Implementation Work that does not conform with the Contract Standards;
- (c) Changes in the scope or cost of Project Implementation Work that may occur as the design is advanced from the level set forth in the Project Technical Requirements to a fully complete level;

(d) The risk that inflation in the cost of commodities, materials, equipment, labor and services necessary for the completion of the Project Implementation Work will exceed the level assumed by the parties in establishing the Base Guaranteed Maximum Price under item (1) above;

(e) The risk that it may be necessary to incur additional expenses in order to comply with the Project Technical Requirements and achieve Milestone Substantial Completion by the Scheduled Milestone Substantial Completion Dates; and

(f) Any other risk specifically referred to herein as a risk to be borne by the Project Company in performing the Project Implementation Work.

(F) Obligations of the Project Company Relating to the GMP Contract Amendment. In connection with a potential GMP Contract Amendment, the Project Company shall be obligated (1) to make a complete bona fide GMP Project Submittal in accordance with this Section and Section 5.8 (GMP Project Submittal), and (2) to negotiate in good faith toward a GMP Contract Amendment based on the GMP Project Submittal, if and to the extent the KRRC elects pursuant to subsection (H) (No Obligation of the KRRC to Enter into a GMP Contract Amendment) of this Section to enter into and continue such negotiations.

(G) Compensation for GMP Project Submittal and Finalization of GMP Contract Amendment. The Preliminary Services include the preparation of a GMP Project Submittal in accordance with Section 2.9 (Preliminary Services Task #8 – GMP Project Submittal and Supporting Cost Estimates) of Appendix 2 (Preliminary Services) and for the refinement and finalization of the GMP Contract Amendment in accordance with this Section. Accordingly, the Project Company shall be entitled to receive the Preliminary Services Fee for the Preliminary Services performed in connection with the preparation of the GMP Project Submittal. The Project Company shall not, however, be entitled to compensation for discussing, refining, negotiating and finalizing the GMP Contract Amendment.

(H) No Obligation of the Parties to Enter into a GMP Contract Amendment. Notwithstanding the intent of the parties as expressed in subsection (B) (Negotiation and Execution of the GMP Contract Amendment) of this Section, neither the KRRC nor the Project Company has any obligation whatsoever to negotiate with the other party to enter into a GMP Contract Amendment. The KRRC and the Project Company, each in its discretion, may elect not to commence or continue negotiations and not to enter into and execute a GMP Contract Amendment for any reason. Except for payment of that portion of the Preliminary Services Fee that has been earned by the terms hereof but not yet paid by the KRRC, the Project Company acknowledges and agrees that no failure by the KRRC to negotiate or to enter into the GMP Contract Amendment shall entitle the Project Company to make any claim for damages or other compensation as a result of any such failure, and all such claims are hereby waived and released by the Project Company. The Project Company acknowledges and agrees that neither the intent of the parties to negotiate and enter into the GMP Contract Amendment, nor the conduct or discontinuance of any such negotiations, shall be construed to limit or affect the KRRC's right to terminate this Project Agreement for its convenience at any time as provided in Section 12.6 (KRRC Convenience Termination Rights).

(I) Elective Continuance of the Project by the KRRC on Other Bases Using the Lead Design Subcontractor. The KRRC, upon termination of this Project Agreement or upon any failure by the parties to execute a GMP Contract Amendment, may elect to require the Project Company to either:

(1) Continue to perform the Preliminary Services to advance the design of the Project, either partially or to the fully complete level (or, if applicable, cause its lead design Subcontractor acting as Engineer-of-Record to perform such services) pursuant to this Project Agreement, so that the Project may be procured and implemented on a design-bid-build basis or on another alternative delivery basis; or

(2) Cause its lead design Subcontractor to make a bona fide proposal to perform all Design Professional Services to advance the design of the Project, either partially or to the fully complete level, and to enter into such services on terms and conditions substantially identical to the terms and conditions of this Project Agreement pertaining to the Design Professional Services element of the Preliminary Services and to negotiate in good faith to enter into a separate agreement with the KRRC to provide such services.

(J) Elective Continuance of the Project by the KRRC with Other Contractors. The KRRC shall have the right at any time in its discretion to proceed to develop and implement the Project with other contractors and service providers. The KRRC may exercise such right during the performance of the Preliminary Services, upon termination of this Project Agreement or upon any failure of the parties to execute a GMP Contract Amendment. The KRRC shall have the further right in connection therewith, based on its ownership of the Preliminary Services Deliverable Material as provided in Section 4.8 (Deliverable Material), to use any Preliminary Services Deliverable Material in any manner it chooses to complete the Project Implementation Work; provided, however, that the Project Company shall only be liable for negligent errors or omissions in the Preliminary Services Deliverable Material in the event that the Project Company continues to perform, or causes its lead design Subcontractor to continue to perform, the Preliminary Services pursuant to this Project Agreement and advances the design of the Project to the fully complete level at the election of the KRRC in accordance with subsection (I)(1) (Elective Continuance of the Project by the KRRC on Other Bases Using the Lead Design Subcontractor) of this Section. The Project Company acknowledges and agrees that such limitation will have no applicability if the parties enter into the GMP Contract Amendment and proceed with the Project Implementation Work on the design-build basis contemplated by this Project Agreement.

(K) Project Company Representations in a GMP Contract Amendment. In the event the parties execute a GMP Contract Amendment, the GMP Contract Amendment shall be deemed to constitute a representation by the Project Company that:

(1) It has examined, carefully studied, and thoroughly understands the Contract Documents associated with the Project Implementation Work;

(2) It has thoroughly reviewed and verified all information provided to or obtained by the Project Company through the performance of the Preliminary Services, including:

(a) Reports of explorations and tests of subsurface conditions at or contiguous to the Project Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Project Site which have been identified or made available by the KRRC; and

(b) Reports as to Regulated Substances, if any, at the Project Site which have been identified or made available by the KRRC;

(3) It has become familiar with and is satisfied as to the general, local, and Project Site conditions that may affect cost, progress, and performance of the Project Implementation Work;

(4) It is familiar with and is satisfied as to all Applicable Law (including the terms and conditions of all Governmental Approvals) that may affect cost, progress, and performance of the Project Implementation Work;

(5) It is aware of the nature of the Related Projects and is satisfied that the Project Implementation Work can be performed in accordance with the requirements concerning the Related Projects, as set forth in the Contract Documents;

(6) It has considered the information known to the Project Company, including information commonly known to designers and contractors doing business in the localities of the Project Site; information and observations obtained from visits to the Project Site; and the Project Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on:

(a) The cost, progress, and performance of the Project Implementation Work;

(b) The means, methods, techniques, sequences, and procedures of construction to be employed by the Project Company, including any specific means, methods, techniques, sequences, and procedures of construction, demolition and habitat restoration expressly required by the Contract Documents; and

(c) Project Company's health and safety precautions and programs;

(7) Based on all of the foregoing and the performance of the Preliminary Services, the Project Site constitutes an acceptable and suitable site for the performance of the Project Implementation Work;

(8) It does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for it to enter into the GMP Contract Amendment for the performance of the Project Implementation Work for the Base Guaranteed Maximum Price on or before the applicable Scheduled Milestone Substantial Completion Dates, and in accordance with the other terms and conditions of this Project Agreement;

(9) The Project Technical Requirements are sufficient to enable the Project Company to determine the Base Guaranteed Maximum Price; and

(10) Subject to the terms and conditions of this Project Agreement, the Project Implementation Work can be completed in accordance with the Contract Standards for the Base Guaranteed Maximum Price by the applicable Scheduled Milestone Substantial Completion Date.

(L) Effect of GMP Contract Amendment. The execution and delivery of the GMP Contract Amendment shall establish the Base Guaranteed Maximum Price, the Milestone Substantial Completion Dates, the Milestone Longstop Dates, and the other basic terms and

conditions of this Project Agreement which were not established at the Contract Date. The parties expect, however, that not all of the Governmental Approvals required for the commencement of the Project Implementation Work will have been obtained by the GMP Contract Amendment Date. Accordingly, the execution and delivery of the GMP Contract Amendment shall not authorize the Project Company to commence Project Implementation Work, nor obligate the parties in any manner with respect to the Project Implementation Work until a Project Implementation Contract Amendment is executed.

(M) Governmental Approvals Not Yet Obtained. In negotiating and agreeing on a Base Guaranteed Maximum Price, the Milestone Substantial Completion Dates and the Milestone Longstop Dates, the parties intend to take into account the terms and conditions of the Governmental Approvals that have been obtained on or before the GMP Contract Amendment Date, and any draft terms and conditions that have been developed by the Governmental Body responsible for issuing any Governmental Approvals not yet obtained as of the GMP Contract Amendment Date. The parties acknowledge and agree that the effect on the Base Guaranteed Maximum Price, the Milestone Substantial Completion Dates, the Milestone Longstop Dates and any other material term of this Project Agreement that may be materially affected by the final terms and conditions of any such Governmental Approvals shall be taken into account in the negotiation of the Project Implementation Contract Amendment.

SECTION 5.10. GOVERNMENTAL APPROVALS COMPLETION PERIOD.

(A) Obtaining All Remaining Governmental Approvals. Promptly following the GMP Contract Amendment Date, the parties shall resume and continue to completion the performance of their respective obligations to obtain the Project Company-Managed Governmental Approvals and the KRRC-Managed Governmental Approvals. The work of the Project Company in this regard shall constitute Preliminary Services, not Project Implementation Work, and the Project Company shall be compensated on such basis. The parties shall cooperate and keep each other apprised of progress in meeting their respective obligations with respect to obtaining all required Governmental Approvals, and any potential cost or schedule impacts of proposed terms and conditions in Governmental Approval drafts. The period between the GMP Contract Amendment Date and the Project Implementation Contract Amendment Date shall constitute the **“Governmental Approvals Completion Period”**.

(B) Effect of Final Terms and Conditions of Remaining Governmental Approvals. When all Governmental Approvals required for the commencement of the Project Implementation Work have been obtained, the parties intend to negotiate and agree upon any amendments required to be made to this Project Agreement, as amended by the GMP Contract Amendment.

(C) Estimated Project Implementation Contract Amendment Date. As of the Contract Date, the Project Implementation Contract Amendment Date is estimated to occur in April 2021. This estimate is for planning purposes only, as of the Contract Date.

SECTION 5.11. PROJECT IMPLEMENTATION CONTRACT AMENDMENT.

(A) Project Implementation Contract Amendment Generally. The KRRC and the Project Company acknowledge and agree that each intends (without obligation) to negotiate and enter into a further Contract Amendment (the **“Project Implementation Contract Amendment”**) at the conclusion of the Governmental Approvals Completion Period. The Project Implementation Contract Amendment is expected to be entered into for the purpose of

amending, if and to the extent required, the Base Guaranteed Maximum Price, Scheduled Milestone Substantial Completion Dates, Milestone Longstop Dates or any other provision of this Project Agreement that may be materially affected by (1) the terms and conditions of the KHS-A-Managed Governmental Approvals as finally issued, (2) the length of the Governmental Approvals Completion Period, or (3) any other material fact or circumstance occurring during the Governmental Approvals Completion Period.

(B) Project Implementation Contract Amendment Submittal. The Project Company shall, in connection with any potential Project 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 Project Implementation Contract Amendment. The submittal shall, as and to the extent applicable and appropriate, be consistent with the submittal requirements for the GMP Project Submittal, and the parties shall negotiate the Project Implementation Contract Amendment under the same principles and terms described in subsections (D), (E) and (F) of Section 5.9 (GMP Contract Amendment) as if written expressly to apply to a potential Project Implementation Contract Amendment. In negotiating the Project Implementation Contract Amendment, the KRRC does not intend to agree to any modification of the Base Guaranteed Maximum Price, the Scheduled Milestone Substantial Completion Dates or the Milestone Longstop Dates, in the absence of any change in material facts or circumstance affecting the Project Implementation Work or occurring during the Governmental Approvals Completion Period.

(C) Expected Conditions to the Execution of the Project Implementation Contract Amendment. The KRRC does not expect to enter into a Project Implementation Contract Amendment unless, on or before the Project 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 under the Natural Environmental Policy Act.

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

(4) PacifiCorp Property Transfer Agreement. The PacifiCorp Property Transfer Agreement has been executed and is in full force and effect, and the KRRC owns fee title to the PacifiCorp Property.

(5) 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 Project Implementation Work.

(6) KRRC-Managed Governmental Approvals. The KRRC-Managed Governmental Approvals have been obtained, are in full force and effect, and provide all authority required under Applicable Law to commence, carry out and continue to completion the Project Implementation Work. **[Note: If any KRRC-Managed Governmental Approvals have not been obtained or are not yet in full force and effect and the parties nonetheless elect to execute and**

deliver the Project Implementation Contract Amendment, the parties shall negotiate in good faith, as part of the Project Implementation Contract Amendment, the allocation of risk for such outstanding KRRC-Managed Governmental Approvals in subsections 6.6(I) (Delays in the Issuance of KRRC-Managed Governmental Approvals) and 6.9(C) (Changes to Terms and Conditions of Governmental Approvals).]

(7) Project Company-Managed Governmental Approvals. All Project Company-Managed Governmental Approvals required to commence the Project Implementation Work have been obtained and are in full force and effect.

(8) KHSA Indemnity. The KHSA Indemnity has been executed and delivered or has been issued, and is in full force and effect.

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

(10) Legal Proceedings. There is no Legal Proceeding pending or threatened that seeks to enjoin the performance of the Project Implementation Work 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 the performances of the Project Implementation Work.

(11) Funding Assurances. The KRRC and the Project Company have established a process for the Project Implementation Period, which assures the Project Company that the Funders are funding the KRRC in a manner consistent with the KRRC's payment obligations to the Project Company pursuant to this Project Agreement.

(D) No Obligation to Enter into Project Implementation Contract Amendment. Neither the KRRC nor the Project Company shall have any obligation to enter into a Project Implementation Contract Amendment, and the provisions of Section 5.9 (GMP Contract Amendment), subsections (G), (H), (I) and (J), relating to a potential GMP Contract Amendment, shall apply in full during the Governmental Approvals Completion Period as if written expressly to apply to a potential Project Implementation Contract Amendment.

(E) Performance Bond and Payment Bond. The Project Company shall provide the KRRC with either amended Early Work Package Bonds or a new Performance Bond and a new Payment Bond concurrently with the execution of the Project Implementation Contract Amendment, as required by and in accordance with Section 16.2 (Bonds).

ARTICLE 6

PROJECT IMPLEMENTATION WORK

SECTION 6.1. SCOPE OF THE PROJECT IMPLEMENTATION WORK.

(A) Project Implementation Work Generally. The Project Implementation Work shall commence on the Project Implementation Commencement Date and be performed in accordance with and subject to the terms and conditions of this Project Agreement.

(B) Compensation for Project Implementation Work. The Project Company shall be paid the Contract Price pursuant to Article 9 (Compensation) for the Project Implementation Work as its entitlement to payments of portions of the Contract Price arise thereafter. The Contract Price shall be subject to the Guaranteed Maximum Price.

(C) Elements of the Project Implementation Work. In performing the Project Implementation Work (including any Project Implementation Work associated with any Early Work Package Amendment, as applicable) generally, the Project Company shall, in accordance with the Contract Standards:

- (1) Apply for, obtain and maintain the Project Company-Managed Governmental Approvals, and assist the KRRC in obtaining KRRC-Managed Governmental Approvals;
- (2) Complete the Design Professional Services;
- (3) Perform the Hatchery Work;
- (4) Perform the Pre-Reservoir Drawdown Work;
- (5) Perform the Reservoir Drawdown Work;
- (6) Perform the Dam Removal Work and the Initial Habitat Restoration Work;
- (7) Perform the Final Habitat Restoration Work; and
- (8) Achieve Milestone Substantial Completion by the applicable Scheduled Milestone Substantial Completion Date.

SECTION 6.2. PROJECT IMPLEMENTATION WORK GENERALLY.

(A) Sequencing and Staging of Project Implementation Work. The Project Company shall not be limited in the sequencing or staging of the Project Implementation Work, except to the extent that the Contract Standards impose limitations. The KRRC understands and acknowledges that the Project Company intends to complete the Project Implementation Work in stages, whereby particular segments of the Project Implementation Work will be designed and implemented prior to the completion of the design and implementation of the Project as a whole. Although this Project Agreement does not require the Project Company to fully complete the entire design of the Project prior to proceeding with particular segments of the Project Implementation Work, the Project Company shall comply with all requirements of Applicable Law in performing the Project Implementation Work and shall further comply with the design submittal requirements set forth in subsection 6.7(D) (KRRC Review and Comment on Project Implementation Design Documents).

(B) Laydown Areas. Laydown and staging areas for construction, demolition and habitat restoration materials and supplies required for the Project Implementation Work shall be located on the Project Site or at other locations approved by the KRRC, and shall be identified in the Project Technical Requirements.

(C) Project Implementation Schedule and Reports. The initial Project Implementation Schedule shall be prepared during performance of the Preliminary Services, and shall be negotiated and agreed upon by the parties as part of the GMP Contract Amendment and updated as part of the Project Implementation Contract Amendment. Throughout the Project Implementation Work, the Project Company shall further update and maintain the Project Implementation Work Schedule in accordance with Appendix 5 (General Project Implementation Work Requirements). The Project Company shall submit Monthly Progress Reports, which shall include updates to the Project Implementation Schedule, in accordance with the requirements set forth in Section 4.9 (Monthly Progress Reports) and Appendix 5 (General Project Implementation Work Requirements). The Project Company acknowledges and agrees that it has a material obligation to provide the KRRC with, and to update, maintain and revise, the Project Implementation Schedule throughout the Project Implementation Period in accordance with the Contract Standards.

(D) On-Site Meetings and Design and Project Implementation Work Review. During the Project Implementation Period, the Project Company, the KRRC and the Program Manager shall conduct regular progress and management meetings as set forth in Appendix 5 (General Project Implementation Work Requirements). Such meetings shall take place at the Project Site in a field office to be provided by the Project Company in accordance with Appendix 5 (General Project Implementation Work Requirements) or as otherwise directed by the KRRC. The Monthly Progress Report shall be prepared by the Project Company and provided to the KRRC and the Program Manager at least five days prior to each monthly meeting.

(E) Utilities. The Project Company shall provide, make all arrangements necessary to secure the availability of, and construct all connections for, all Utilities necessary for the performance of the Project Implementation Work and shall be responsible for modifying all existing Utilities at the Project Site in order to support the Project Implementation Work, in the capacities required hereunder in accordance with the specific requirements that shall be set forth in the Project Technical Requirements.

(F) Quality Assurance and Quality Control. The Project Company shall have full responsibility for quality assurance and quality control for the Project Implementation Work, including compliance with the Project Implementation and Quality Management Plan. Without limiting any other requirement hereunder, the Project Company shall perform quality control inspection and testing services to ensure compliance with the Contract Standards. Sampling and testing of materials, laboratory inspection of materials and processes for quality control purposes shall be performed in compliance with the requirements set forth in subsection 6.16(C) (Project Company Tests).

(G) Sales Tax. The Project Company shall pay all sales, consumer, use, and similar taxes required by the law of the place where the Project Implementation Work is performed and such taxes shall constitute Project Implementation Work Costs. 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 Project, the Project Company 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 Project Implementation Work. In such circumstances, the KRRC will provide the Project Company with an appropriate certification, letter or other reasonably required materials setting

forth any such exemption that is obtained by the KRRC for the Project. Notwithstanding anything to the contrary in this Section, in the event the Project Company or the KRRC obtain an exemption from any sales, consumer, use, and similar taxes for the Project, any taxes for which such an exemption is available shall constitute Unallowable Costs.

(H) Title and Risk of Loss. Title to the structures, improvements, fixtures, machinery, equipment and materials constituting the Project shall pass to the KRRC upon incorporation in the Project or payment therefor by the KRRC, whichever first occurs, free and clear of all Encumbrances as provided in subsection (I) (Encumbrances) of this Section. Except to the extent provided in subsection 6.18(E) (Payment for Restoration Work and Uninsured Costs), however, the Project Company shall bear all risk of loss concerning such structures, improvements, fixtures, machinery, equipment and materials until the applicable Milestone Substantial Completion Date, regardless of the extent to which the loss was insured or the availability of insurance proceeds. The procedures set forth in Section 6.18 (Property Damage) shall be applicable in the event of any damage to, loss or the destruction of the Project Implementation Work at the Project Site. Notwithstanding anything set forth in this Section or Section 6.18 (Property Damage), the Project Company shall bear all risk of loss concerning any structures, improvements, fixtures, machinery, equipment or materials required for the Project Implementation Work and stored at any location other than the Project Site, regardless of whether the KRRC has paid for any such structures, improvements, fixtures, machinery, equipment or materials.

(I) Encumbrances. The Project Company 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 Project or the Project Implementation Work. The Project Company'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 Project Company 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, Subcontract, Security Instrument or other transaction agreement pertaining to the Contract Obligations.

(K) Required Engineer-of-Record Certification. Any notice, certification, report or application delivered by the Project Company to the KRRC in connection with the Project Implementation Work, or payment therefor, under this Article, Article 9 (Compensation) or any Appendix relating to the performance of the Project Implementation Work shall be accompanied by a signed certificate of the Engineer-of-Record affirming the accuracy thereof to the best of his or her knowledge.

(L) Temporary Project Site Facilities. The Project Company 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 Project Site facilities necessary for the Project Company to manage, inspect and supervise the Project Implementation Work, including all facilities and services the cost of which constitutes a General Conditions Cost.

SECTION 6.3. PROJECT IMPLEMENTATION COMMENCEMENT DATE.

(A) Project Implementation Commencement Date Generally. Except with respect to Early Work Packages as provided in Section 5.7 (Early Work Packages), in no event shall the Project Company commence the Project Implementation Work prior to the “**Project Implementation Commencement Date**” established pursuant to this Section. The Project

Implementation Commencement Date shall not occur prior to the satisfaction of the following **“Project Implementation Commencement Date Conditions”**, each of which must be and remain satisfied as of the Project Implementation Commencement Date:

- (1) The Project Implementation Contract Amendment Date shall have occurred;
- (2) All Governmental Approvals required to commence the Project Implementation Work have been issued and are in full force and effect;
- (3) The Project Company shall have certified that it has completed all pre-Project Implementation Work requirements set forth in Appendix 5 (General Project Implementation Work Requirements) and shall have provided the KRRC with an updated Project Implementation Schedule in accordance with in Appendix 5 (General Project Implementation Work Requirements) and a final, approved (a) Maintenance of Facilities Operations Plan, (b) Health and Safety Plan, and (c) Security Plan;
- (4) The Project Company shall have satisfied all requirements of Applicable Law with respect to the commencement of Project Implementation Work and shall have obtained all Governmental Approvals (other than KRRC-Managed Governmental Approvals) required for the commencement of the Project Implementation Work and provided copies of such Governmental Approvals to the KRRC. All such Governmental Approvals shall be in full force and effect;
- (5) The KRRC shall have provided the Project Company with certificates for all Required Insurance which is to be provided by the KRRC in accordance with Section 13.1 (Insurance) and certified that all such policies are in full force and effect and in compliance with the requirements of Section 13.1 (Insurance) and Appendix 9 (Insurance Requirements);
- (6) The KRRC shall have provided the Project Company with certificates for all Required Insurance which is to be provided by the KRRC in accordance with Section 13.1 (Insurance) and certified that all such policies are in full force and effect and in compliance with the requirements of Section 13.1 (Insurance) and Appendix 9 (Insurance Requirements);
- (7) The Project Company shall have submitted the Document Submittal Procedures in accordance with the requirements of Appendix 7 (Project Implementation Work Review Procedures) and shall have complied with the design submittal requirements set forth in subsection 6.7(D) (KRRC Review and Comment on Project Implementation Design Documents) to the extent necessary to commence with the Project Implementation Work; and
- (8) The Project Company shall have held a work commencement conference with the KRRC and its representatives in accordance with Appendix 7 (Project Implementation Work Review Procedures).

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

(B) Establishment of the Project Implementation Commencement Date. In no event shall the Project Implementation Commencement Date be established prior to the satisfaction by the Project Company and the KRRC of the Project Implementation Commencement Date Conditions. The Project Company shall provide 10 days’ written notice to

the KRRC as to the satisfaction of its Project Implementation Commencement Date Conditions and the date it proposes to establish as the Project Implementation Commencement Date hereunder. The KRRC shall issue a Notice to Proceed with Project Implementation Work on the Project Implementation Commencement Date proposed by the Project Company upon satisfaction of the Project Implementation Commencement Date Conditions. In the event the KRRC determines that the Project Company has not satisfied the Project Implementation Commencement Date Conditions, notwithstanding the Project Company's notice pursuant to this Section, the KRRC Contract Representative, by written notice to the Project Company delivered not later than three days prior to the Project Implementation Commencement Date proposed by the Project Company, shall notify the Project Company of the KRRC's determination and state which conditions the Project Company has failed to satisfy. The Project Company shall satisfy all such conditions prior to the establishment of the Project Implementation Commencement Date. Without limiting any of the foregoing, the KRRC, in its discretion, may issue a limited Notice to Proceed with Project Implementation Work pending satisfaction by the Project Company of all Project Implementation Commencement Date Conditions and the specific terms and conditions under which the Project Company is authorized to proceed with Project Implementation Work shall be specified in such Notice to Proceed.

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

SECTION 6.4. DIFFERING SITE CONDITIONS.

(A) Preliminary Services Relating to Differing Site Conditions. The Project Company shall review all available information, including the Geotechnical Data Report, and undertake all soils and other site conditions investigations required with respect to the Project Site during performance of the Preliminary Services as required pursuant to Appendix 2 (Preliminary Services), and shall furnish the KRRC with the Existing Conditions Assessment Report as provided therein.

(B) Commencing Subsurface Excavations. Prior to commencing any trenching or excavations, the Project Company shall, taking into account the information in the Geotechnical Data Report and the Existing Conditions Assessment Report and in compliance with Good Dam Removal Practice, conduct further site investigations in accordance with Appendix 5 (General Project Implementation Work Requirements), including exploratory excavations and further borings, to confirm the location and type of underground structures that could be damaged as a result of the excavations or impede performance of the Project Implementation Work. Such underground structures include all sewer, water, gas, and other piping, and manholes, chambers, electrical conduits, wires, tunnels, foundations, substructures and other existing subsurface work located within or adjacent to the Project Site. The Project Company shall carefully sustain in their places and support, or if necessary relocate, all underground and surface structures located within or adjacent to the Project Site and as required by the party owning or controlling such structure. The Project Company shall communicate with any Utilities listed on the Project Technical Requirements, call for locations and subsequently visit the Project Site with a qualified representative of each such Utility. Existing surface facilities which are temporarily removed to facilitate installation of the Project Implementation Work shall be replaced and restored to their original condition. The Project Company shall notify the KRRC seven days in advance of any work that might impact utilities

of business or residents in the area surrounding the Project Site so that the KRRC can notify such businesses or residents of such work.

(C) Discovery of Differing Site Conditions. Upon discovering a Differing Site Condition and before the condition is further disturbed, the Project Company shall immediately, after taking appropriate measures to secure the affected Project Implementation Work: (1) stop work in and secure the affected area; and (2) notify the KRRC Contract Representative of the alleged Differing Site Condition in accordance with this Section. The Project Company's initial notice to the KRRC Contract Representative shall be issued by telephone or in person and followed thereafter by written notice provided in accordance with Section 14.2 (Uncontrollable Circumstance Claim Procedures). The written notice shall describe the specific differing conditions encountered, a brief description of why the condition encountered is considered a Differing Site Condition and the measures taken to deal with the differing conditions. To the extent the existence of a Differing Site Condition causes or is reasonably expected to cause an increase in the cost or time required for performance of the Project Implementation Work, the Project Company shall be entitled to a Change Order as and to the extent provided in subsection (D) (Relief for Differing Site Conditions) of this Section. Notwithstanding anything set forth in subsection (D) (Relief for Differing Site Conditions) of this Section or in Article 14 (Uncontrollable Circumstances), no Uncontrollable Circumstance relief shall be allowed for any alleged Differing Site Condition unless the Project Company provides the KRRC with notice in accordance with this Section.

(D) Relief for Differing Site Conditions. If the Project Company establishes that the actual conditions encountered during Project Implementation Work meet the criteria for a Differing Site Condition then the Project Company shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in Section 14.1 (Uncontrollable Circumstances Generally).

SECTION 6.5. REGULATED SITE CONDITIONS.

(A) Project Company Responsibilities and Indemnity. In performing the Project Implementation Work, the Project Company 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 Project Company or becomes actually known by the Project Company through physical observation. Notwithstanding anything to the contrary in this Section, the Project Company shall bear full responsibility for the handling, treatment, storage, removal, remediation, avoidance, or other appropriate action (if any), with respect to:

(1) Any Regulated Substance present at, on, in or under, or migrating or emanating to or from the Project Site, that were generated by or brought or caused to be brought on the Project Site by any act or omission of the Project Company or any Subcontractor; and

(2) The creation of any Regulated Site Condition due to Project Company Fault, or the exacerbation of any Regulated Site Condition due to Project Company Fault once the location and existence of such Regulated Site Condition becomes actually known to the Project Company.

All remediation costs resulting from Regulated Substances or Regulated Site Conditions for which the Project Company bears responsibility pursuant to this Section shall constitute Unallowable Costs borne solely by the Project Company. The Project Company shall indemnify, defend and hold harmless the Project Company Indemnitees in accordance with and to the extent provided in Article 15 (Indemnification) from and against all Loss-and-Expense resulting

from Regulated Substances or Regulated Site Conditions for which the Project Company bears responsibility pursuant to this Section.

(B) Known Regulated Site Conditions. The Project Company acknowledges that the Known Regulated Site Conditions, and all cost, schedule and performance impacts relating to the Project Company's responsibility to handle, remediate and otherwise deal with such Known Regulated Site Conditions in compliance with Applicable Law, have been fully taken into account in entering into this Project Agreement and in establishing the Project Implementation Schedule, the Scheduled Milestone Substantial Completion Dates, the Base Guaranteed Maximum Price, and all of the terms and conditions of this Project Agreement. Accordingly, Known Regulated Site Conditions and any requirements to handle, remediate and otherwise deal with Known Regulated Site Conditions shall not constitute an Uncontrollable Circumstance.

(C) Unknown Regulated Site Conditions. If the Project Company encounters any Unknown Regulated Site Conditions at the Project Site, it shall stop work immediately in the affected part of the Project Implementation Work to the extent required to avoid any safety or health hazard or comply with Applicable Law until it has taken such action as is necessary, in accordance with Applicable Law, to protect the interests of any affected party. The Project Company shall, immediately upon encountering any Unknown Regulated Site Condition at the Project Site, notify the KRRC and, if required by Applicable Law, all Governmental Bodies with jurisdiction over the Project or Project Site.

(D) Remediation of Unknown Regulated Site Conditions. The Project Company shall take, or cause a Subcontractor to take, subject to subsections (E) (Relief for Unknown Regulated Site Conditions) and (F) (Articles of Historic or Scientific Value) of this Section, all necessary measures required to ensure that Unknown Regulated Site Conditions are remediated, rendered harmless or otherwise handled in accordance with Applicable Law. The Project Company shall, prior to proceeding with any such work: (1) obtain all environmental site assessments of the affected property and submit copies of such assessments to the KRRC for its approval; (2) develop remediation plans for the Unknown Regulated Site Condition, subject to the KRRC's approval; and (3) obtain all applicable Governmental Approvals to implement such plans. During the period of any investigation and remediation efforts, the Project Company shall take all necessary measures to isolate and contain such Unknown Regulated Site Condition from the unaffected parts of the Project Implementation Work, and shall continue the Project Implementation Work to the maximum extent possible on unaffected parts of the Project Implementation Work.

(E) Relief for Unknown Regulated Site Conditions. Except for those Regulated Site Conditions (1) identified in subsection (A) (Project Company Responsibilities and Indemnity) of this Section and without limiting the Project Company's obligations under subsection (D) (Remediation of Unknown Regulated Site Conditions) of this Section, and (2) constituting Known Regulated Site Conditions, if the Project Company establishes that the actual conditions encountered during Project Implementation Work meet the criteria for Unknown Regulated Site Conditions and materially and directly impact the Project Company's cost or time of performance, then the Project Company shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in Article 14 (Uncontrollable Circumstances).

(F) Articles of Historic or Scientific Value. All articles of historical, archaeological, religious, scientific or similar value, including coins, fossils and articles of antiquity, which are known to exist at the Project Site as of the Project Implementation Contract Amendment Date or which may be uncovered by the Project Company during the progress of the Project Implementation Work shall become the KRRC's property. Such findings

shall be reported immediately to the KRRC, who will determine in consultation with the Project Company, the method of removal, where necessary, and the final disposition thereof.

(G) Generator Liability. Nothing contained herein is intended to identify the Project Company as the generator of any pre-existing Hazardous Material. Except with respect to those Hazardous Materials identified in subsection (A) (Project Company Responsibilities and Indemnity) of this Section as to which the Project Company bears responsibility, the KRRC shall execute, as generator, Hazardous Materials manifests required in order for the Project Company to fulfill its obligations under this Section, as and to the extent required under Applicable Law.

SECTION 6.6. PERMITTING RESPONSIBILITIES AND SCHEDULE.

(A) Preliminary Services Relating to Permitting. Appendix 3 (Governmental Approvals) sets forth, as of the Contract Date, the Governmental Approvals expected to be required for the performance of the Project Implementation Work, and the division of responsibility between the parties for managing the application process and obtaining each such Governmental Approvals. During the performance of the Preliminary Services, the Project Company shall review and confirm all Governmental Approvals that are required for the Project Implementation Work, identifying the permit name, issuing agency and permittee or approval holder. The Preliminary Services Fee is the only compensation payable for such services. Based on such services and negotiation between the parties, any necessary revisions to Appendix 3 (Governmental Approvals) shall be made on the GMP Contract Amendment Date, and updated as part of the Project Implementation Contract Amendment.

(B) Project Company Governmental Approvals Responsibility Generally. The Project Company shall obtain and maintain all Governmental Approvals necessary to commence, continue and complete the Project Implementation Work and achieve Milestone Substantial Completion, other than the KRRC-Managed Governmental Approvals. The Project Schedule sets forth the dates on which all such Governmental Approvals are expected to be applied for and obtained during the Preliminary Services Period. The Project Company shall use all reasonable efforts to adhere to such schedule and in any event to obtain, and assist the KRRC in obtaining, all Governmental Approvals required to commence the Project Implementation Work as soon as practicable. The Project Company-Managed Governmental Approvals expected to be required as of the Contract Date are set forth in Table 1 of Appendix 3 (Governmental Approvals). In connection therewith, the Project Company shall:

- (1) Prepare and complete all required filings, applications and reports;
- (2) Develop and furnish all necessary data, information, plans, documentation and supporting material;
- (3) Familiarize itself with all applicable terms and conditions;
- (4) Attend all required meetings and hearings;
- (5) Cooperate with and assist the KRRC in carrying out any of the KRRC's responsibilities hereunder with respect to the KRRC-Managed Governmental Approvals as and to the extent provided in subsection (E) (Project Company Responsibilities in Connection with KRRC-Managed Governmental Approvals) of this Section;
- (6) Pay all required permit and filing fees;

(7) Perform all activities that are the responsibility of the Project Company as set forth in Appendix 3 (Governmental Approvals);

(8) Take all other action necessary, as soon as practicable in the performance of the Preliminary Services and Project Implementation Work to, as applicable, obtain, maintain, renew and extend all Governmental Approvals other than KRRC-Managed Governmental Approvals; and

(9) Comply with the terms and conditions of all Governmental Approvals.

The Project Company shall be responsible for identifying, obtaining and maintaining any Governmental Approvals required for the performance of the Project Implementation Work that are not KRRC-Managed Governmental Approvals, whether or not the Governmental Approval is listed in Table 1 of Appendix 3 (Governmental Approvals).

(C) Application Process. The KRRC shall be notified by the Project Company prior to any application, data submittal, or other communication by the Project Company with any Governmental Body regarding Governmental Approvals. The Project Company 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 Project Company, to modify, alter, amend, delete or supplement any information supplied, or term or condition proposed, by the Project Company 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 approval, which approval shall not be unreasonably withheld or delayed. The Project Company shall deliver to the KRRC, promptly after the Project Company's receipt, a copy of each Governmental Approval, and shall provide a listing of the status of all Governmental Approvals in its Monthly Progress Report.

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

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

(2) Perform all activities that are the responsibility of the KRRC as set forth in Appendix 3 (Governmental Approvals);

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

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

(a) Execute Governmental Approval applications and related documents, either in its own name or jointly with the Project Company, 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 Project Company 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 Governmental Approvals that are required to be obtained by the Project Company 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 Project Company shall provide all necessary support and efforts to apply for and obtain such Governmental Approvals, including preparing all application 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 Project Company's obligations under this Section and shall not require the KRRC to:

(1) Staff the Project Company's permitting or development efforts, to undertake any new studies or investigations with respect to the Project, or to affirmatively seek to obtain the issuance of the Governmental Approvals required to be obtained by the Project Company hereunder;

(2) Take a position which it 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 Project Agreement or are inconsistent with the express obligations of the KRRC hereunder); or

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

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

(1) Assisting the KRRC in preparing and completing all required filings, applications and reports;

(2) Developing and furnishing all necessary data, information, plans, documentation and supporting material;

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

(4) Attending all required meetings and hearings;

(5) Taking all other actions reasonably necessary in accordance with Good Dam Removal Practice to assist the KRRC in obtaining, maintaining, renewing, and extending all KRRC-Managed Governmental Approvals; and

(6) As provided in subsection 4.6(C) (Fines, Penalties, Indemnification and Remediation), comply with the KRRC-Managed Governmental Approvals, all other

Governmental Approvals and all Applicable Laws, and indemnify, defend and hold harmless the Project Company Indemnitees from and against all Loss-and-Expense resulting from any failure of compliance.

(F) Delays in the Issuance of Project Company-Managed Governmental Approvals in General. Except as provided in subsection (G) (Allowable Relief in Connection with Delays in the Issuance of Project Company-Managed Governmental Approvals) of this Section, to the extent any Project Company-Managed Governmental Approval has not been obtained as of the Project Implementation Contract Amendment Date because it was not required in order to commence the Project Implementation Work, the Project Company shall bear the risk of any delays in obtaining such remaining Governmental Approvals and of complying with any of the terms and conditions contained in such Governmental Approvals, 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 Project Company to any price, schedule or performance relief hereunder.

(G) Allowable Relief in Connection with Delays in the Issuance of Project Company-Managed Governmental Approvals. To the extent any Project Company-Managed Governmental Approval cannot be obtained as of the Project Implementation Contract Amendment Date but must be obtained after the Project Implementation Contract Amendment Date in order to complete the Project Implementation Work, the Project Company may claim Uncontrollable Circumstance relief if the following requirements are met:

(1) the Project Company, in a manner consistent with the overall Project Schedule, has submitted all applications, data, studies, reports, responses and other information required under Applicable Law and the adopted administrative practice of the Governmental Body;

(2) the Project Company has consistently maintained a fully responsive, engaged and respectful professional relationship with the staff and management of the Governmental Body in a manner that, while not expressly required under Applicable Law, is generally recognized among regular practitioners in the permitting field to facilitate the securing of similar approvals in a timely manner in light of the discretion accorded Governmental Bodies under administrative law;

(3) the Governmental Body issuing the Project Company-Managed Governmental Approval, fails to issue such Project Company-Managed Governmental Approval by the date assumed in the Project Schedule;

(4) the delay in the issuance of the Project-Company Governmental Approval by the Governmental Body causes an undue delay on the Project Schedule;

(5) the Project Company demonstrates that it has complied with the requirements of this Project Agreement and has in all respects used its commercially reasonable efforts to obtain the Project Company-Managed Governmental Approval in a timely manner and consistent with the Project Schedule; and

(6) the Project Company satisfies all requirements and makes all demonstrations specified in Article 14 (Uncontrollable Circumstances).

(H) Allowable Relief in Connection with Changes in Terms and Conditions. Section 6.9(C) (Changes to Terms and Conditions of Governmental Approvals) addresses allowable relief in connection with changes to the terms and conditions of Governmental Approvals issued after the Project Implementation Contract Amendment Date.

(I) Delays in the Issuance of KRRC-Managed Governmental Approvals. The parties acknowledge and agree that all KRRC-Managed Governmental Approvals must be obtained and in full force and effect on or prior to, and as a condition to the occurrence of, the Project Implementation Contract Amendment Date. Accordingly, delays in the issuance of any KRRC-Managed Governmental Approval shall operate to delay the occurrence of the Project Implementation Contract Amendment Date but, once the Project Implementation Contract Amendment Date occurs, shall not constitute an Uncontrollable Circumstance, operate to provide the Project Company any schedule relief, or be the basis of any extension of the Scheduled Milestone Substantial Completion Dates or the Milestone Longstop Dates. **[Note: See note in subsection 5.11(C)(6), regarding the establishment of the Project Implementation Contract Amendment where not all KRRC-Managed Governmental Approvals have been obtained.]**

SECTION 6.7. FINAL DESIGN RESPONSIBILITIES AND RISK ASSUMPTION.

(A) Performance of the Design Work. Following the issuance of the Notice to Proceed with the Project Implementation Work pursuant to Section 6.3 (Project Implementation Commencement Date), the Project Company agrees to undertake, perform, and complete the designs and plans for the Project in accordance with the Contract Standards and to prepare all Project Implementation Design Documents necessary or appropriate to carry out and complete the Project Implementation Work. All Project Company working design documents and final Project Implementation Design Documents shall comply with the Project Technical Requirements and shall ensure that the Project Implementation Work is performed to a standard of quality, integrity, durability and reliability which is equal to or better than the standard established by the Project Technical Requirements. The Project Company shall be responsible for the professional quality, technical accuracy, timely completion and coordination of all Project Implementation Design Documents and shall, without additional compensation, correct or revise any negligent errors, omissions or other deficiencies in the Project Technical Requirements or the Project Implementation Design Documents.

(B) Sole Design Responsibility and Liability; Exception for Hatchery Work and City of Yreka Waterline Work. The Project Company shall have the sole and exclusive responsibility and liability for the design of the Project and the execution and completion of the Project Implementation Work hereunder in accordance with the Contract Standards, notwithstanding (1) the fact that the RFP included certain design criteria, technical requirements and performance standards for the Project Implementation Work, and (2) the KRRC's role in defining the nature and extent of the Preliminary Services, reviewing and commenting on the Preliminary Services Deliverable Material, and negotiating and agreeing upon the GMP Contract Amendment and the Project Implementation Contract Amendment. Without limiting the Project Company's right to claim relief in the event of Uncontrollable Circumstances as and to the extent provided in this Project Agreement, all risks relating to the design of the Project and the execution and completion of the Project Implementation Work, including all risks of design defects, constructability, demolition and removal, and habitat restoration, have been transferred to the Project Company under this Project Agreement. The provisions set forth in this subsection are subject to subsection (C) (Design Responsibility and Liability for Hatchery Work and City of Yreka Waterline Work Retained by the KRRC) of this Section relating to the design of the Hatchery Work and the City of Yreka Waterline Work.

(C) Design Responsibility and Liability for Hatchery Work and City of Yreka Waterline Work Retained by the KRRC. The KRRC has furnished the Hatchery Work Complete Plans, Drawings and Specifications and the City of Yreka Waterline Work Complete Plans, Drawings and Specifications as part of this Project Agreement. The obligation of the Project Company to perform the Hatchery Work element and the City of Yreka Waterline Work element of the Project Implementation Work shall be limited to construction and construction-related services, which shall be performed based on the Hatchery Work Complete Plans, Drawings and Specifications and the City of Yreka Waterline Work Complete Plans, Drawings and Specifications furnished by the KRRC. The Project Company shall have no responsibility or liability with respect to the design of the Hatchery Work or the City of Yreka Waterline Work, and the risks and responsibility relating to the design of the Hatchery Work and the City of Yreka Waterline Work shall be borne by the KRRC.

(D) KRRC Review and Comment on Project Implementation Design Documents. The Project Company shall provide the KRRC with the Document Submittal Procedures in accordance with the specific requirements set forth in Appendix 7 (Project Implementation Work Review Procedures). The KRRC shall have the right to review and comment on all Project Implementation Design Documents within the time frames specified in Appendix 7 (Project Implementation Work Review Procedures) in order to confirm the compliance and consistency of the Project Implementation Design Documents with the Contract Documents. In no event shall the Project Company proceed with the Project Implementation Work of any particular segment of the Project Implementation Work without first complying with the requirements of the Document Submittal Procedures and Appendix 7 (Project Implementation Work Review Procedures). The Project Company shall give due consideration and provide written responses, in the time and manner provided in Appendix 7 (Project Implementation Work Review Procedures), to any comments delivered by the KRRC or its representatives as to the Project Company's design submittals. Neither compliance by the Project Company with the Project Technical Requirements, nor review and comment by the KRRC or the Program Manager on the Project Company's Preliminary Services Design Documents or Project Implementation Design Documents, nor any failure by the KRRC or the Program Manager to comment on any design submittals shall in any way relieve the Project Company of full responsibility for the design and completion of the Project Implementation Work in accordance with the Contract Standards. The parties acknowledge and agree that the review and comment rights of the KRRC under this Section are intended for the informational purposes of the KRRC and for the KRRC to determine whether the Project Implementation Design Documents comply with the Project Technical Requirements. Without limiting the KRRC's review and comment rights under this Section, the KRRC's approval of any Project Implementation Work Design Document shall not be required in order for the Project Company to proceed with the performance of the Project Implementation Work.

(E) Documents at the Project Site. The Project Company shall maintain at the Project Site in a location approved by the KRRC all Project Implementation Design Documents, including a complete set of record Drawings, in accordance with the Contract Standards. These documents shall be available to the KRRC for reference, copying and use, and a complete set thereof shall be delivered to the KRRC upon completion of the Project Implementation Work.

SECTION 6.8. CHANGES TO THE PROJECT TECHNICAL REQUIREMENTS AT PROJECT COMPANY REQUEST.

(A) KRRC Consent Required. The Project Company acknowledges the KRRC's material interest in each provision of the Project Technical Requirements, and agrees that, subject to Section 6.9 (Other Changes to the Project Technical Requirements), no material change to the Project Technical Requirements shall be made after the Project Implementation

Contract Amendment Date except with the consent of the KRRC, which may be withheld or conditioned in its discretion after a good faith review is made of such proposed change; provided, however, that the KRRC shall provide a written explanation in reasonable detail to the Project Company as to its reasoning for declining to make any such change. Any change accepted by the KRRC, together with all related approved terms and conditions, shall be set forth in a Contract Administration Memorandum, a Contract Amendment or a Change Order, as applicable.

(B) Notice and Information as to Proposed Change. The Project Company shall give the KRRC written notice of, and reasonable opportunity to review and approve, any Project Technical Requirements Change proposed to be made at the Project Company's request. The notice shall contain sufficient information for the KRRC to determine that the proposed Project Technical Requirements Change:

- (1) Does not diminish the capacity of the Project Implementation Work to be performed so as to meet the Contract Standards;
- (2) Does not impair the quality, integrity, durability and reliability of the Project Implementation Work;
- (3) Is reasonably necessary or is advantageous for the Project Company to fulfill its obligations under this Project Agreement; and
- (4) Is feasible.

SECTION 6.9. OTHER CHANGES TO THE PROJECT TECHNICAL REQUIREMENTS.

(A) Changes Made Due to Uncontrollable Circumstances. Upon the occurrence of an Uncontrollable Circumstance after the Project Implementation Contract Amendment Date, the Project Company shall promptly proceed, subject to the terms, conditions and procedures set forth in Article 14 (Uncontrollable Circumstances) and subject to the KRRC's approval, to make or cause to be made all Project Technical Requirements Changes reasonably necessary to address the Uncontrollable Circumstance. The Project Company shall consult with the KRRC concerning possible means of addressing and mitigating the effect of any Uncontrollable Circumstance. The parties shall use all reasonable efforts to address Project Technical Requirements Changes required due to Uncontrollable Circumstances in a manner that will not impact the critical path of planned Project Implementation Work associated with any construction or demolition milestone in the Project Implementation Schedule. The Project Company shall be entitled to schedule and price relief resulting from any such Project Technical Requirements Change to the extent provided in Article 14 (Uncontrollable Circumstances). Without limiting the right of the KRRC to issue a Unilateral Change Directive under Section 6.10 (Unilateral Change Directives), any Project Technical Requirements Change made on account of Uncontrollable Circumstances, and any related change in the terms and conditions of the Contract Documents shall be set forth in a Change Order.

(B) Changes Required by a Change in Law Governmental Bodies. The parties recognize that a Change in Law after the Project Implementation Contract Amendment Date may require a Project Technical Requirements Change. In the event of the imposition of any such additional terms and conditions imposed through a Change in Law, the Project Company shall promptly proceed, subject to the KRRC's approval, to make or cause to be made all Project Technical Requirements Changes reasonably necessary to comply with such additional terms and conditions. The Project Company shall be entitled to schedule and price

relief resulting from any such Project Technical Requirements Change, to the extent provided in Article 14 (Uncontrollable Circumstances). Without limiting the right of the KRRC to issue a Unilateral Change Directive under Section 6.10 (Unilateral Change Directives), any such Project Technical Requirements Change and any related change in the terms and conditions of the Contract Documents shall be set forth in a Change Order.

(C) Changes to Terms and Conditions of Governmental Approvals. As provided in Section 5.11 (Project Implementation Contract Amendment), the Project Implementation Contract Amendment will not be entered into until all Governmental Approvals necessary to commence, carry out and complete the Project Implementation Work have been issued and are in full force and effect. Accordingly, the terms and conditions of all such Governmental Approvals will have been established in final form, not subject to change, on or before the Project Implementation Contract Amendment Date. The parties acknowledge that certain Project Company-Managed Governmental Approvals, not required to commence the Project Implementation Work, will need to be obtained subsequent to the Project Implementation Contract Amendment Date in order to carry out and complete the Project Implementation Work once commenced. The risk of any material changes to the Project Technical Requirements that may be required to be made by any such Project Company-Managed Governmental Approvals and the imposition of any unanticipated terms and conditions that require any such changes shall constitute an Uncontrollable Circumstance only if and to the extent the following requirements are met:

(1) the Project Company satisfies all requirements and makes all demonstrations specified in Article 14 (Uncontrollable Circumstances);

(2) the Project Company demonstrates that it has complied with the requirements of this Project Agreement and has in all respects used its commercially reasonable efforts to obtain the Governmental Approval with terms and conditions that would not require material changes to the Project Technical Requirements;

(3) the Project Company has submitted all applications, data, studies, reports, responses and other information required under Applicable Law and the adopted administrative practice of the Governmental Body in order to obtain the Governmental Approval with terms and conditions that would not require material changes to the Project Technical Requirements; and

(4) the Project Company has consistently maintained a fully responsive, engaged and respectful professional relationship with the staff and management of the Governmental Body in a manner that, while not expressly required under Applicable Law, is generally recognized among regular practitioners in the permitting field as necessary on a practical level to secure similar approvals in a timely manner in light of the discretion accorded Governmental Bodies under administrative law.

(D) Changes Required by the KRRC. The KRRC shall have the right to require the Project Company to make Project Technical Requirements Changes at any time prior to Project Final Completion in its discretion for any reason whatsoever, whether and however the exercise of such rights affects this Project Agreement so long as the Project Company's rights are protected as provided in this Section. The Project Company shall be entitled to a Change Order providing appropriate price, schedule, performance and other relief in the event of a Project Technical Requirements Change made at the direction of the KRRC under this Section; provided, however, that the Project Company shall not be entitled to any such price, schedule, performance or other relief to the extent that any such Project Technical

Requirements Change is required due to Project Company Fault. The KRRC shall have no obligation to make any Project Technical Requirements Change on account of its rights under this Section.

SECTION 6.10. UNILATERAL CHANGE DIRECTIVES.

(A) **KRRC Right to Issue.** The parties intend to negotiate the terms of any Change Order providing for a Project Technical Requirements Change pursuant to Section 6.9 (Other Changes to the Project Technical Requirements) prior to the Project Company incurring any costs with respect to any such change or adjustment. The Project Company shall consult with the KRRC concerning possible means of addressing any proposed Project Technical Requirements Change pursuant to Section 6.9 (Other Changes to the Project Technical Requirements) and, without limiting any of the rights of the KRRC under Section 6.8 (Changes to the Project Technical Requirements at Project Company Request), the Project Company and the KRRC shall cooperate in order to minimize any delay and lessen any additional cost in light of such proposed Project Technical Requirements Change. Notwithstanding the foregoing, however, the KRRC shall have the right to issue a written order directing a change in scope of the Project Implementation Work, including Project Technical Requirements Changes, pursuant to this Section, which order shall specify any appropriate price, performance or schedule relief, if any, associated with the change in scope of the Project Implementation Work (a “**Unilateral Change Directive**”). A Unilateral Change Directive may be issued to address any inability of the parties to reach agreement as to the terms and conditions of a Change Order, or to direct changes in the Project Implementation Work in circumstances where the Project Company has no entitlement to an increase in compensation, schedule adjustment or other performance relief hereunder, including changes required due to Project Company Fault. No Unilateral Change Directive shall be made that would be contrary to Applicable Law. Upon receipt of a Unilateral Change Directive, the Project Company shall promptly proceed with the performance of any change in the Project Implementation Work as instructed and shall promptly advise the KRRC in writing of the Project Company’s agreement (or disagreement in accordance with subsection (B) (Disagreement with Terms of a Unilateral Change Directive) of this Section) with any price, performance or schedule relief, if any, as may be proposed by the KRRC in the Unilateral Change Directive. If the Project Company receives a written communication signed on behalf of the KRRC, which the Project Company believes is a Unilateral Change Directive that is not so identified, or a verbal communication which the Project Company believes is a Unilateral Change Directive, it shall not proceed with the purported change in the Project Implementation Work until it receives written confirmation from the KRRC that such communication is in fact a Unilateral Change Directive. A Unilateral Change Directive that is signed by the Project Company and approved by the KRRC in accordance with its procurement rules and regulations, reflecting the scope of work and any price, schedule and performance relief, if any, shall be deemed a Change Order.

(B) **Disagreement with Terms of a Unilateral Change Directive.** If the Project Company disagrees with the suggested price, schedule or performance relief, if any, set out in the Unilateral Change Directive, the Project Company shall notify the KRRC Contract Representative in writing within 20 Business Days after receipt of the Unilateral Change Directive. Within 30 days after providing the notice required in the preceding sentence, the Project Company shall document its position in writing, delivered to the KRRC Contract Representative, specifying the reasons the Project Company believes it is entitled to any requested price, performance or schedule relief under this Project Agreement. Failure of the Project Company to notify the KRRC Contract Representative within seven days after receipt of the Unilateral Change Directive or to provide written documentation of the Project Company’s position within the time prescribed in this Section shall constitute an abandonment of all entitlement to any relief under this Project Agreement and waiver by the Project Company of any further right to object to the Unilateral Change Directive. Any agreement by the KRRC and

the Project Company to any price, performance or schedule relief pursuant to this Section and any related change in the terms and conditions of the Contract Documents, shall be set forth in a Change Order. If the Project Company is unable to reach agreement with the KRRC with regard to any price, performance or schedule relief under this Section, the Project Company may elect to initiate dispute resolution procedures in accordance with Section 11.1 (Dispute Resolution Procedures). In such case, the Project Company shall proceed with the performance of the Project Implementation Work in accordance with the Unilateral Change Directive and shall keep and present, in such form as the KRRC may request, an itemized accounting to go with the appropriate supporting data with respect to the Project Company's position, including all information necessary to support Cost Substantiation.

SECTION 6.11. INTERFACE AND COORDINATION.

(A) Maintenance of Facilities Operations. The Project Company shall undertake and execute the Project Implementation Work in a manner which does not interfere with or impair any ongoing operations of the Facilities until decommissioning. As part of the Preliminary Services, the Project Company shall provide, for the KRRC's review and approval, a plan for the maintenance of Facilities operations during performance of the Project Implementation Work (the "**Maintenance of Facilities Operations Plan**"), prepared in accordance with this Section and Appendix 2 (Preliminary Services) and Appendix 5 (General Project Implementation Work Requirements). The Project Company shall provide a final Maintenance of Facilities Operations Plan, approved by the KRRC, as a precondition to the establishment of the Project Implementation Commencement Date under Section 6.3 (Project Implementation Commencement Date). The Project Company shall coordinate all Project Implementation Work with the KRRC in accordance with the Contract Standards, including the approved Maintenance of Facilities Operations Plan. The Project Company acknowledges that the operation of the Facilities may require a stoppage of Project Implementation Work on all or a portion of the Project Site from time-to-time, subject to Section 6.12 (Suspension of Work). The Project Company assumes the risk that the Project Implementation Work can be accomplished in accordance with the Contract Standards in the manner required by this Section.

(B) Related Projects Generally. The Project Company acknowledges that the KRRC will be undertaking several other projects at and in the vicinity of the Project Site and, without limiting any other obligation under this Project Agreement, agrees to reasonably coordinate the Project Implementation Work (including making reasonable adjustments to its Project Implementation 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 Project Site are referred to herein as the "**Related Projects**". As part of the Preliminary Services, the Project Company shall provide, for the KRRC's review and comment, a Related Projects Coordination Protocol, prepared in accordance with the Contract Standards. Nothing in this Project Agreement shall be interpreted as granting the Project Company exclusive occupancy of the Project Site. The Project Company must ascertain to its own satisfaction the scope of the Project and the nature of any other contracts that have been or may be awarded by the KRRC in relation to its overall capital improvement program. The Project Company shall cause the Project Implementation 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 Project Site. The Project Company agrees to reasonably cooperate and coordinate its activities with those of the KRRC and all Separate Contractors so that the Project and any Related Project can be completed in an orderly and coordinated manner without unreasonable disruption. Without limiting any of the foregoing, the Project Company 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 Project Company and the Separate Contractors. Notwithstanding anything to the contrary in the Related Projects Coordination Protocol or this Project Agreement, the Project Company's agreement to comply with the Related Projects Coordination Protocol shall not be construed to: (1) confer upon the Project Company any liability for the acts or omissions of the Separate Contractors; (2) impose upon the Project Company joint or several liability for the acts or omissions of the Separate Contractors; (3) create a partnership, consortium or joint venture relationship among the Project Company and any Separate Contractor; or (4) expand the Project Company's liabilities beyond those set forth in this Project Agreement. The Project Company 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 Project Company Person to reasonably cooperate or coordinate its work with the work of any Separate Contractor in accordance with this Section. **[Note: As part of the GMP Contract Amendment process, the parties shall negotiate in good faith the extent to which the Project Company shall be entitled to Uncontrollable Circumstance relief on account of (1) any Separate Contractor's work (including delays) and (2) PacifiCorp's continued operation and maintenance of the Facilities between the Project Implementation Contract Amendment Date and Decommissioning, as defined in the KHSa. Any specific work to be performed by Separate Contractors or PacifiCorp will be identified during the Preliminary Services Period, and its potential effect on the Project Implementation Work will be taken account of in the negotiation of the GMP Contract Amendment and confirmed or modified, as appropriate, in the Project Implementation Contract Amendment. Conforming changes to the definition of Uncontrollable Circumstances shall also be made, as necessary.]**

(C) Coordination Meetings. The KRRC intends to have coordination meetings among the KRRC, the Project Company 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 Project Site and to avoid or mitigate cost and time impacts to the overall capital improvements program. The Project Company 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.

(D) Equipment and Materials Storage at Project Site. The Project Company shall afford the KRRC and any Separate Contractors reasonable opportunity for the introduction and storage of their equipment and materials and the execution of their work at and in the vicinity of the Project Site. Subject to subsection 6.2(B) (Laydown Areas), the Project Company shall coordinate with the KRRC and any Separate Contractors to store apparatus, materials, supplies and equipment in such orderly fashion at the Project Site as will not unduly interfere with the progress of the Project Implementation Work or the work of the KRRC or any Separate Contractor.

(E) Interrelated Work. If part of the Project Implementation Work depends on proper execution of construction or operations by the KRRC or a Separate Contractor, the Project Company shall, prior to proceeding with that portion of the Project Implementation 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 Project Implementation Work. The Project Company shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in Article 14 (Uncontrollable Circumstances) in the event that defects in the work of the KRRC or any Separate Contractor render the work unsuitable for the proper execution or result of any part of the Project Implementation Work. However, failure of the Project Company to report apparent discrepancies or defects in the other construction shall constitute acknowledgement

that the KRRC's or the Separate Contractor's completed or partially completed construction is fit and proper to receive the Project Implementation Work, except as to discrepancies or defects not then reasonably discoverable pursuant to Good Dam Removal Practice.

(F) Disputes Associated with Separate Work. If the performance of any work by the KRRC or a Separate Contractor is likely to be interfered with by the simultaneous 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 simultaneously. Any decision by the KRRC to halt or delay the performance of the Project Implementation Work by the Project Company pursuant to this Section shall be made in accordance with Section 6.12 (Suspension of Work), and the Project Company shall be entitled to Uncontrollable Circumstance relief as and to the extent provided therein.

SECTION 6.12. SUSPENSION OF WORK.

(A) KRRC Right to Suspend Work. The KRRC may, through a written notice executed by the KRRC Contract Representative, order the Project Company to suspend, delay or interrupt all or any part of the Project Implementation Work for such period of time as the KRRC Contract Representative may determine to be appropriate for the coordination of the Related Projects or otherwise for the convenience of the KRRC.

(B) Uncontrollable Circumstance Relief. In the event the KRRC exercises its right to suspend, delay or interrupt all or any part of the Project Implementation Work pursuant to this Section, the Project Company shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in Article 14 (Uncontrollable Circumstances). No adjustment will be made pursuant to this Section or Article 14, however, for any suspension, delay or interruption to the extent caused by Project Company Fault, including any failure of the Project Company to comply with the Maintenance of Facilities Operations Plan or suspension under subsection 6.14(E) (Health and Safety Compliance Requirements). Any adjustment under this subsection shall be subject to the terms and conditions of Article 14 (Uncontrollable Circumstances), including, in particular, subsection 14.1(A) (Extent of Relief Available to the Project Company), so that the Project Company shall not be entitled to any relief pursuant to this Section absent the required demonstration of the impact of the suspension, delay or interruption on the critical path of the Project Implementation Schedule.

SECTION 6.13. CONSTRUCTION, DEMOLITION AND HABITAT RESTORATION PRACTICE.

(A) Exclusive Responsibility of Project Company. The Project Company shall have exclusive responsibility for all construction, demolition and habitat restoration means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt, and orderly performance and completion of the Project Implementation Work as required by the Contract Documents. The responsibility to provide the construction, demolition and habitat restoration means, methods, techniques, sequences and procedures referred to above shall include the obligation of the Project Company to provide the following construction, demolition and habitat restoration requirements: supervision, tools, implements, machinery, labor, materials and accessories necessary and proper for the purpose; installation, periodic inspection, and removal of temporary site lighting, including specific task lighting and emergency lighting; temporary offices and construction, demolition and habitat restoration trailers; installation, daily inspection, and removal of miscellaneous temporary barricades, fencing, partitions, and other means of temporary separation/isolation on the site during construction, demolition and habitat restoration, including any temporary covered wooden walkways for sidewalks; required design certifications; required approvals; weather protection;

dust control; noise abatement, barriers, etc.; miscellaneous de-watering requirements; clean-up and housekeeping of the Project Site; construction, demolition and habitat restoration trade management; temporary parking; vehicle traffic; health, safety and first aid facilities and equipment; correction of defective work or equipment; Subcontractors' insurance; storage areas; workshops and warehouses; temporary fire protection; security of the Project Site; temporary Utilities; Utility relocations necessary or convenient to its performance of the Project Implementation Work; potable water; sanitary services; Subcontractor and vendor qualification; receipt and unloading of delivered materials and equipment; erection rigging; temporary supports; and construction, demolition and habitat restoration coordination.

(B) Project Site Debris, Trash and Waste. The Project Company shall keep the Project Site reasonably free from debris, trash and construction, demolition and habitat restoration wastes to permit the Project Company to perform its Project Implementation 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 Project Company shall be responsible for the maintenance of grass, shrubbery and trees located on the Project Site. Upon the Milestone Substantial Completion for the Final Habitat Restoration Work and prior to the Final Habitat Restoration Work's Milestone Final Completion, the Project Company shall remove all debris, trash, construction, demolition and habitat restoration wastes, materials, equipment, machinery and tools arising from the Project Implementation Work or applicable portions thereof (and not otherwise incorporated into the Project in accordance with the Contract Documents) to permit the KRRC to occupy the Project for its intended use.

SECTION 6.14. RESPONSIBILITY FOR HEALTH AND SAFETY.

(A) Health and Safety Representative. The Project Company assumes responsibility for implementing and monitoring all health and safety precautions and programs related to the performance of the Project Implementation Work. The Project Company shall, prior to commencing Project Implementation Work, designate an individual with the qualifications and experience necessary under Good Dam Removal Practice to supervise the implementation and monitoring of all health and safety precautions and programs related to the Project Implementation Work (the "**Health and Safety Representative**"). The Health and Safety Representative shall be an individual stationed at the Project Site who shall have no other responsibilities with respect to the Project other than supervising the implementation and monitoring of all health and safety precautions and programs related to the Project Implementation Work.

(B) Precautions and Protection. The Project Company 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 Project Site and all other persons who may be affected thereby;

(2) All the Project Implementation Work, whether in storage on or off the Project Site, under the care, custody or control of Project Company 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 Project Site or adjacent thereto, including plant facilities, trees, shrubs, lawns, walks, pavements, roadways, structures and Utilities not

designated for removal, relocation or replacement in the course of Project Implementation Work.

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

(D) Health and Safety Plan. The Project Company 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 Project Company shall not perform any Project Implementation Work-related activity until the KRRC has had an opportunity to review and comment on the Health and Safety Plan. The Project Company 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 Project Implementation Commencement Date under Section 6.3 (Project Implementation Commencement Date).

(E) Health and Safety Compliance Requirements. The Project Company 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 Project Company. The Project Company 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 Project Implementation 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 Project. The KRRC, through the KRRC Contract Representative, shall have the right to suspend any or all Project Implementation Work if the Project Company fails to comply with its obligations hereunder without any requirements of providing the Project Company with Uncontrollable Circumstance relief hereunder.

(F) Emergencies. The Project Company shall develop an emergency response plan in accordance with the requirements set forth in Appendix 5 (General Project Implementation Work Requirements). The emergency response plan shall be subject to the approval of the KRRC and shall establish the protocols for the Project Company in dealing with emergencies impacting the performance of the Project Implementation Work. In case of an emergency which threatens immediate loss or damage to property or health and safety of life, the Project Company shall act immediately to prevent threatened loss, damage, injury or death. The Project Company shall notify the KRRC of the situation and all actions taken immediately thereafter. If, in the opinion of the Project Company, immediate action is not required, the Project Company 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 Project Company's prompt and immediate action, Project Company 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 Project Implementation Work and at all times during the performance of the Project Implementation Work, the Project Company 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 Contract KRRC Representative will so notify the Project Company. In the event the Project Company 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 Project Company.

SECTION 6.15. SECURITY.

(A) Security Generally. The Project Company, in accordance with the Contract Standards, shall be responsible for the security and protection of the Project and the Project Site, including any requirements set forth in Appendix 5 (General Project Implementation Work Requirements). The Project Company 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 Project in accordance with the Contract Standards. The Project Company shall comply with, and cause all Subcontractors to comply with, all terms and conditions set forth in subsection 4.4(E) (Access to the Project Site Following the PacifiCorp Property Transfer Date).

(B) Security Plan. The Project Company 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 Project Company shall not perform any Project Implementation Work-related activity (including any activity that disturbs the Project Site) until the KRRC has had an opportunity to review and comment on the Security Plan. The Project Company shall provide a final Security Plan, having addressed any comments provided by the KRRC, as a pre-condition to the establishment of the Project Implementation Commencement Date under Section 6.3 (Project Implementation Commencement Date).

SECTION 6.16. MONITORING, OBSERVATIONS, TESTING AND UNCOVERING OF PROJECT IMPLEMENTATION WORK.

(A) Observations and Project Implementation Work Review Protocol. During the progress of the Project Implementation Work through Project Final Completion, the Project Company 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 Project Implementation Work at the Project Site, and shall comply with the Project Implementation Work review procedures set forth in Appendix 7 (Project Implementation Work Review Procedures). During any such observation and inspection, all representatives of the KRRC, including the Program Manager, shall comply with all reasonable health and safety and other rules and regulations applicable to presence in or upon the Project Site, and shall in no material way interfere with the Project Company's performance of any Project Implementation Work. The right of access provided for under this Section shall extend to all storage facilities associated with the Project Implementation Work, whether located on or off the Project Site.

(B) Factory Fabrication, Inspection and Testing. The KRRC reserves the right to have its designated representatives, including the Program Manager, witness any

factory fabrication, inspection or testing. The Project Company shall provide the KRRC with its anticipated schedule for such fabrication, inspection and testing at the initial Project meeting and shall provide 15 days' advance written notice of any actual factory fabrication, inspection or test. The KRRC shall provide the Project Company with reasonable advance notice (at least seven days) of its intention to witness any factory fabrication, inspection or test pursuant to this Section, which notice shall indicate the identity and number of designated representatives of the KRRC who will witness the fabrication, inspection or test.

(C) Project Company Tests. The Project Company shall conduct all tests of the Project Implementation Work or inspections required by the Contract Standards (including shop tests and all testing and special inspections required under the 2015 International Building Code through independent approved agency testing firms). The Project Company shall give the KRRC and the Program Manager reasonable advance written notice (at least two days in advance or otherwise as consistent with the approved Project Implementation and Quality Management Plan prepared in accordance with Appendix 6 (Project Implementation Work Quality Control Requirements)) of tests or inspections required by the Contract Standards prior to the conduct thereof. In no event shall the inability, failure, or refusal of the KRRC or any of its representatives to attend or be present at or during any such test or inspection delay the conduct of such test or inspection, delay the performance of the Project Implementation Work, or otherwise serve as the basis for relief from the Project Company's obligations hereunder. The Engineer-of-Record shall conduct or witness any such test or inspection to the extent required by the Contract Standards. All analyses of test samples shall be conducted by persons appearing on lists of laboratories authorized to perform such tests by the State or federal agency having jurisdiction or, in the absence of such an authorized list in any particular case, shall be subject to the approval of the KRRC, which approval shall not be unreasonably withheld or delayed.

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

(E) 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 Project Implementation Work complies with the Contract Standards. The Project Implementation Work Costs paid in connection with any such test, observation or inspection shall result in a Change Order unless such test, observation or inspection reveals a material failure of the Project Implementation Work to comply with the Contract Documents or Applicable Law, in which event the costs and expenses of such observation, inspection or test shall be Unallowable Costs borne solely by the Project Company. The Project Company shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in Article 14 (Uncontrollable Circumstances) in the event that any requested test, observation or inspection causes a delay in the critical path of the Project Implementation Schedule, but only if such testing, observation or inspection does not reveal any material failure or non-compliance as set forth herein. The Project Company 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 Project Company from its obligations to perform the Project Implementation Work in accordance with the requirements of the Contract Documents.

(F) Notice of Covering Project Implementation Work. The Project Company shall give the KRRC notice in the Monthly Progress Report of its upcoming schedule with respect to the covering and completion of any Project Implementation Work, and shall update such notice, if necessary, within a reasonable time period (at least seven days) before such covering and completion. The KRRC shall give the Project Company reasonable notice (a minimum of 48 hours) of any intended inspection or testing of such Project Implementation Work in progress prior to its covering or completion. If the KRRC provides such notice, the Project Company shall afford the KRRC a reasonable opportunity to conduct such tests or inspections, which the KRRC shall promptly complete. At the KRRC's written request, the Project Company shall take apart or uncover for inspection or testing any previously-covered or completed Project Implementation Work; provided, however, that the KRRC's right to make such requests shall be limited to circumstances where there is a reasonable basis for concern by the KRRC as to whether the disputed Project Implementation Work complies with the requirements of the Contract Documents. The cost of uncovering, taking apart, or replacing such Project Implementation Work along with the costs related to any delay in performing Project Implementation Work caused by such actions, shall:

(1) Be Unallowable Costs borne solely by the Project Company, if such Project Implementation Work was covered prior to any observation or test required by the Contract Standards or for which the KRRC was not provided reasonable advance notice hereunder, or prior to the date on which the KRRC was to conduct any observation or test as to which the KRRC has provided notice of its intention to conduct in accordance with this Section; and

(2) In all other cases, as follows:

(a) Be Unallowable Costs borne solely by the Project Company, if such observation or test reveals that the Project Implementation Work does not comply with the Contract Documents; or

(b) Be Project Implementation Work Costs, if such observation or test reveals that the Project Implementation Work complies with the Contract Documents, and shall result in a Change Order.

In the event such Project Implementation Work does comply with the Contract Documents and the associated costs are determined to be Project Implementation Work Costs pursuant to this Section, the delay caused by such observation or test shall be treated as having been caused by an Uncontrollable Circumstance and any costs incurred with respect to such observation or test shall be costs for the account of the KRRC in accordance with Article 14 (Uncontrollable Circumstances).

SECTION 6.17. CORRECTION OF WORK.

(A) Correction of Non-Conforming Project Implementation Work. Throughout the Project Implementation Period, the Project Company shall complete, repair, replace, restore, re-perform, rebuild and correct promptly any Project Implementation Work that does not conform with the Contract Standards. The Project Company shall be solely responsible for the removal of defective work. The costs incurred by Project Company in completing, repairing, replacing, restoring, re-performing, rebuilding, correcting and removing any such non-conforming or defective Project Implementation Work shall be payable solely through the Project Company Contingency subject to all limitations specified in Appendix 8 (Contract Price), including particularly Attachment 8C (Schedule of Values and Project Company Contingency). Any such costs caused by negligence or willful misconduct shall be Unallowable Costs borne solely by the Project Company. To the extent that any such costs

incurred pursuant to this Section can be recovered from any insurer or from another third party (including any Subcontractor), the Project Company shall exercise its commercially reasonable efforts to obtain recovery from the appropriate source and provide a credit to the KRRC if recovery is obtained. In the event of a failure of the Project Company to take action to correct any such non-conforming Project Implementation 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 Project Implementation Work and the costs and expenses reasonably incurred by the KRRC in connection therewith shall be reimbursed by the Project Company to the KRRC, subject to cost substantiation. The KRRC shall provide the Project Company with seven days' advance written notice prior to exercising its right to correct or provide for the correction of any non-conforming Project Implementation Work pursuant to this Section.

(B) Election to Accept Non-Conforming Project Implementation Work. The KRRC may elect by Change Order, at the Project Company's request, to accept non-conforming Project Implementation Work and charge the Project Company (through a Base Guaranteed Maximum Price Adjustment) for the amount agreed upon by the parties as reflecting the reduction in value of the Project Implementation Work. The KRRC shall have no obligation to accept non-conforming Project Implementation Work pursuant to this Section.

(C) Relation to Other Obligations. The obligations specified in this Section establish only the Project Company's specific obligation to correct the Project Implementation Work and shall not be construed to establish any limitation with respect to any other obligations or liabilities of the Project Company under this Project Agreement. This Section is intended to supplement (and not to limit) the Project Company's obligations under the Project Technical Requirements and any other provisions of this Project Agreement or Applicable Law.

SECTION 6.18. PROPERTY DAMAGE.

(A) Damage Prevention. In performing the Project Implementation Work, the Project Company shall use care and diligence, and shall take all appropriate precautions in accordance with the Contract Standards to protect the Project Implementation Work from loss, damage or destruction. In case of a suspension of Project Implementation Work, for any reason, the Project Company shall take precautions as may be necessary in accordance with the Contract Standards to prevent damage to the Project Implementation Work, all material or equipment to be incorporated therein, whether in storage on or off the Project Site, and other property at the Project Site or adjacent thereto; provide for proper drainage; provide temporary heat, light and other required Utilities and services; and shall erect any necessary temporary structures, signs, or other facilities at its expense. In addition, the Project Company shall properly and continuously maintain in acceptable growing condition all living material in newly established plantings, seedings and sodding furnished under this Project Agreement, and shall take adequate precautions to protect new and existing growth against injury.

(B) Restoration. In case of damage to the Project Implementation Work, and regardless of the extent thereof or the estimated cost of restoration, and whether or not any insurance proceeds are sufficient or available for the purpose, the Project Company shall promptly undertake and complete restoration of the damage to the Project Implementation Work to the character and condition existing immediately prior to the damage and in accordance with the procedures set forth herein, as applicable, regarding Uncontrollable Circumstances, Change Orders and Unilateral Change Directives, and subject to subsection (E) (Payment for Restoration Work and Uninsured Costs) of this Section. The KRRC shall have the right to monitor, review and inspect the performance of any repair, replacement and restoration work by the Project Company in accordance with this Article. If the Project Company fails to undertake restoration of the damage, or having so commenced fails to

complete restoration in accordance with the Contract Documents, the KRRC may (but shall not be obligated to) undertake or complete restoration at the Project Company's expense to the extent applicable in accordance with this Section. The KRRC shall provide the Project Company with 10 days' advance written notice prior to exercising its right to undertake or complete restoration pursuant to this Section. Notwithstanding any of the foregoing, to the extent that Uncontrollable Circumstances cause damage to the Project Implementation Work and insurance proceeds or other third-party payments are not sufficiently available to pay for restoration work pursuant to this Section, the Project Company's obligation to perform such restoration work shall be subject to the receipt of reasonable assurances from the KRRC of its ability to pay the costs for which the KRRC is financially responsible under this Section.

(C) Notice and Reports. In addition to the notification requirements set forth in subsection 6.14(E) (Health and Safety Compliance Requirements), the Project Company shall notify the KRRC and the insurers under any applicable policy of Required Insurance of any incident causing property damage to the Project Implementation Work in excess of \$5,000 or of any OSHA recordable injury accident on the Project Site related to the Project Implementation Work, as promptly as reasonably possible after the Project Company 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 Project Company 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 Project Company shall also submit to the KRRC copies of all accident and other reports filed with (or given to the Project Company 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.

(E) Payment for Restoration Work and Uninsured Costs. All insurance proceeds and recoveries from third parties resulting from damage to or the loss or destruction of the Project Implementation Work, including proceeds from all policies of Required Insurance, shall be for the benefit of the KRRC. The KRRC shall pay the Project Company for restoration work required pursuant to this Section with such proceeds and recoveries and, to the extent the damage to or loss or destruction of the Project Implementation Work is caused by an Uncontrollable Circumstance, other funds of the KRRC obtained pursuant to the Change Order provisions of this Article and the payment provisions of Article 9 (Compensation), as applicable. In the event the damage to or loss or destruction of the Project Implementation Work is not caused by an Uncontrollable Circumstance, all costs of the restoration work that are not covered by insurance proceeds or third-party payments, and are not Unallowable Costs, shall be payable solely through the Project Company Contingency subject to all limitations specified in Attachment 8C (Schedule of Values and Project Company Contingency) of Appendix 8 (Contract Price). Nothing in this Section is intended to waive any rights of recovery under applicable policies of insurance.

(F) Repair of KRRC and Private Property. The Project Company shall promptly repair or replace all KRRC Property and all private property (including Separate

Contractor work or property) damaged by any Project Company Person in connection with the performance of, or the failure to perform, the Project Implementation Work. 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. The costs incurred by Project Company in repairing or replacing any KRRC Property and any private property damaged by any Project Company Person pursuant to this Section shall be payable solely through the Project Company Contingency subject to all limitations specified in Attachment 8C (Schedule of Values and Project Company Contingency) of Appendix 8 (Contract Price), provided that such damage to KRRC Property or private property was not caused by the negligence of any Project Company Person. Such costs shall be Unallowable Costs borne solely by the Project Company to the extent the damage was caused by the negligence of any Project Company Person or to the extent insurance proceeds are not available due to a failure of the Project Company 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 any Subcontractor), the Project Company shall 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
COMPLETION

SECTION 7.1. MILESTONE SUBSTANTIAL COMPLETION.

(A) Project Implementation Work. The Project Implementation Work shall be completed in stages by five successive Scheduled Milestone Substantial Completion Dates. Scheduled Milestone Substantial Completion Dates are established in this Article for the (1) Hatchery Work, (2) Pre-Reservoir Drawdown Work, (3) Reservoir Drawdown Work, (4) Dam Removal and Initial Habitat Restoration Work, and (5) Final Habitat Restoration Work.

(B) Commencement of Each Project Implementation Work Element. The Hatchery Work and the Pre-Reservoir Drawdown Work may commence at any time following the Project Implementation Commencement Date in accordance with the Project Implementation Schedule, and may proceed in parallel. The Reservoir Drawdown Work may not commence until Milestone Substantial Completion for the Hatchery Work and the Pre-Reservoir Drawdown Work has been achieved; the Dam Removal Work and Initial Habitat Restoration Work may not commence until Milestone Substantial Completion for the Reservoir Drawdown Work has been achieved; and the Final Habitat Restoration Work may not commence until Milestone Substantial Completion for the Dam Removal Work and Initial Habitat Restoration Work has been achieved.

SECTION 7.2. SCHEDULED MILESTONE SUBSTANTIAL COMPLETION DATES AND MILESTONE LONGSTOP DATES.

The Scheduled Milestone Substantial Completion Dates and Milestone Longstop Dates for each of the Project Implementation Work Elements are as follows:

Project Implementation Work Element	Scheduled Milestone Substantial Completion Dates ⁽¹⁾	Milestone Longstop Dates ⁽¹⁾
1. Hatchery Work		
2. Pre-Reservoir Drawdown Work		
3. Reservoir Drawdown Work		
4. Dam Removal Work and Initial Habitat Restoration Work		
5. Final Habitat Restoration Work		

⁽¹⁾ Note: The Scheduled Milestone Substantial Completion Dates and Milestone Longstop Dates are expected to be negotiated and established on a definitive basis in the GMP Contract Amendment, as confirmed or revised in the Project Implementation Contract Amendment.

SECTION 7.3. MILESTONE SUBSTANTIAL COMPLETION DATE CONDITIONS.

The following conditions shall constitute the “**Milestone Substantial Completion Date Conditions**”, each of which must be satisfied in all material respects by the Project Company in order for the applicable Milestone Substantial Completion Date to have been achieved, and each of which must remain satisfied as of the Milestone Substantial Completion Date:

(1) Certification of Completion. The Project Company has submitted, and the KRRC has approved in writing, such approval not to be unreasonably withheld or delayed, a certification by the Project Company that applicable Project Implementation Work Element is physically complete and in all respects is in compliance with the Contract Standards;

(2) Governmental Approvals. All Governmental Approvals required under Applicable Law and this Project Agreement to be obtained by the Project Company which are necessary to commence and continue the next succeeding Project Implementation Work Element shall be in full force and effect, and certified copies of all such Governmental Approvals shall have been delivered to the KRRC;

(3) Required Maintenance Bond. With respect to the Final Habitat Restoration Work, the Project Company has obtained and delivered to the KRRC the Maintenance Bond required pursuant to subsection 16.2(F) (Maintenance Bond);

(4) No Default. The Project Company shall have certified that there is no Event of Default by the Project Company existing under this Project Agreement, or event which with the giving of notice or the passage of time would constitute an Event of Default by the Project Company hereunder; and

(5) Certification of Satisfaction of Conditions. The Project Company has submitted written certification that all of the foregoing conditions have been satisfied and the KRRC has approved the Project Company’s certification, which approval shall be effective as of the date of the Project Company’s certification.

The KRRC shall have the right, in its discretion, to waive any of the foregoing conditions.

SECTION 7.4. MILESTONE SUBSTANTIAL COMPLETION DATE CONCURRENCE OR DISAGREEMENT.

(A) Milestone Substantial Completion Date Concurrence. The Milestone Substantial Completion Date, with respect to each Project Implementation Work Element, shall be the day on which the Milestone Substantial Completion Date Conditions have been achieved, as determined in accordance with this Section. If the Project Company certifies that all of the Milestone Substantial Completion Date Conditions have been achieved, the KRRC shall determine, within 30 days following its receipt of such report, whether it concurs in such certification. If the KRRC states in writing that it concurs with the Project Company’s certification, the Project shall be deemed to have satisfied the Milestone Substantial Completion Date Conditions, and the Milestone Substantial Completion Date with respect to the applicable Project Implementation Work Element shall be deemed to have been established on the date of the Project Company’s original certification.

(B) Milestone Substantial Completion Date Disagreement. If the KRRC determines, at any time within 30 days following its receipt of the Project Company’s certification that all of the Milestone Substantial Completion Date Conditions have been

achieved, that it does not concur with the Project Company's certification of Milestone Substantial Completion with respect to the applicable Project Implementation Work Element, the KRRC shall promptly send written notice to the Project Company of the basis for its disagreement. In the event of any such non-concurrence by the KRRC, the Project Company may elect to initiate dispute resolution procedures in accordance with Article 11 (Dispute Resolution).

SECTION 7.5. EFFECT OF UNEXCUSED DELAY IN ACHIEVEMENT OF MILESTONE SUBSTANTIAL COMPLETION.

(A) Schedule for Completing Each Project Implementation Work Element. The Project Company shall achieve Milestone Substantial Completion with respect to the applicable Project Implementation Work Element by the applicable Milestone Scheduled Substantial Completion Date as set forth in Section 7.2 (Scheduled Milestone Substantial Completion Dates and Milestone Longstop Dates), and as such date may be extended pursuant to Article 14 (Uncontrollable Circumstances) and subsection (E) (Adjustment of Dates Applicable to Liquidated Damages) of this Section. The Project Company shall pay delay liquidated damages for delays in the achievement of Milestone Substantial Completion beyond the applicable Scheduled Milestone Substantial Completion Date as and to the extent provided in subsection (B) (Daily Delay Liquidated Damages) and subsection (C) (Lump Sum Delay Liquidated Damages) of this Section.

(B) Daily Delay Liquidated Damages. Subject to relief in accordance with the terms and conditions of this Project Agreement as and to the extent provided in Article 14 (Uncontrollable Circumstances), subsection (E) (Adjustment of Dates Applicable to Liquidated Damages) of this Section, and subsection 12.3(B) (Liquidated Damages Sublimit), if the Milestone Substantial Completion Date with respect to any Project Implementation Work Element occurs subsequent to the applicable Scheduled Milestone Substantial Completion Date, the Project Company shall pay to the KRRC daily delay liquidated damages in the amount of \$15,000 for each day that the applicable Milestone Substantial Completion Date falls after the applicable Scheduled Milestone Substantial Completion Date and prior to the applicable Milestone Longstop Date. No daily delay liquidated damages shall be payable with respect to any delays past the applicable Milestone Longstop Date.

(C) Lump Sum Delay Liquidated Damages. The parties acknowledge and agree that in the event the Project Company fails to achieve Milestone Substantial Completion of the Hatchery Work or the Pre-Reservoir Drawdown Work by the applicable Milestone Longstop Dates set forth in Section 7.2 (Scheduled Milestone Completion Dates and Milestone Longstop Dates), the applicable Project Implementation Work cannot be completed in calendar year 2021 and instead will need to be completed in calendar year 2022, thereby causing a one year delay in the overall completion of the Project Implementation Work. Similarly, the parties acknowledge and agree that in the event the Project Company fails to achieve Milestone Substantial Completion of the Reservoir Drawdown Work or the Dam Removal Work and Initial Habitat Restoration Work by the applicable Milestone Longstop Dates set forth in Section 7.2 (Scheduled Milestone Completion Dates and Milestone Longstop Dates), the applicable Project Implementation Work cannot be completed in calendar year 2022 and instead will need to be completed in calendar year 2023, thereby causing a one year delay in the overall completion of the Project Implementation Work. Finally, the parties also acknowledge and agree that a failure to complete both calendar year 2021 Project Implementation Work and calendar year 2022 Project Implementation Work in their respective years will cause an aggregate two year delay in the overall completion of the Project Implementation Work. Accordingly, subject to relief in accordance with the terms and conditions of this Project Agreement in the event of Uncontrollable Circumstances as and to the extent provided in Article 14 (Uncontrollable Circumstances, subsection (E) (Adjustment of Dates Applicable to Liquidated Damages) of this

Section and subsection 12.3(B) (Liquidated Damages Sublimit), in the event that there is a delay in achieving Milestone Substantial Completion by either of the applicable Milestone Longstop Dates for calendar year 2021, the Project Company shall make a liquidated damage payment to the KRRC of \$4,950,000 on account of such delay. In addition, in the event that there is a delay in achieving Milestone Substantial Completion by either of the applicable Milestone Longstop Dates for calendar year 2022, the Project Company shall also make a liquidated damage payment of \$4,950,000 to the KRRC on account of such delay.

(D) Maximum Liquidated Damages. Subject to subsection 12.3(B) (Liquidated Damages Sublimit):

(1) the aggregate maximum amount of daily delay liquidated damages payable is \$465,000, calculated as the sum of the maximum daily delay liquidated damages under subsection (B) (Daily Delay Liquidated Damages) of this Section; and

(2) the aggregate maximum amount of lump sum delay liquidated damages payable under subsection (C) (Lump Sum Delay Liquidated Damages) of this Section, calculated as the sum of the lump sum delay liquidated damages payable on account of a failure to achieve both a Milestone Substantial Completion Date by the applicable calendar year 2021 Milestone Longstop Date and a Milestone Substantial Completion Date by the applicable calendar year 2022 Milestone Longstop Date, is \$9,900,000.

Any daily or lump sum delay liquidated damages payable by the Project Company pursuant to this Section shall be due on the first day of each month following the month during which such daily or lump sum delay liquidated damages were incurred by the Project Company pursuant to this Section.

(E) Adjustment of Dates Applicable to Liquidated Damages. The payment of any lump sum delay liquidated damages payable on account of a failure to achieve a Milestone Longstop Date shall cause all subsequent Scheduled Milestone Substantial Completion Dates and Milestone Longstop Dates to be adjusted to a date that is one year later than the applicable date set forth in Section 7.2 (Scheduled Milestone Substantial Completion Dates and Milestone Longstop Dates), as such date may be adjusted by Article 14 (Uncontrollable Circumstances). The parties acknowledge and agree this adjustment is established for the purposes of avoiding a double recovery of liquidated damages for the same delay.

(F) Extension of Milestone Longstop Date. If the Project Company fails to achieve Milestone Substantial Completion with respect to any Project Implementation Work Element by the applicable Milestone Longstop Date for any reason, the Milestone Longstop Date for such Project Implementation Element shall be extended by 365 days to account for seasonal considerations in carrying out the Project Implementation Work, and the Project Company shall resume performance of such Project Implementation Work Element as soon as practicable. Failure of the Project Company to achieve Milestone Substantial Completion with respect to such Project Implementation Work Element in such circumstances by the extended Milestone Substantial Completion Date, without excuse for Uncontrollable Circumstances, shall constitute an Event of Default hereunder without further cure opportunity, as provided in Section 12.2 (Events of Default by the Project Company).

(G) Milestone Substantial Completion Requires Completion of Work on All Facilities. In order to achieve Milestone Substantial Completion with respect to a particular Project Implementation Work Element, the Project Company shall complete the Project

Implementation Work with respect to all of the Facilities; work completion with respect to some but not all of the Facilities shall not be deemed to constitute Milestone Substantial Completion.

(H) KRRC's Right to Complete a Project Implementation Work Element. In the event the Project Company fails to achieve Milestone Substantial Completion with respect to any Project Implementation Work Element by the last day of the applicable Milestone Longstop Date, without limiting any other right of the KRRC hereunder, the KRRC shall have the right, but not the obligation, to engage others to complete performance of the applicable Project Implementation Work Element, at the risk and cost of the Project Company, and the KRRC may deduct such cost from any amount remaining to be paid against the Contract Price or deduct and retain an amount equal to such cost from the retainage held pursuant to subsection 9.3(E) (Retainage). If the cost of such completion of the applicable Project Implementation Work Element by the KRRC exceeds the cost of such applicable Project Implementation Work Element, as specified in the Schedule of Values prepared in accordance with Appendix 8 (Contract Price), then the Project Company shall reimburse the KRRC for all such excess cost and expenses reasonably incurred by the KRRC in connection therewith. The KRRC shall provide the Project Company with seven days' advance written notice prior to exercising its right to complete the applicable Project Implementation Work Element pursuant to this Section. The Project Company acknowledges that if the KRRC exercises its right to complete the applicable Project Implementation Work Element pursuant to this Section, the KRRC shall have the right to take possession of and utilize such materials, appliances and equipment on the Project Site that the KRRC deems necessary or useful in completing the applicable Project Implementation Work Element. The right of the KRRC to complete the applicable Project Implementation Work Element specified in this Section shall not be construed to establish any limitation with respect to any obligations or liabilities of the Project Company under this Project Agreement. This Section is intended to supplement (and not to limit) the Contract Obligations otherwise applicable to the Project Implementation Work.

SECTION 7.6. MILESTONE PUNCH LIST ITEMS.

(A) Milestone Punch List Requirements. The Project Company shall submit a proposed Milestone Punch List to the KRRC and the Program Manager when the Project Company believes that a Project Implementation Work Element has been substantially completed in compliance with the Contract Documents. The "**Milestone Punch List**" shall be a statement of repairs, corrections and adjustments to the Project Implementation Work Element, and incomplete aspects of the Project Implementation Work, which in the Project Company's opinion:

(1) The Project Company can complete before the date specified in subsection (B) (Completion of Milestone Punch List Items) of this Section, and with minimal interference to the occupancy, use and lawful operation of the Project; and

(2) Would represent, to perform or complete, a total cost of not more than 0.5% of the portion of the Guaranteed Maximum Price applicable to such Project Implementation Work Element (unless the KRRC determines, in its discretion, that a higher percentage is acceptable, as evidenced by the written approval of the KRRC Contract Representative).

The KRRC shall, acting reasonably, have the right to approve the Milestone Punch List.

(B) Completion of Milestone Punch List Items. The Project Company shall complete all items on the Milestone Punch List within 90 days following the Substantial Completion Date. All work associated with the Milestone Punch List items shall constitute

Project Implementation Work hereunder and shall be performed by the Project Company in accordance with the Contract Standards.

SECTION 7.7. MILESTONE FINAL COMPLETION.

(A) Requirements. The Project Company shall achieve each Milestone Final Completion within 120 days following each applicable Milestone Substantial Completion Date. **“Milestone Final Completion”** shall be deemed to have occurred when all of the following conditions have been satisfied:

(1) Milestone Substantial Completion Achieved. The Project Company shall have achieved Milestone Substantial Completion for the applicable Project Implementation Work Element in accordance with this Article;

(2) Project Implementation Work Completed. All applicable Project Implementation Work for the applicable Project Implementation Work Element is complete and in all respects is in compliance with the Contract Documents;

(3) Deliverable Material. The Project Company shall have delivered to the KRRC all Deliverable Material required by the Contract Documents;

(4) Final Record Drawings. The Project Company shall have delivered to the KRRC a final and complete reproducible set of record Drawings, as required by Appendix 7 (Project Implementation Work Review Procedures);

(5) Milestone Final Completion Payment Requirements. The Project Company shall have satisfied all requirements associated with payment for Milestone Final Completion, as set forth in Section 9.5 (Payment Upon Milestone Final Completion); and

(6) Certification. The Project Company has submitted written certification that all of the foregoing conditions have been satisfied and the KRRC has approved the Project Company’s certification, which approval shall be effective as of the date of the Project Company’s certification.

(B) Notice and Report of Milestone Final Completion. When the Project Company believes that it has achieved any Milestone Final Completion, it shall deliver to the KRRC and the Program Manager a written notice thereof (the **“Notice of Milestone Final Completion”**). The Notice of Milestone Final Completion shall contain a report in a form acceptable to the KRRC, and with sufficient detail to enable the KRRC and the Program Manager to determine the completion by the Project Company of all Project Implementation Work to be performed under this Project Agreement, and such other information that the KRRC may require to determine whether Milestone Final Completion has been achieved.

(C) Achievement of Milestone Final Completion. The KRRC shall, in consultation with the Program Manager, within 20 days following receipt of a Notice of Milestone Final Completion, inspect the Project Implementation Work Element, review the report submitted by the Project Company and either: (1) deliver a written certificate to the Project Company stating that all conditions set forth in subsection (A) (Requirements) of this Section have been satisfied; or (2) notify the Project Company in writing that Milestone Final Completion has not been achieved, stating in detail the reasons therefor. In the event that the KRRC determines that Milestone Final Completion has not been achieved, the Project Company shall promptly take such action or perform such Project Implementation Work as will achieve Milestone Final Completion and shall issue to the KRRC and the Program Manager another

Notice of Milestone Final Completion pursuant to subsection (B) (Notice and Report of Milestone Final Completion) of this Section. Such procedure shall be repeated as necessary until Milestone Final Completion is achieved. If the KRRC, in its written certificate delivered in accordance with this Section, states that it concurs that all conditions set forth in subsection (A) (Requirements) of this Section have been satisfied, the Project shall be deemed to have achieved Milestone Final Completion and Milestone Final Completion shall be deemed to have been established on the date of the Project Company's most recent Notice of Milestone Final Completion.

(D) Failure to Achieve Milestone Final Completion. The Project Company shall achieve Milestone Final Completion by the date specified in subsection (A) (Requirements) of this Section. If Milestone Final Completion has not been achieved by such date, an Event of Default by the Project Company shall be deemed to have occurred under Section 12.2 (Events of Default by the Project Company), notwithstanding any absence of notice, further cure opportunity or other procedural rights accorded the Project Company thereunder, and the KRRC shall thereupon have the right to terminate this Project Agreement upon written notice to the Project Company. Upon any such termination, the KRRC shall have all of the rights provided in Article 12 (Breach, Default, Remedies and Termination) upon a termination of this Project Agreement for cause.

SECTION 7.8. PROJECT FINAL COMPLETION.

(A) Project Final Completion Services Requirements. The Project Company shall submit a proposed list of Project Final Completion Services to the KRRC and the Program Manager when the Project Company believes all Milestone Substantial Completion Dates have been achieved. The "**Project Final Completion Services List**" shall be a statement of all necessary ongoing habitat monitoring work which in the Project Company's opinion:

(1) Will be completed before the date specified in subsection (B) (Completion of Project Final Completion Services List) of this Section, in order to complete the Project; and

(2) Would represent, to perform or complete, a total cost of not more than 0.5% of the Guaranteed Maximum Price (unless the KRRC determines, in its discretion, that a higher percentage is acceptable, as evidenced by the written approval of the KRRC Contract Representative).

The KRRC shall have the right, acting reasonably, to approve the Project Final Completion Services List.

(B) Completion of Project Final Completion Services List. The Project Company shall complete all items on the Project Final Completion Services List within 60 days following the Milestone Substantial Completion Date applicable to the Final Habitat Restoration Work. All Project Final Completion Services shall constitute Project Implementation Work hereunder and shall be performed by the Project Company in accordance with the Contract Standards.

ARTICLE 8

MANAGEMENT, LABOR AND SUBCONTRACTORS

SECTION 8.1. MANAGEMENT.

(A) Project Manager. The Project Company shall designate an employee of the Project Company, any Affiliate of the Project Company, or the Project Company's Project Implementation Work manager as the "**Project Manager**". When the Project Company or any Subcontractor is performing Project Implementation Work, the Project Manager (or designee reasonably acceptable to the KRRC) shall be present at the Project Site. The Project Manager shall, among other things:

- (1) Be familiar with the Contract Obligations and all requirements of the Contract Documents;
- (2) Be able to communicate in fluent English;
- (3) Coordinate the Contract Obligations and give the Contract Obligations regular and careful attention and supervision;
- (4) Maintain a daily status log of the Project Implementation Work when being performed; and
- (5) Attend all Project meetings (including meetings concerning scope, review, pre-bid, pre-construction, construction, demolition and habitat restoration matters) with the KRRC and its representatives.

The Project Company represents and warrants that the Project Manager shall be vested with the authority to act on behalf of the Project Company in connection with the performance of the Contract Obligations and to bind the Project Company with respect to any certification required under this Project Agreement to be made by the Project Manager. If the Project Company is comprised of two or more persons functioning as a joint venture, the Project Company shall have the authority to represent and act for the joint venture. The Project Manager may be a different individual for the Preliminary Services and the Project Implementation Work. The Project Company may change the person assigned as the Project Manager solely in accordance with the provisions of subsection (C) (KRRC Rights with Respect to Key Personnel) of this Section.

(B) Replacement of Certain Key Personnel. If the Project Company formally or informally replaces the Project Manager, the Construction Design Coordinator or the Construction Manager, each as identified in Appendix 10 (Key Personnel and Approved Subcontractors), absent the KRRC's request and absent good cause shown (as defined in subsection (C) (KRRC Rights with Respect to Key Personnel) of this Section), a deduction of \$150,000 shall be applied to the Contract Compensation. Any successor Project Manager, Construction Design Coordinator, or Construction Manager shall be subject to the approval of the KRRC in its discretion. This Section's requirements shall apply to the replacement of any successor Project Manager, Construction Design Coordinator or Construction Manager.

(C) KRRC Rights with Respect to Key Personnel. The Project Company acknowledges that the identity of the Project Manager and the other key management and supervisory personnel proposed by the Project Company and its Subcontractors in its Proposal was a material factor in the selection of the Project Company to perform this Project Agreement. Such personnel, their affiliations and their anticipated roles in the performance of

the Contract Obligations are set forth in Appendix 10 (Key Personnel and Approved Subcontractors). The Project Company 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 Project Company 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 Project Company 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 and approval, which shall not be unreasonably withheld or delayed. The Project Company 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 8.2. LABOR.

(A) Personnel Performance. The Project Company shall enforce discipline and good order at all times among the Project Company’s employees and all Subcontractor employees. All persons engaged by the Project Company for performance of the Contract Obligations shall have requisite skills for the tasks assigned. The Project Company shall employ or engage and compensate engineers and other consultants to perform all engineering and other services required for the Contract Obligations. The Project Company 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 Project Company and Subcontractor employees.

(B) Training of Project Company and Subcontractor Employees. The Project Company shall provide training for all individuals employed by the Project Company or Subcontractors as a prerequisite to their entry to the Project Site. The Project Company’s training program for such employees shall include orientation training, safety and awareness training, and any other training deemed necessary.

(C) Labor Relations. The Project Company shall furnish labor that can work in harmony with all other elements of labor employed for the performance of the Project Implementation Work. The Project Company shall have exclusive responsibility for disputes or jurisdictional issues among unions or trade organizations representing employees of the Project Company or its Subcontractors, whether pertaining to organization of the Project Implementation Work, arrangement or subdivision of the Project Technical Requirements, employee hiring, or any other matters. The KRRC shall have no responsibility whatsoever for any such disputes or issues and the Project Company shall indemnify, defend and hold harmless the KRRC and the Project Company Indemnitees in accordance with and to the extent provided in Section 15.1 (Project Company’s Obligation to Indemnify) from and against all Loss-and-Expense resulting from any such labor dispute.

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

- (1) Give notice thereof to the KRRC, including all relevant information related to the dispute of which the Project Company 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.

(E) Prevailing Wage Rates in California and Oregon. The Project Company shall, and shall cause all Subcontractors to, pay not less than the prevailing wage rate for all types and classifications of any of the Project Implementation Work (1) specified in Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of California Labor Code, and (2) specified in applicable Oregon law (each as applicable for Project Implementation Work in each State) or workers at the Project Site in job classifications covered thereby, including all applicable shift, weekend, holiday, foreman, health and welfare, pension, vacation, travel, training, subsistence and other pay established for each classification of work. The Project Company shall cause a copy of the prevailing rates of wages to be posted at the Project Site, shall keep and maintain payroll and other relevant information in order to permit the KRRC to monitor compliance with this requirement, and shall furnish certified copies of such payrolls and other information to the KRRC or its designee upon request. The prevailing wage rates must be posted at the Project Site. Failure to pay the prevailing wage rate is a material breach of this Project Agreement.

(F) Non-Discrimination Policy. Discrimination in any manner against any employee or applicant for employment by the Project Company 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 Project Company shall include a similar nondiscrimination clause in all Subcontracts. If the Project Company fails to include a nondiscrimination clause in a Subcontract, the KRRC shall provide a reasonable opportunity to cure the defect. If the Project Company fails to cure the defect within the time period granted, the KRRC may declare this Project Agreement void and the Project Company 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 Project Company cures the defect, this Project Agreement shall remain in force. If the Project Company willfully fails to comply with the requirements of the nondiscrimination clause, the KRRC may compel the Project Company to continue to perform under this Project Agreement as provided in California Public Utilities Code Section 20-106(b).

(G) Sexual Harassment. Sexual harassment by the Project Company, a Subcontractor, or any of their employees while on the Project Site or while actively representing or performing Contract Obligations for the KRRC is prohibited. It shall be the responsibility of the Project Company 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 drugs or intoxicants by the Project Company, a Subcontractor, or any of their employees while on the Project Site or while actively representing or performing Contract Obligations for the KRRC is prohibited. It shall be the responsibility of the Project Company 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. Failure of the Project Company to comply with this Section shall be a material breach of this Project Agreement.

SECTION 8.3. SUBCONTRACTING GENERALLY.

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

(B) Approval Required. The Subcontractors identified in Appendix 10 (Key Personnel and Approved Subcontractors) 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. The Project Company shall retain such Subcontractors to perform such services, unless otherwise agreed to in writing by the KRRC. All other Subcontractors shall be subject to the approval of the KRRC, which approval shall not be unreasonably withheld or delayed. The Project Company 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, in its reasonable discretion, that an unworkable relationship has developed between the KRRC or the Project Company and the Subcontractor. The KRRC's approval of any Subcontractor performing Contract Obligations shall be subject to the terms and conditions of Section 8.4 (Self-Performance and Subcontractor Selection).

(C) Performance Failure. The Project Company shall retain full responsibility to the KRRC under this Project Agreement for all matters related to the Contract Obligations. No failure of any Subcontractor used by the Project Company in connection with the provision of the Contract Obligations shall constitute an Uncontrollable Circumstance or otherwise relieve the Project Company from its obligations hereunder to perform the Contract Obligations, except as provided in items (10), (11) and (13) in the definition of Uncontrollable Circumstances. The Project Company shall be responsible for settling and resolving with all Subcontractors all claims including those:

- (1) Arising out of delay, disruption, interference, hindrance, schedule extension caused by the Project Company;
- (2) Arising from the actions or inactions of the Project Company or a Subcontractor; or
- (3) Inflicted on the Project Company or a Subcontractor by the actions of another Subcontractor.

The Project Company 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 Project Company of its obligations under the Contract Documents.

(D) Restricted Persons. In providing the Contract Obligations, the Project Company 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. Subsection 8.2(A) (Personnel Performance) shall be applicable to all Subcontractors performing Design Professional Services. The Project Company and any Subcontractor that performs any construction portion of the Project Implementation Work in California shall possess and maintain a State contractor's license, classification A (General Engineering Contractor)

(F) Availability of Material Subcontractors and Key Personnel. At the request of the KRRC, the Project Company shall make the key representatives of Material Subcontractors available for meetings between the KRRC and the Project Company concerning design review, Project Implementation Work progress or any other matter relating to the performance of the Project Implementation Work. The Project Company shall provide the KRRC with periodic human resource allocation summary reports concerning the personnel of the Material Subcontractors, which reports shall include anticipated personnel allocations for all ongoing and planned projects and shall demonstrate human resource sufficiency.

(G) Assignability. All Subcontracts entered into by the Project Company with respect to the Project shall be assignable to the KRRC, solely at the KRRC's election and without cost or penalty, upon any early termination of this Project Agreement, including convenience termination under Section 12.6 (KRRC Convenience Termination Rights).

(H) SLTBE Goals. The Project Company acknowledges the KRRC has established (1) a non-mandatory goal for 5% of the Preliminary Services Fee and 5% of the Contract Price to be subcontracted to SLBE Firms, and (2) a non-mandatory goal for 5% of the Preliminary Services Fee and 5% of the Contract Price to be subcontracted to TBE Firms (the **"SLTBE Goals"**). The Project Company 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 Project Company 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 the KRRC in a KRRC-supervised subcontracting process. The Project Company shall report its progress in meeting the SLTBE Goals in each Monthly Progress Report.

(I) Subcontractor Claims. The Project Company 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 Project Company acknowledges that its indemnity obligations under Article 15 (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 Project Implementation Work. The Project Company shall, at the KRRC Contract 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 Project Company fails to do so the KRRC may, after having notified the Project Company, either pay unpaid bills or withhold from the Project Company'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 Project Company will be resumed in accordance with the terms of this Project Agreement, but in no event shall the provisions of this sentence be construed to impose any obligations upon the KRRC to either the Project Company, the Surety or any third party. In paying any unpaid bills of the Project Company, any payment so made by the KRRC will be considered as a payment

made under this Project Agreement by the KRRC to the Project Company and the KRRC will not be liable to the Project Company 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, the KRRC may require the Project Company to remove such Subcontractor or staff member immediately and replace the Subcontractor or staff member at no cost or penalty to the KRRC.

(K) Statement Required by California Business and Professions Code Section 7030. Construction contractors are required by California law to be licensed and regulated by the Contractors' State License Board, which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any question concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 2600, Sacramento, California 95826.

SECTION 8.4. SELF-PERFORMANCE AND SUBCONTRACTOR SELECTION.

(A) Self-Performed Project Implementation Work Generally. Project Implementation Work on the Project shall not be performed by the Project Company or its Affiliates, except with the approval of the KRRC given in its discretion pursuant to subsection (F) (Alternative Procedures for Project Implementation Work) of this Section. The parties acknowledge that, during the performance of the Preliminary Services and in the development of the GMP Project Submittal, the Project Company is expected to propose that specific aspects of the Project Implementation Work be proposed for self-performance by the Project Company, any Affiliate of the Project Company or by an Approved Subcontractor. The KRRC agrees to consider approving such self-performance if the Project Company demonstrates to the KRRC's satisfaction that providing for such self-performance is in the best interest of the Project and that the pricing therefor will be fair, reasonable and consistent with industry standards for similar services. The KRRC, in its discretion, may require that any such demonstration be subject to an "open book" process in accordance with subsection (F) (Alternative Procedures for Project Implementation Work) of this Section. In the event that the KRRC approves self-performance of Project Implementation Work by the Project Company or any Affiliate of the Project Company hereunder, the KRRC expects that the value of any such self-performed Project Implementation Work will not exceed 40% of the Guaranteed Maximum Price.

(B) Division of Work. The Project Company shall coordinate and develop with the KRRC Contract Representative and the Program Manager bid packages and work scope descriptions for each separate bid category that represents the entirety of the scope of the Project Implementation Work for each phase and stage of the Project. The Project Company shall be responsible for determining the Project Technical Requirements that are applicable to each Subcontractor performing Project Implementation Work, including all trade Subcontractors and Suppliers. The Project Company shall be responsible for the assembly, reproduction and distribution of all documents defining the scope of work for each Subcontractor.

(C) Competitive Procedures for Project Implementation Work. Except as may otherwise be approved in writing by the KRRC Contract Representative in accordance with subsection (F) (Alternative Procedures for Project Implementation Work) of this Section, the Project Company shall enter into fixed-price Subcontracts for the performance of all Project

Implementation Work and, in connection therewith, shall utilize a competitive bidding or competitive proposal process in accordance with the Subcontracting Plan prepared during performance of the Preliminary Services and negotiated and agreed upon by the parties as part of the GMP Contract Amendment. All Subcontractors shall be subject to the approval of the KRRC pursuant to subsection 8.3(B) (Approval Required).

(D) KRRC and Program Manager Review and Participation Rights. Without limiting anything set forth herein, the Project Company acknowledges and agrees that the KRRC and the Program Manager shall have the right to: (a) review and comment on all procurement documents; (b) attend any bid or proposal openings; (c) attend any meetings with prospective Subcontractors or Suppliers, including scope review meetings; (d) review all bids, proposals, and other information developed or otherwise resulting from any competitive procurement, including the Project Company's tabulation, scoring or evaluation materials; and (e) otherwise participate in the negotiation and contract award process. Upon contract award, the Project Company shall provide the KRRC Contract Representative and the Program Manager with a description of the competitive process undertaken in connection with such contract award, together with copies of all material documents used in connection therewith and agreements resulting therefrom.

(E) KRRC Right to Require Re-Solicitations. The KRRC, in its discretion, shall have the right to direct the Project Company to reject any or all bids and proposals and re-solicit any Project Implementation Work in accordance with subsection (C) (Competitive Procedures for Project Implementation Work) of this Section in the event the KRRC is not satisfied that the pricing received is fair, reasonable and consistent with industry standards for similar services. In making such determination, the KRRC, in its discretion, shall have the right to request a review of any bids and proposals received by the Project Company under an "open book" process.

(F) Alternative Procedures for Project Implementation Work. The Project Company may propose to the KRRC Contract Representative alternative procedures for the procurement of Project Implementation Work, including performance of Project Implementation Work by labor forces of the Project Company, any Affiliate of the Project Company or by an Approved Subcontractor as indicated in subsection (A) (Self-Performed Project Implementation Work Generally) of this Section. The KRRC Contract Representative's approval of any such alternative procedure, shall be in the KRRC's discretion. The Project Company recognizes that, if the Project Company wishes to perform Project Implementation Work with its own labor forces or the labor forces of an Affiliate or an Approved Subcontractor, the KRRC may, but is not obligated to, require that the Project Company, Affiliate or Approved Subcontractor submit a bid or proposal for the work on a competitive basis, as contemplated by subsection (C) (Competitive Procedures for Project Implementation Work) of this Section. If the Project Company or any Affiliate of the Project Company intends to submit a competitive bid or proposal for Project Implementation Work, the Project Company shall notify the KRRC Contract Representative in writing prior to the issuance of procurement documents for the work, and the KRRC Contract Representative shall have the right to require the submittal of all bids or proposals directly to the KRRC (and not to the Project Company) for review, evaluation and selection. Any decision by the KRRC to approve the performance of Project Implementation Work without obtaining competitive bids or proposals shall, in the KRRC's discretion, be subject to an "open book" process to provide the KRRC with sufficient information to determine whether the proposed pricing of the work is fair, reasonable and consistent with industry standards for similar services.

(G) Procurement of Subcontractors Prior to the GMP Contract Amendment Date. The Project Company, during the Preliminary Services, in the development of the

proposed Base Guaranteed Maximum Price to be submitted to the KRRC in the GMP Project Submittal (1) may conduct discussions with and obtain indicative pricing information from potential Project Implementation Work Subcontractors, and (2) may initiate, subject to the approval of the KRRC given in its discretion, the formal procurement process for selecting Project Implementation Work Subcontractors. Any such formal procurement process shall be conducted in accordance with the requirements of this Section. No Subcontract resulting from such procurement process shall be executed prior to the GMP Contract Amendment Date without the KRRC's consent given in its discretion.

(H) Security for Project Implementation Work Subcontractor Performance. The Project Company, acting reasonably, may provide security for the performance of Subcontractors under Project Implementation Work Subcontracts, and the reasonable costs therefor shall constitute Project Implementation Work Costs. Such security may include Subcontractor Default Insurance.

SECTION 8.5. TERMINATION, AMENDMENT, ASSIGNMENT AND REPLACEMENT OF MATERIAL SUBCONTRACTS.

(A) Termination, Amendment and Assignment. Unless the Project Company has, at its earliest practicable opportunity, submitted to the KRRC notice of the proposed course of action (and any relevant documentation), the Project Company shall not:

(1) Terminate, or agree to, or permit the termination of, any Material Subcontract;

(2) Make, or agree to, or permit the making of (a) any material amendment of any Material Subcontract; or (b) any departure by any party from any material provision of any Material Subcontract; or

(3) Permit any Material Subcontract party to assign or transfer to any person any of such Material Subcontract party's rights or obligations under a Material Subcontract.

(B) Replacement. If any Material Subcontract at any time lapses, terminates, or otherwise ceases to be in full force and effect (whether by reason of expiration or otherwise), unless the goods, services or rights which were the subject matter of such Material Subcontract are no longer reasonably required for the Project, the Project Company will forthwith enter into, or cause to be entered into, a replacement contract or contracts upon the same or substantially similar terms as the contract so replaced (to the extent reasonably practicable). If at any time any amendment is made to any Material Subcontract, or a replacement Material Subcontract (or any agreement which materially affects the interpretation or application of any Material Subcontract) is entered into, the Project Company shall deliver to the KRRC a copy of each such amendment or agreement within 14 days of the date of its execution or creation, certified as a true copy by the Project Manager.

ARTICLE 9
COMPENSATION

SECTION 9.1. COMPENSATION FOR PRELIMINARY SERVICES.

(A) Compensation for Base Preliminary Services. During the Preliminary Services, the KRRC shall pay the Project Company the Preliminary Services Fee in the manner and subject to the terms and conditions set forth in this Project Agreement and in Appendix 2 (Preliminary Services). The Project Company agrees that the Preliminary Services Fee, when earned, shall be the Project Company's entire compensation and reimbursement for the performance of the Preliminary Services, inclusive of all costs, expenses and disbursements paid or incurred by the Project Company, 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).

(B) Compensation for Additional Preliminary Services. The Project Company shall be compensated for any Additional Preliminary Services on a time and materials or lump sum basis, agreed to in writing through a Change Order or a Contract Amendment executed by the KRRC and the Project Company. Compensation for Additional Preliminary Services may consist of compensation on the basis of Project Company's and Subcontractors' billing rates approved by the KRRC. The Change Order or Contract Amendment, as applicable, may set forth additional compensation and Payment Request requirements.

(C) Payment Requests and Payment. The Project Company 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 2 (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 the 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 Project Company of all properly supported invoiced amounts within 30 days of receipt of the Payment Request, subject to the terms and conditions of this Project Agreement. Payments of the Preliminary Services Fee shall not be subject to retainage holdback or, except as provided in subsections (D) (Non-Compliant Preliminary Services) and (E) (Billing Statement Disputes) of this Section, offset.

(D) Non-Compliant Preliminary Services. Nothing contained in this Project Agreement shall require the KRRC to pay for any Preliminary Services which are not performed in accordance with the terms and conditions of this Project Agreement. The KRRC shall not be required to pay the Preliminary Services Fee to the Project Company at any time the Project Company is in material breach or default under this Project Agreement.

(E) 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 Project Company with a written objection indicating the amount being disputed and the reasons then known to the KRRC for the dispute. In the event that the Project Company disputes any amounts offset by the KRRC, it shall provide the KRRC with a written objection indicating the amount being disputed and the reasons then known to the Project Company. If the Project Company is unable to reach agreement with the KRRC as to the payment dispute, the Project Company may elect to initiate dispute resolution procedures in accordance with Section 11.1 (Dispute Resolution Procedures). When any billing dispute is finally resolved, if payment by the KRRC to the Project Company 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 9.9 (Interest on Overdue Obligations) of this Project Agreement.

SECTION 9.2. COMPENSATION FOR PROJECT IMPLEMENTATION WORK.

The KRRC shall pay the Project Company the Contract Price for properly performed and completed Project Implementation Work during the Project Implementation Period. The Contract Price and the components thereof are defined in Appendix 8 (Contract Price). The KRRC's obligation to pay the Contract Price is subject to the Guaranteed Maximum Price and the terms and conditions of this Article and Appendix 8 (Contract Price). Except with respect to (1) payments of the Preliminary Services Fee in accordance with Section 9.1 (Compensation for Preliminary Services), and (2) Project Implementation Work performed pursuant to an Early Work Package Amendment, the Project Company shall not be entitled to any compensation for costs or expenses incurred, or Project Implementation Work performed, prior to the issuance of the Notice to Proceed with Project Implementation Work pursuant to subsection 6.3(B) (Establishment of the Project Implementation Commencement Date). Any amount payable for Project Implementation Work performed pursuant to an Early Work Package shall, on the GMP Contract Amendment Date, be part of the Contract Price and subject to the Guaranteed Maximum Price and all other terms and conditions of this Article and Appendix 8 (Contract Price).

SECTION 9.3. CONTRACT PRICE PAYMENT PROCEDURE.

(A) Progress Payments. The Project Company shall be paid the Contract Price for the performance of Project Implementation Work on a progress-payment basis in accordance with the Schedule of Values and the terms and conditions of this Section. The Project Company shall prepare and submit to the KRRC for its approval preliminary and final drafts of the Schedule of Values in accordance with the Contract Standards. After the final Schedule of Values is accepted by the KRRC, it shall be used to assist in the estimating of the value of the Project Implementation Work performed for payment purposes. The Project Company shall not submit requests for progress payments of the Contract Price unless a final Schedule of Values has been approved, except as otherwise agreed to by the KRRC, in its discretion.

(B) Payment Request. The Project Company shall be entitled to submit Payment Requests to the KRRC on a monthly basis and to receive from the KRRC the payments, which (1) shall be made on a percent complete basis in accordance with the Schedule of Values; (2) shall be subject to the Guaranteed Maximum Price limitations; and (3) shall be subject to the conditions to payment set forth in this Article. Each Payment Request shall be in a form provided by or otherwise reasonably acceptable to the KRRC and must be accompanied by a monthly requisition report, which shall include:

(1) A reasonably detailed description of all Project Implementation Work actually completed to date;

(2) Revisions to the Project Implementation Schedule, which shall reflect changes in the Project Company's cost loaded, critical path schedule since the date of the last Payment Request and any changes to the Schedule of Values;

(3) A signed certificate of the Engineer-of-Record and the Project Manager certifying: (a) the portion of the Contract Price payable to the Project Company for completed Project Implementation Work; (b) that the Project Company is neither in default under this Project Agreement nor in breach of any material provision of this

Project Agreement such that the breach would, with the giving of notice or passage of time, constitute an Event of Default; and (c) that all items applicable to the Project Implementation Work entitling the Project Company to the requested payment under the Schedule of Values have been completed in accordance therewith and with the Contract Documents;

(4) A verified statement setting forth the information required under any Contract Standard pertaining to prevailing wages;

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

(6) Any other documents or information relating to the Project Implementation Work or this Project Agreement reasonably requested by the KRRC or the Program Manager or as may be required by Applicable Law, this Project Agreement or generally accepted accounting practices or principles, including payrolls, receipts, fully detailed invoices with check vouchers or other evidence of Project Implementation Work Costs incurred which the KRRC or the Program Manager deems necessary to support the amount requested in the Payment Request.

The General Conditions Costs shall be shown as a separate line item on each Payment Request in accordance with Appendix 8 (Contract Price). In determining the percentage of completion of the Project Implementation Work, the parties shall use the lesser of the percentage of the Project Implementation Work actually completed for each classification on the Schedule of Values or the percentage of the Guaranteed Maximum Price allocable to that item which has been actually incurred and demonstrated as a Project Implementation Work Cost by the Project Company. The Project Company Fee shall be shown as a separate line item on each Payment Request and shall be paid on a monthly, pro-rata basis, for Project Implementation Work performed from the date of the Notice to Proceed with the Project Implementation Work until the Scheduled Milestone Substantial Completion Date.

(C) Review and Payment. Prior to submitting a Payment Request for the Contract Price to the KRRC, the Project Company shall submit a draft Payment Request to the KRRC Contract Representative and the Program Manager, including all information required pursuant to this Section. The Program Manager shall have no fewer than 10 days to review each draft Payment Request. Within such 10-day period, the Program Manager shall verify or dispute in writing (or by telecommunication promptly confirmed in writing) the Project Company's certification that the Project Company has achieved the level of progress indicated and is entitled to payment. If the Program Manager does not approve the draft Payment Request, the Project Company may make the necessary corrections and resubmit the draft Payment Request. If the Program Manager determines that the Project Implementation Work has progressed as indicated in the draft Payment Request, the Program Manager shall notify the KRRC and the Project Company, and the Project Company 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 Program Manager. The KRRC shall pay the Project Company the requisitioned amount included in the final, certified Payment Request within 30 days following receipt, subject to subsection (E) (Retainage) of this Section and the KRRC's rights to withhold payments under Section 9.4 (Permissible Withholdings). Disputes regarding payments of the Contract Price shall be resolved in accordance with subsection (D) (Payment Dispute Procedures) of this Section. Any undisputed amounts of the Contract Price shall be paid within 30 days after receipt of the Project Company's final, certified Payment Request. The Project Company, when signing each draft and final Payment Request submitted in accordance with this Section, shall certify that it has made payment from proceeds of prior

payments and that it will make timely payments from the proceeds of the progress and final payment then due to the Project Company to its Subcontractors and Suppliers in accordance with the applicable Subcontract. Failure to meet the conditions in the preceding two sentences may result in a pause in the processing of subsequent draft Payment Requests and progress payments until such conditions are met.

(D) Payment Dispute Procedures. If the KRRC determines, pursuant to subsection (C) (Review and Payment) of this Section, that the Project Implementation Work required for any payment has not progressed as indicated by the Project Company in the draft Payment Request, or otherwise disputes any draft Payment Request, the KRRC shall provide prompt written notice to the Project Company as to the KRRC's reasons, in reasonable detail, for such determination or the basis for such dispute. After receiving such determination notice, the Project Company may make the necessary corrections and resubmit the Payment Request, or the KRRC may agree on a revised amount, in which case the Project Company shall promptly submit a final, certified Payment Request to the KRRC as to any undisputed amount. If the Project Company is unable to reach agreement with the KRRC as to the progress of the Project Implementation Work and the payment dispute, the Project Company may exercise its right to contest the KRRC's determination in accordance with the dispute resolution procedures set forth in Article 11 (Dispute Resolution). Any proceedings undertaken to resolve a dispute arising under this Section shall immediately terminate if (1) the Project Company demonstrates to the KRRC that the Project Implementation Work has progressed as indicated in the Payment Request giving rise to the dispute and that the disputed Payment Request is correct, and (2) the KRRC concurs with such demonstration. The Project Company shall not be entitled to payment of the amount so requisitioned and disputed except upon resolution of the dispute in accordance with this Section; provided, however, that the KRRC shall pay all requisitioned amounts which are not in dispute in accordance with subsection (C) (Review and Payment) of this Section. In the event that upon resolution of any such dispute, it is determined that the Project Company was properly entitled to the disputed amount as of a date earlier than the date on which payment is actually made, the Project Company shall be entitled to receive, promptly following such resolution, such disputed amount plus interest on such disputed amount as and to the extent provided under Applicable Law.

(E) Retainage. Each Contract Price payment will be subject to a 5% retainage holdback. Pursuant to Section 22300 of the California Public Contract Code, the Project Company shall have the option to request in writing that the KRRC make payments of all retained funds directly to an escrow agent, or to deposit securities valued in an amount equal to 5% of each Contract price payment with an escrow agent or the KRRC as a substitute for retained funds. The Parties acknowledge that a "retainage bond" shall not constitute "securities" for purposes of the preceding sentence. The KRRC shall release to the Project Company or the escrow agent, as applicable, all of the accumulated funds retained from all prior drawdown payments or the escrow agent shall release all of the securities deposited with the escrow agent upon each Milestone Final Completion in accordance with Section 9.5 (Payment upon Milestone Final Completion). The Project Company acknowledges and agrees that the performance of the Project Implementation Work and the Warranty Work under this Project Agreement is not complete until the expiration of the applicable Warranty Period. In the event the Project Company deposits securities in lieu of retained funds or requests that the KRRC make payments of all retained funds to an escrow agent, the Project Company shall be responsible for paying all fees incurred by the escrow agent. Any interest earned on the retainage held by the KRRC shall be for the KRRC's benefit only. Any interest earned on securities or retained funds held in escrow pursuant to Section 22300 of the California Public Contract Code shall be for the Project Company's benefit only.

(F) Cost Control and Reporting. The Project Company shall develop and monitor an effective system of Project Implementation Work cost control, which system shall be

disclosed to and reviewed and approved by the KRRC and the Program Manager. The Project Company shall develop cash flow reports and forecasts as reasonably requested or required by the KRRC and the Program Manager, including a good faith calendar quarterly estimate of payments of the Contract Price throughout the Project Implementation Period, specifying the range of minimum and maximum monthly payments, which shall not exceed the Guaranteed Maximum Price or any line item on the Schedule of Values. The Project Company shall promptly (within seven days) after acquiring such information, identify and report to the KRRC and the Program Manager all variances between estimated costs and actual costs of the Project Implementation Work, including any proposed corrective action to be taken by the Project Company.

(G) Certification of Amounts Due. Whenever requested by the KRRC or the Program Manager, the Project Company shall submit a sworn statement certifying all amounts then due (or yet to become due) the Project Company for the Project Implementation Work (or any portion thereof) and describing any payment or other dispute which may exist between the Project Company and any Subcontractor.

SECTION 9.4. PERMISSIBLE WITHHOLDINGS.

In addition to the amounts required to be retained pursuant to subsection 9.3(E) (Retainage), the KRRC may disapprove and withhold and retain all or any portion of any payment requested in any Payment Request for Project Implementation Work in an amount equal to the sum of:

- (1) Any liquidated damages or reimbursement payments which are due and owing to the KRRC hereunder;
- (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 Project Company Indemnatee by a third party in accordance with Applicable Law;
- (3) Any amount determined pursuant to subsection 13.1(D) (Maintenance of Insurance Coverage) of Appendix 9 (Insurance Requirements);
- (4) Any other deductions which are required by Applicable Law;
- (5) Any payments with respect to which documents to be delivered in connection therewith are not correct and complete;
- (6) Any payments to the extent that the Project Implementation Work covered by such Payment Request (or any previous Payment Request) does not comply with this Project Agreement;
- (7) The cost of repairing damage to the work of a Separate Contractor, to the extent the Project Company is responsible for such costs and fails to promptly repair or replace the damaged work as required by this Project Agreement;
- (8) Any payments with respect to which any person has filed a Lien resulting from the acts or omissions of the Project Company in performing the Project Implementation Work and such Lien remains unreleased or unbonded;
- (9) All requisitioned payments if an Event of Default of the Project Company has occurred under Section 12.2 (Events of Default by the Project Company); and

(10) In the event the Project Company fails to pay any Taxes, assessments, penalties or fees imposed by any Governmental Body, then the Project Company authorizes the KRRC to deduct and withhold or pay over to the appropriate Governmental Body those unpaid amounts upon demand by the Governmental Body.

In addition, the KRRC may withhold payment for persistent and uncured Project Company noncompliance with the administrative provisions of this Project Agreement, including failure to electronically submit monthly Subcontractor payment information. In the event of any permissible withholding under this Section, the KRRC shall notify the Project Company 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 Project Company must take to rectify the KRRC's concerns. Any dispute associated with any such withholding shall be handled in accordance with subsection 9.3(D) (Payment Dispute Procedures).

SECTION 9.5. PAYMENT UPON MILESTONE FINAL COMPLETION.

(A) Milestone Final Completion Payment Request. In connection with the achievement of each Milestone Final Completion in accordance with Section 7.7 (Milestone Final Completion), the Project Company shall prepare and submit to the KRRC and the Program Manager a Milestone Final Completion Payment Request. Each Milestone Final Completion Payment Request shall enclose:

(1) A notarized affidavit in duplicate stating under oath that all Subcontractors, vendors, and other persons or firms who have furnished or performed labor or furnished materials for the Project Implementation Work Element have been fully paid or satisfactorily secured, and, if requested by the KRRC, further proof, including waiver or release of lien or claims from any Subcontractors or Suppliers;

(2) A certificate of the Surety for both the Performance Bond and the Payment Bond certifying that the Surety consents to payment for Milestone Final 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 general release executed by the Project Company waiving, upon receipt of payment for Milestone Final Completion, all claims arising out of or resulting from the Project Implementation Work Element, except those claims made in writing to the KRRC and remaining unsettled at the time of such payment, which claims shall be specifically listed in an attachment to the general release, 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 Project Agreement.

(B) Milestone Final Completion Payment. If based on the Program Manager's (1) observation of the Project Implementation Work Element, (2) final inspection, and (3) review of the Milestone Final Completion Payment Request and other documents required by subsections (A) (Milestone Final Completion Payment Request) and (C) (Final Determination and Approval of Contract Price) of this Section and Section 7.7 (Milestone Final Completion), the Program Manager is satisfied that the conditions for Milestone Final Completion have been achieved, the Program Manager shall, within 15 days after receipt of the Milestone Final Completion Payment Request, furnish to the KRRC and the Project Company the Program Manager's recommendation of payment for Milestone Final Completion. If the Program Manager is not satisfied, the Program Manager shall return the Milestone Final Completion

Payment Request to the Project Company, indicating in writing the reasons for not recommending payment, in which case the Project Company shall either (1) exercise its right to contest the Program Manager's determination in accordance with subsection 9.3(D) (Payment Dispute Procedures), or (2) make the necessary corrections and resubmit the Milestone Final Completion Payment Request.

(1) KRRC Concurrence. If the KRRC concurs with the Program Manager's recommendation of payment for Milestone Final Completion, the KRRC shall, within 15 days, file a written notice of Milestone Final Completion and notify the Project Company of such concurrence. As soon as reasonably practicable (but in no event later than 45 days after the KRRC's original receipt of the Project Company's Milestone Final Completion Payment Request, subject to the KRRC's right to dispute payment in accordance with this Project Agreement and Applicable Law) after filing such notice, the KRRC shall pay to the Project Company the balance of the Contract Price associated with such Project Implementation Work Element, subject to any withholdings and any other provisions governing final payment specified herein.

(2) KRRC Non-Concurrence. If the KRRC does not concur with the Program Manager's determination, the KRRC shall return the Payment Request to the Project Company, indicating in writing its reasons for refusing payment for Milestone Final Completion. The Project Company shall promptly make the necessary corrections and resubmit the Payment Request to the KRRC and the Program Manager. The KRRC's written determination shall bind the Project Company, unless the Project Company delivers to the KRRC written notice of a claim within 30 days after receipt of the KRRC's determination.

Payment for Milestone Final Completion does not constitute a waiver by the KRRC of any rights relating to the Project Company's obligations under this Project Agreement. Except as specifically provided in subsection (A) (Milestone Final Completion Payment Request) of this Section with respect to exceptions taken in the Project Company's general release, payment for Milestone Final Completion constitutes a waiver of all claims by the Project Company against the KRRC, including all claims associated with Uncontrollable Circumstances, relating to the Project Implementation Work, the payment of the Project Implementation Work Costs or otherwise in connection with the Project Implementation Period.

(C) Final Determination and Approval of Contract Price. Notwithstanding any of the foregoing, the KRRC shall have no obligation to make payment for Milestone Final Completion hereunder until a final accounting of the Project Implementation Work Costs for the Project Implementation Work Element has been submitted by the Project Company and has been verified by the KRRC and the Program Manager. Such accounting shall be provided by the Project Company in connection with the Milestone Final Completion Payment Request. The aggregate total of payments to the Project Company with respect to the Contract Price (including amounts retained pursuant to subsection 9.3(E) (Retainage)) shall not exceed the total of the actual Project Implementation Work Costs relating to the Project Implementation Work Element, as verified by the KRRC and the Program Manager from the Project Company's final accounting, plus the Project Company Fee which shall not exceed the Guaranteed Maximum Price. If payments to the Project Company exceed that which is due and owing the Project Company pursuant to this Article, the Project Company shall promptly refund the excess to the KRRC. The Project Company acknowledges and agrees that the KRRC shall have the right to withhold and retain amounts from payment for Milestone Final Completion in accordance with Section 9.4 (Permissible Withholdings).

(D) Completion of Project Implementation Work. Notwithstanding payment for Milestone Final Completion pursuant to this Section, the Project Company acknowledges

and agrees that the performance of the Project Implementation Work is not complete until the expiration of the applicable Warranty Period, and that the Project Company shall have the continuing obligation to perform Warranty Work pursuant to the terms and conditions of Article 10 (Project Warranties) until the expiration of the applicable Warranty Period. To the extent the Project Company is entitled to payment of any amount retained by the KRRC pursuant to Section 9.4 (Permissible Withholdings) upon each Milestone Final Completion, the Project Company shall provide the KRRC with a final Payment Request in a form reasonably acceptable to the KRRC, and the KRRC shall pay the amount due within 30 days following receipt of the final Payment Request.

(E) Project Final Completion. The procedure described in this Section shall be followed for the final payment by the KRRC to the Project Company related to Project Final Completion.

SECTION 9.6. NO ACCEPTANCE, WAIVER OR RELEASE.

Unless other provisions of this Project Agreement specifically provide to the contrary, none of the following, without limitation, shall be construed as (i) the KRRC's acceptance of any Project Implementation Work which is defective, incomplete, or otherwise not in compliance with this Project Agreement, (ii) the KRRC's release of the Project Company from any obligation under this Project Agreement, (iii) the KRRC's extension of the Project Company's time for performance, (iv) an estoppel against the KRRC, or (v) the KRRC's acceptance of any claim by the Project Company:

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

SECTION 9.7. CHANGES IN CONTRACT PRICE.

(A) Determination of Base Guaranteed Maximum Price Adjustment. Without limiting any requirement of Article 14 (Uncontrollable Circumstances), any Base Guaranteed Maximum Price Adjustment included in a Change Order or Unilateral Change Directive shall be determined as follows:

(1) Where unit prices set forth in the Contract Documents are applicable to the Project Implementation Work that is the subject of the Change Order or Unilateral Change Directive, or unit prices are otherwise mutually agreed upon by the parties, by application of such unit prices to the quantities of the items involved;

(2) To the extent unit prices are not applicable, by a mutually agreed lump sum supported by written Cost Substantiation documentation acceptable to the KRRC;

(3) To the extent unit prices are not applicable and the parties are unable to reach agreement on a lump sum value, on the basis of the actual cost of performing the applicable Project Implementation Work (subject to Cost Substantiation, any limitations contained in Appendix 8 (Contract Price) and excluding any cost attributable to Project Company Fault), plus (a) a reasonable lump sum fee attributable to profit, mark-up and general and indirect overhead with respect to such Project Implementation Work based upon the percentages set forth in Section 8.5 (Project Company Fee) of Appendix 8 (Contract Price), and (b) a Subcontractor mark-up determined in accordance with this Section; or

(4) A combination of the foregoing.

(B) Design Professional Services. Without limiting anything in subsection (C) (Subcontractor's Maximum Mark-Up on Subcontracted Project Implementation Work) of this Section, for purposes of determining the amount payable for Design Professional Services included in any Change Order or Unilateral Change Directive, the rates payable for Project Company personnel and personnel of Subcontractors providing Design Professional Services shall not exceed their then currently applicable rates for similar services on projects of similar size and scope to the Project Implementation Work. The Project Company shall use commercially reasonable efforts to use available Project Company personnel for additional work hereunder before using Subcontractors.

(C) Subcontractor's Maximum Mark-Up on Subcontracted Project Implementation Work. The price payable to all Subcontractors for work performed under Project Implementation Work Subcontracts, including Project Implementation Work Subcontractor overhead and mark-ups for risk and profit, shall be commercially reasonable. A Change Order or Unilateral Change Directive may provide for a mark-up payable to Project Implementation Work Subcontractors for their risk, profit, administration, and all other overhead where Project Implementation Work that is the subject of the Change Order or Unilateral Change Directive is performed through such Project Implementation Work Subcontractors. Any such Project Implementation Work Subcontractor mark-up shall not exceed: (1) 15% of the costs incurred by such Project Implementation Work Subcontractor in respect of labor, materials, equipment, supplies; and (2) for any higher tier Project Implementation Work Subcontractor, 5% of the amount paid to the next lower-tier Project Implementation Work Subcontractor.

SECTION 9.8. COST SUBSTANTIATION.

(A) Required Substantiation and Competitive Practices. Without limiting anything in Appendix 8 (Contract Price), the Project Company shall substantiate the Project Implementation Work Costs and any other costs for which it claims compensation hereunder, other than (1) the Project Company Fee, which was proposed and negotiated on a fixed basis, (2) any other costs that are part of a negotiated fixed price, or (3) any fixed-price Subcontracts for the performance of all Project Implementation Work procured in accordance with Section 8.4 (Self-Performance and Subcontractor Selection). In incurring any other costs which are subject to Cost Substantiation, the Project Company 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 \$50,000), 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 for compensation relating to costs requiring Cost Substantiation under subsection (A) (Required Substantiation and Competitive Practices) of this Section shall be accompanied by a certificate stating that the Project Implementation Work Costs or other costs being invoiced (1) are properly payable under this Project Agreement, and specifying the provisions of this Project Agreement under which compensation is due, and (2) are equal to amounts paid by the Project Company for Project Implementation Work that has been properly performed. The Cost Substantiation certificate shall describe the competitive or other process utilized by the Project Company 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 Project Agreement. Each Cost Substantiation certificate shall be accompanied by copies of all documentation reasonably necessary to demonstrate that the Project Implementation Work 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 9.9. 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 rate of interest set forth in California Code of Civil Procedure Section 685.010(a).

SECTION 9.10. RETENTION AND AUDIT OF BOOKS AND RECORDS.

(A) Books and Records. The Project Company shall, and shall cause its Subcontractors to, 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 Project Company 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, any Governmental Body having an interest in the performance of this Project Agreement, and any of their authorized representatives. All

financial records of the Project Company and its Subcontractors shall be maintained in accordance with generally accepted accounting principles and generally accepted auditing standards. The Project Company 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 Project Company (other than lump sum payments, including any lump sum payments of the Preliminary Services Fee or any lump sum payments of Project Implementation Work Costs) and all Contract Obligations shall be subject to audit at any time by the KRRC, the States, any Governmental Body having an interest in the performance of this Project Agreement, and any of their authorized representatives. The Project Company shall provide all evidence necessary to support Cost Substantiation as required under this Project Agreement, and allow the KRRC access to the Project Company's Books and Records that are directly related to the Project. The Project Company shall require all Subcontractors to comply with the provisions of this Section and include the requirements hereof in the written contract between the Project Company and the Subcontractor. The Project Company 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 Project Company is a joint venture, such right to examine, copy and audit shall apply collaterally and to the same extent to the Books and Records that are directly related to the Project of the joint venture sponsor, and those of each individual joint venture member.

(C) Notice and Process. Upon no less than 30 days' prior written notice by the KRRC, the States, any Governmental Body having an interest in the performance of this Project Agreement, or any of their authorized representatives, the Project Company shall, and shall cause its Subcontractors to, make available at its office at all reasonable times the Books and Records for examination, audit, or reproduction. The KRRC may take possession of such Books and Records by reproducing such Books and Records, excluding confidential financial or payroll details, for off-site review or audit. When requested in the KRRC's written notice of examination or audit, the Project Company shall provide the KRRC with copies of electronic and electronically stored Books and Records in a reasonable usable format consistent with the Project Company's standard record keeping practices 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 Project Company shall provide the KRRC with two licenses with maintenance agreements authorizing the KRRC to access and analyze all such Books and Records. If the Project Company is unable to provide the licenses, the Project Company shall provide the KRRC with reports and records from the Project Company'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 as available.

(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 Project Company shall preserve all of its Books and Records, and the KRRC, the States, any Governmental Body having an interest in performance of this Project Agreement, and any of their authorized representatives, may examine, audit, or reproduce Books and Records, from the Contract Date until the later of three years after: (1) final payment under this Project Agreement; or (2) final settlement of a termination for convenience under Section 12.6 (KRRC Convenience Termination Rights); or (3) the final resolution of any dispute. After the expiration of a 30 day period to cure a breach of this subsection (E) (Preservation of Books and Records), the failure by the Project Company to make available the Books and Records in accordance with this Section or the Project

Company's refusal to cooperate with a notice of audit or examination shall be deemed a material breach of this Project Agreement and grounds for termination.

(F) Overpayment. In the event an audit by the KRRC determines that the Project Company cannot document a cost or expense for which payment has been made, or that the KRRC has overpaid the Project Company and the Project Company has not cured such deficiency within 30 days of the audit, the Project Company shall, within 10 days following a demand by the KRRC, refund the amounts overpaid or undocumented to the KRRC. If the overpayment exceeds 1% of the total amount that should have been properly paid by the KRRC during the period audited, then the Project Company shall, in addition, reimburse the KRRC for any reasonable fees and costs incurred in connection with the inspection or audit. Payments to the Project Company, or approval by the KRRC of any requisition for payment submitted by the Project Company, shall in no way affect the Project Company's obligation hereunder or the right of the KRRC to obtain a refund of any payment to the Project Company which is in excess of that to which it was lawfully entitled.

ARTICLE 10

PROJECT WARRANTIES

SECTION 10.1. PROJECT WARRANTIES.

(A) Project Warranties Defined. The Project Company warrants to the KRRC that the Project Implementation Work, including all completed materials, equipment, systems and structures comprising the Project, shall: (i) be new, of recent manufacture and of good quality; (ii) conform to the requirements of the Contract Documents; and (iii) be free of material faults or defects, including defects caused by or resulting from design errors or omissions and defects in title (the “**Project Warranties**”). The Project Warranties are further subject to the following:

(1) Inclusions. The Project Warranties include remedy for damage or defect caused by Project Implementation Work performed by the Project Company.

(2) Exclusions. The Project Warranties exclude remedies for damage or defect caused by capital modifications not undertaken or executed by the Project Company under this Project Agreement. In addition, except as provided in item (1), above, the Project Warranties exclude remedy for damage or defect caused by improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage.

(B) Term of the Project Warranties. The Project Warranties set forth in this Article shall be in full force and effect for the period of time beginning on each applicable Milestone Substantial Completion Date and, subject to subsection (C) (Optional Extension of Warranty Periods) of this Section and subsection 10.2(D) (Extension of Warranties), continuing for one year following such applicable Milestone Substantial Completion Date (each, a “**Warranty Period**”).

(C) Optional Extension of Warranty Periods. The KRRC shall have the right at any time prior to the expiration of the applicable one-year Warranty Period specified in subsection (B) (Term of the Project Warranties) of this Section, upon written notice to the Project Company, to elect to extend such Warranty Period so that it continues for two years following the final Milestone Substantial Completion Date. In the event the KRRC elects to extend the Warranty Period pursuant to this Section, the Project Company shall be entitled to receive the fixed sum of [\$_____] [**Note: To be finalized on the GMP Contract Amendment Date**] (the “**Extended Warranty Fee**”). The Extended Warranty Fee shall be payable on a monthly, pro-rata basis during the one-year extension of the Warranty Period. The Project Company shall provide the KRRC with a Payment Request in a form reasonably acceptable to the KRRC by the 15th day of each month, which shall state the amount payable for the month and the total amount paid against the Extended Warranty Fee through the date of the Payment Request, along with such other information or documentation as the KRRC may reasonably require. The KRRC shall pay the amount due in accordance with this Section within 30 days following receipt of the Payment Request. The Extended Warranty Fee is not included in the Contract Price and is not subject to retainage holdback; provided, however, that the KRRC shall have the right to withhold payment for Warranty Work that is not performed in accordance with the Contract Standards and otherwise as provided in Section 9.4 (Permissible Withholdings). The KRRC shall not be required to make any payment to the Project Company at any time the Project Company is in breach or default under this Project Agreement. The Maintenance Bond required pursuant to subsection 16.2(F) (Maintenance Bond) shall automatically renew for an additional one-year term if the KRRC elects to extend the Warranty Period pursuant to this Section.

SECTION 10.2. WARRANTY WORK.

(A) “Call-Back” Obligations. If, at any time during the applicable Warranty Period, the Project or any of the Project Implementation Work is found to be malfunctioning, defective or otherwise not in accordance with the requirements of the Project Warranties, the Project Company shall correct the condition promptly after receipt of written notice from the KRRC to do so. The KRRC shall provide such notice promptly after discovery of the condition. The Project Company shall respond to critical or emergency service calls from the KRRC and be onsite within four hours and to non-critical or non-emergency calls within eight hours; provided however such response times will not be required for the Final Habitat Restoration Work, which require reasonable response times. Such response shall require that a competent representative or representatives of the Project Company familiar with the Project, including its specific equipment, design and operational requirements, inspect the Project and, while on-site, either correct the problem or initiate a course of action that will fully correct the problem within a reasonable period of time in accordance with Good Dam Removal Practice and the specific requirements of this Section. In critical or emergency situations and for non-emergencies, the correction shall be made in the minimum amount of time required in accordance with Good Dam Removal Practice.

(B) Right of the KRRC to Proceed with Corrective Action; Project Company Liability. If the Project Company fails to commence and complete the steps set forth in subsection (A) (“Call-Back” Obligations) of this Section within the required time frames, in addition to any other remedies provided under this Project Agreement, the Security Instruments or Applicable Law, the KRRC may commence and complete the correction of such non-conforming Project Implementation Work with its own forces or with third-party contractors. If the KRRC does perform such corrective work, the Project Company shall be responsible for all costs reasonably incurred in performing such correction, subject to Cost Substantiation in accordance with this Project Agreement.

(C) No Period of Limitation on Other Obligations. Nothing contained in this Section shall be construed to establish a period of limitation with respect to other obligations that the Project Company has under this Project Agreement or under Applicable Law with respect to the Project Implementation Work, including warranties and obligations with respect to latent defects. The Warranty Periods relate only to the specific obligations of the Project Company to respond to notices from the KRRC under the Project Warranties, and have no relationship to the time within which the obligation of the Project Company to comply with this Project Agreement may be enforced, nor the time within which proceedings may be commenced to establish the Project Company’s liability with respect to its obligations under this Project Agreement.

(D) Extension of Warranties. The “call-back” obligations set forth in this Section shall apply to all Project Implementation Work re-done or corrected pursuant to this Project Agreement. The “call-back” obligations for re-done or corrected elements of the Project Implementation Work shall extend beyond the applicable Warranty Period, if necessary, to provide a minimum one-year period following acceptance by the KRRC of such re-done or corrected Project Implementation Work; provided, however, that in no event shall such “call-back” obligations extend beyond one year following the expiration of the applicable Warranty Period.

(E) Manufacturers’ Warranties. During each Warranty Period, the Project Company (or the KRRC) shall be permitted to enforce all warranties provided by manufacturers, suppliers and other third parties with respect to the Project Implementation Work. However, as provided in subsection 10.4(A) (Manufacturers’ Warranties Generally), no such warranty shall relieve the Project Company of any obligation with respect to the Project Warranties.

(F) Performance of Warranty Work. The Project Company acknowledges that time is of the essence in the performance of all Warranty Work required under this Section in light of the Project's essential public purpose. Accordingly, all Warranty Work shall be performed in accordance with the Contract Standards and within the minimum amount of time required in accordance with Good Dam Removal Practice. The Project Company shall provide a written plan for all proposed Warranty Work (unless expressly waived by the KRRC).

(G) Responsibility for Costs. The costs incurred by the Project Company in performing Warranty Work shall be Project Implementation Work Costs, subject to the Guaranteed Maximum Price, except to the extent that such Warranty Work was the result of Project Company Fault, in which case such costs shall be Unallowable Costs. The Project Company shall reimburse the KRRC for its costs resulting from a breach of the Project Warranties, subject to the terms and conditions of this Project Agreement.

SECTION 10.3. PROJECT WARRANTIES NOT EXCLUSIVE.

The Project Company acknowledges and agrees that the Project Warranties are in addition to, and not in limitation of, any other warranties, rights and remedies available under this Project Agreement or Applicable Law, and shall not limit the Project Company's liability or responsibility imposed by this Project Agreement or Applicable Law with respect to the Project Implementation Work, including liability for defects caused by or resulting from design errors or omissions, latent construction, demolition and habitat restoration defects, strict liability, negligence or fraud. The provisions of this Section shall survive the termination of this Project Agreement.

SECTION 10.4. MANUFACTURERS' WARRANTIES.

(A) Manufacturers' Warranties Generally. Without limiting any of the Project Warranties, the Project Company shall, for the protection of the KRRC, obtain from all Subcontractors (including vendors, suppliers and other persons from which the Project Company procures structures, improvements, fixtures, machinery, equipment and materials) such warranties and guarantees as are normally provided with respect thereto and as may be specifically required by the Contract Standards, each of which is hereby assigned to the KRRC to the full extent of the terms thereof. No such warranty or guarantee shall relieve the Project Company of any obligation hereunder, and no failure of any warranted or guaranteed structures, improvements, fixtures, machinery, equipment or material shall be the cause for any increase in the Guaranteed Maximum Price or otherwise excuse the Project Company from the performance of any Project Implementation Work or Warranty Work obligations, unless such failure is itself attributable to an Uncontrollable Circumstance.

(B) No Limitation on Third-Party Warranties. Nothing in this Project Agreement is intended to limit any third-party warranty that provides the KRRC with greater warranty rights than those provided under the Project Warranties, as set forth in this Project Agreement.

ARTICLE 11

DISPUTE RESOLUTION

SECTION 11.1. DISPUTE RESOLUTION PROCEDURES.

(A) Generally. Except as provided in Section 11.2(D) (Relation to Judicial Legal Proceedings) of this Section, 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 Project Company with day-to-day involvement in the administration of this Project 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 Project 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 Project Agreement. At the KRRC's request, the Project Company shall involve senior representatives of any of its Subcontractors in such negotiations. 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 or request a KRRC Contract Representative's Final Decision in accordance with this Section.

(C) KRRC Contract Representative's Final Decision. If a dispute has not been resolved through direct, informal negotiations as provided in subsection (B) (Informal Negotiations) of this Section, then upon the written request of the Project Company, the KRRC Contract Representative or his or her designee (other than any personnel assigned to the Project) shall review the dispute and issue his or her determination of the dispute (the "**KRRC Contract Representative's Final Decision**"). The KRRC Contract Representative's Final Decision shall be issued in writing within 60 days following the date of the request for review. If the Project Company disagrees with the KRRC Contract Representative's Final Decision, or if the KRRC Contract Representative fails to issue a KRRC Contract Representative's Final Decision within such 60-day period, then the Project Company shall have the right to file a notice of claim with the KRRC Contract Representative. If the Project Company fails to file any such notice of claim with the KRRC Contract Representative on or prior to the final Milestone Substantial Completion Date, or such earlier date as required pursuant to Applicable Law, then the Project Company shall: (1) be deemed to have accepted the KRRC Contract Representative's Final Decision; (2) shall have waived its rights to any further relief for the matters covered by such KRRC Contract Representative's Final Decision; and (3) shall have waived its rights to initiate Legal Proceedings in accordance with Section 11.3 (Forum for Dispute Resolution) and in accordance with this Project Agreement for the matters in dispute between the parties. A KRRC Contract Representative's Final Decision, or the failure of the KRRC Contract Representative to issue a KRRC Contract Representative's Final Decision in accordance with this subsection, shall be a condition precedent to the Project Company's right to file a notice of claim, and subsequently initiate Legal Proceedings, in accordance with this Project Agreement.

SECTION 11.2. NON-BINDING MEDIATION

(A) Rights to Request and Decline Non-Binding Mediation. Subject to the requirements of Section 11.1(B) (Informal Negotiations), either party may request Non-Binding Mediation of any dispute arising under this Project 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 Project Company.

(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 Project Agreement. No mediator shall be empowered to render a binding decision.

(D) Relation to Judicial Legal Proceedings. Except as provided in Section 11.1(C) (KRRC Contract Representative's Final Decision) with respect to the KRRC Contract Representative's Final Decision, 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 Project Agreement by the other party, whether in lieu of, concurrently with, or at the conclusion of any Non-Binding Mediation.

SECTION 11.3. FORUM FOR DISPUTE RESOLUTION.

It is the express intention of the parties that all Legal Proceedings related to this Project 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 Project Company 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 11.4. 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 Project Company shall continue with the performance of the Contract Obligations in a diligent manner and in accordance with the applicable provisions of this Project Agreement. The KRRC shall continue to satisfy its uncontested payment obligations to the Project Company during the pendency of any such dispute, subject to the terms and conditions of this Project Agreement. Records of the Contract Obligations performed during such time shall be kept in accordance with the applicable provisions of this Project Agreement.

ARTICLE 12

BREACH, DEFAULT, REMEDIES AND TERMINATION

SECTION 12.1. REMEDIES FOR BREACH.

(A) Generally. The parties agree that, except as otherwise provided in this Section, in the event that either party breaches this Project Agreement, the other party may exercise any legal rights it may have under this Project Agreement and under Applicable Law, subject to Section 11.1 (Dispute Resolution Procedures). Neither party shall have the right to terminate this Project 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 Project Company's responsibility hereunder to perform the Contract Obligations.

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

(D) Liquidated Damages. This Project Agreement provides for the payment by the Project Company of liquidated damages in certain circumstances associated with unexcused delays in achieving the Milestone Substantial Completion Dates, as and to the extent provided in Section 7.5 (Effect of Unexcused Delay in Achievement of the Milestone Substantial Completion). Each party agrees that the KRRC's actual damages in each such circumstance of replacement or unexcused delay would be difficult or impossible to ascertain, and that the liquidated damages provided for herein with respect to each such circumstance of unexcused delay are intended to place the KRRC in the same economic position as it would have been in had the unexcused delay not occurred. Such liquidated damages shall constitute the only damages payable by the Project Company to the KRRC to compensate the KRRC for such replacement or for unexcused delays in achieving Milestone Substantial Completion by the applicable Scheduled Milestone Substantial Completion Date, as applicable, regardless of legal theory. This limitation, however, is not intended to limit any of the other remedies for breach specifically provided for in this Project Agreement, including the KRRC's remedies associated with an Event of Default by the Project Company under Section 12.2 (Events of Default by the Project Company). The parties acknowledge and agree that the additional remedies specifically provided for in this Project Agreement are intended to address harms and damages which are separate and distinct from those which the liquidated damages are meant to remedy. In addition, the parties agree that:

(1) The liquidated damages payable under this Project Agreement are fair and reasonable and are not a penalty, and such amounts represent a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from the circumstances of unexcused delay; and

(2) In recognition of the acknowledgments above, the Project Company is expressly estopped from arguing, and waives any rights it may have to argue, that the liquidated damages provided for herein are a penalty and that they are not enforceable.

SECTION 12.2. EVENTS OF DEFAULT BY THE PROJECT COMPANY.

(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 Project Company upon which the KRRC, by notice to the Project Company, may terminate this Project Agreement

without any requirement of having given notice previously or of providing any further cure opportunity:

(1) Failure to Achieve Milestone Substantial Completion. The failure of the Project Company, without excuse for Uncontrollable Circumstances, to achieve Milestone Substantial Completion with respect to any Project Implementation Work Element prior to the end of the applicable extended Milestone Longstop Date, as provided in subsection 7.5(F) (Extension of Milestone Longstop Date);

(2) Failure to Achieve Milestone Final Completion. Except to the extent excused due to the occurrence of Uncontrollable Circumstances, the failure of the Project Company to achieve any Milestone Final Completion by the date set forth in Section 7.7 (Milestone Final Completion);

(3) Security for Performance. The failure of the Project Company to obtain and maintain in full force and effect in accordance with the requirements of this Project Agreement any Security Instrument required by Article 16 (Security for Performance) as security for the performance of this Project Agreement;

(4) Assignment or Transfer Without Consent. The assignment or transfer by the Project Company of this Project Agreement or any right or interest therein without the KRRC's prior written consent;

(5) Insolvency. The insolvency of the Project Company as determined under the Bankruptcy Law;

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

(7) Involuntary Bankruptcy. The issuance of an order of a court of competent jurisdiction appointing a receiver, liquidator, custodian or trustee of the Project Company or the Guarantor or of a major part of the property of the Project Company or the Guarantor, or the filing against the Project Company or the Guarantor of a petition to reorganize the Project Company 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 Project Company upon which the KRRC may terminate this Project Agreement by notice to the Project Company and subject to the Project Company's cure rights set forth in subsection (C) (Notice and Cure Opportunity) of this Section, if:

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

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

(3) The Project Company suspends, ceases, stops or abandons the Project Implementation Work or fails to continuously and diligently prosecute the Project Implementation Work, exclusive of work stoppages due to an Uncontrollable Circumstance;

(4) The Project Company fails to resume performance of the Project Implementation Work 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;

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

(6) The Project Company fails to perform any other material obligation under this Project Agreement (unless such failure is excused by an Uncontrollable Circumstance as and to the extent provided herein).

(C) Notice and Cure Opportunity. The Project Company 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 Project Company 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 Project Agreement for cause under this Section unless:

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

(2) The Project Company 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 Project Company shall have initiated and continued with due diligence to carry out to completion all actions required under item (2) above, 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 Project Company shall continue with due diligence to carry out to completion all such actions.

(D) Other Remedies upon Project Company Event of Default. The right of termination provided under this Section upon an Event of Default by the Project Company is not exclusive. If this Project Agreement is terminated by the KRRC for an Event of Default by the Project Company, 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 Project Agreement, under the Security Instruments and under Applicable Law. The Project Company

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.

(E) Relationship to Liquidated Damages. Termination by the KRRC pursuant to this Section shall not relieve the Project Company or its Surety from liability for the liquidated damages provided for under this Project Agreement. The parties acknowledge and agree that such liquidated damages are intended solely to compensate the KRRC for costs and expenses associated with unexcused delay and are not intended to liquidate all other damages that the KRRC is likely to suffer in the event of a Project Company Event of Default under this Article. Accordingly, except with respect to damages relating solely to unexcused delay for which liquidated damages are provided under this Project Agreement, the payment of any such liquidated damages by the Project Company shall not serve to limit or otherwise affect the KRRC's right to pursue and recover damages under subsection (D) (Other Remedies upon Project Company Event of Default) of this Section.

SECTION 12.3. LIMITATION ON PROJECT COMPANY LIABILITY.

(A) Project Company Liability Limit. Subject to subsection (B) (Liquidated Damages Sublimit) of this Section, the Project Company's aggregate liability under this Project Agreement with respect to damages of any kind payable to the KRRC arising out of the performance or unexcused non-performance of the Preliminary Services or the Project Implementation Work as a consequence of a claim or suit initiated by the KRRC shall not exceed an amount equal to: (1) the aggregate value of Early Work Package Prices for all Early Work Packages and the Preliminary Services Fee, during the period commencing on the Contract Date and ending on the Project Implementation Contract Amendment Date; and (2) the Guaranteed Maximum Price commencing on the Project Implementation Contract Amendment Date and at all times thereafter.

(B) Liquidated Damages Sublimit. The aggregate liability of the Project Company, with respect to any liquidated damages payable pursuant subsection 7.5(B) (Delay Liquidated Damages), shall not exceed an amount equal to 15% of the Guaranteed Maximum Price. The payment by the Project Company of any such liquidated damages shall reduce commensurately the liability limit set forth in subsection (A) (Project Company Liability Limit) of this Section.

SECTION 12.4. APPLICABILITY AND INTERPRETATION OF THE LIMITATION ON LIABILITY.

The limitation on Project Company liability provided for in Section 12.3 (Limitation on Project Company Liability) applies solely to the liability of the Project Company for damages to the KRRC arising out of the performance or unexcused non-performance of this Project Agreement as a consequence of a claim or suit initiated by the KRRC. The limitation on liability provided for in Section 12.3 (Limitation on Project Company Liability) shall not apply in the event the Project Company abandons the Project, and does not apply to any other liability, loss, damage, cost or expense that may be incurred by the Project Company in connection with this Project Agreement, including any of the following liabilities, losses, damages, costs or expenses:

(1) Any financial, economic or other loss, cost or expense sustained by the Project Company in the performance of the Project Implementation Work or any other loss sustained by the Project Company, the Guarantor, or any other party in connection with this Project Agreement, the Guaranty Agreement or other agreement relating to the Project;

(2) Any loss, cost or expense incurred by the Project Company in order to perform or complete the Project Implementation Work, including those incurred in seeking to cure or prevent any breach of this Project Agreement;

(3) Any fines or penalties levied or imposed by any Governmental Body due to the acts or omissions of the Project Company;

(4) Any claims, losses or penalties incurred by the Project Company to third parties in any Legal Proceedings which arise from or are based on negligent, reckless, or intentional actions or omissions of the Project Company contrary to the requirements of this Project Agreement, from any breach of contract action in connection with third party contracts, or from any other dispute relating to this Project Agreement that results in a Legal Proceeding;

(5) Any indemnity payment made by the Project Company hereunder;

(6) Payment of any defense costs, including attorney's fees, to, for, or on behalf of the KRRC with respect to any third-party claim;

(7) Any payments made in connection with any Required Insurance under this Project Agreement, including the proceeds of Required Insurance and the payment of any deductible or self-insured retention; and

(8) Any claims, losses, penalties or settlement payments paid to the KRRC in connection with any tort claim by the KRRC against the Project Company based on gross negligence, willful misconduct, fraud, misrepresentation or false claims.

SECTION 12.5. 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 Project Company under this Project Agreement within 30 days following the due date for such payment shall constitute an Event of Default by the KRRC upon which the Project Company, by notice to the KRRC, may terminate this Project 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 Project Company the right to terminate this Project Agreement for cause under this Section unless:

(1) The Project Company has given prior written notice to the KRRC stating that a specified default has occurred which gives the Project Company a right to terminate this Project 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 Project Company's conclusion that such default has occurred or constitutes a material breach of this Project 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) above, 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) Other KRRC Breaches Constituting Uncontrollable Circumstances. Except for the KRRC Events of Default described in subsection (A) (Events of Default Permitting Termination) of this Section, the failure of the KRRC to perform any other material obligation under this Project Agreement (unless such default is due to Project Company Fault or excused by an Uncontrollable Circumstance as and to the extent provided herein), shall constitute an Uncontrollable Circumstance as and to the extent provided in Article 14 (Uncontrollable Circumstances), and the Project Company shall have no right to terminate this Project Agreement.

(D) Effect of Termination. If this Project Agreement is terminated by the Project Company for cause as a result of an Event of Default by the KRRC, the KRRC shall pay the Project Company the same amount which would be payable under Section 12.6 (KRRC Convenience Termination Rights) if this Project 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 Project Company for any Event of Default or termination under this Section.

(E) Payment of Amounts Owed Through the Termination Date. Without duplicating any amount required to be paid pursuant to subsection (D) (Effect of Termination) of this Section, upon any termination pursuant to this Section, the Project Company shall be paid all amounts due for the Project Implementation Work performed prior to the Termination Date to be paid as part of the Contract Price but not yet paid as of the Termination Date.

SECTION 12.6. KRRC CONVENIENCE TERMINATION RIGHTS.

(A) Convenience Termination Right and Payment. Notwithstanding any other provision of the Project Agreement, the KRRC shall have the right at any time following the Contract Date, exercisable in its discretion for any reason upon 30 days' written notice to the Project Company, to terminate this Project Agreement. The Project Company acknowledges that the circumstances which may lead to a convenience termination include: (1) if any of the preconditions listed in Section 7.1.4 of the KHSA are not satisfied; (2) if the FERC License Transfer Order is inconsistent with the KHSA; (3) if the KRRC does not accept the FERC License Transfer Order; (4) if any of the KRRC's funding is withdrawn; (5) if CPUC or OPUC do not approve any property disposition; and (6) if any Governmental Approval is not issued.

(B) Convenience Termination Payment for Preliminary Services. In the event of a convenience termination of the Preliminary Services pursuant to this Section, the Project Company shall not be entitled to a convenience termination payment, but shall be entitled to payment of that portion of the Preliminary Services Fee that has been earned by the terms hereof as of the Termination Date but not yet paid by the KRRC (which amount may include reasonable wind down expenses). No other compensation shall be payable by the KRRC on account of the KRRC's convenience termination of the Preliminary Services.

(C) Convenience Termination Payment for Project Implementation Work. In the event of a convenience termination of the Project Implementation Work pursuant to this subsection (including Project Implementation Work performed pursuant to an Early Work Package Amendment), the Project Company 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 Project Implementation Work performed up to the Termination Date, and (b) all payments already made to the Project Company pursuant to this Project Agreement; and

(2) Subject to subsection (E) (Settlement of Subcontracts Generally) of this Section, the reasonable costs incurred by the Project Company 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 Project Company acknowledges and agrees that it shall not be entitled to any compensation in excess of the value of the Project Implementation Work performed plus its settlement and closeout costs. Under no circumstances shall the Project Company 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.

(D) Early Work Packages. If the parties have entered into any Early Work Package Amendment prior to any convenience termination pursuant to this Section, the KRRC shall have the right to:

(1) Terminate the Project Company's right to perform any Project Implementation Work authorized by any such Early Work Package Amendment; or

(2) Require the Project Company to complete performance of such Project Implementation Work in accordance with the applicable Early Work Package Amendment.

If the KRRC elects to terminate such Project Implementation Work pursuant to item (1) of this subsection, the Project Company shall be entitled to a termination settlement payment associated solely with the terminated Early Work Package Project Implementation Work, as and to the extent provided in subsection (C) (Convenience Termination Payment for Project Implementation Work) of this Section. Nothing in this Section shall provide grounds for adjustment of any applicable Early Work Package Price or limit the KRRC's rights to convenience termination of Project Implementation Work authorized by an Early Work Package Amendment without terminating the Preliminary Services or the Project Implementation Work.

(E) Settlement of Subcontracts Generally. The obligation of the KRRC to pay amounts due in settlement of Subcontracts under subsection (C) (Convenience Termination Payment for Project Implementation Work) of this Section shall be limited to the reasonable costs incurred by the Project Company in settling and closing out Subcontracts that the KRRC does not elect to have assigned to it pursuant to Section 12.7 (Obligations of the Project Company upon Termination) 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 (C) (Convenience Termination Payment for Project Implementation Work) of this Section with respect to the convenience termination settlement payment to the Project Company. 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.

(F) Payment of Amounts Due as a Result of Convenience Termination. The Project Company 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 Project Company 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 Project Company by reason of the convenience termination and shall thereupon pay to the Project Company the amount so determined, if any. In no event shall the amount payable to the Project Company pursuant to this Section exceed the Guaranteed Maximum Price as reduced by the amount of payments otherwise made. In addition, any amount payable to the Project Company pursuant to this Section shall be reduced in the amount of (1) any claim the KRRC may have against the Project Company under this Project Agreement, and (2) the fair value, as determined by the KRRC, of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the KRRC, excluding normal spoilage and except to the extent that the KRRC shall have otherwise expressly assumed the risk of loss with respect to such property hereunder. Any payment required to be made to the Project Company pursuant to this Section shall be made within 120 days following the Termination Date, subject to compliance by the Project Company with its obligations under Section 12.7 (Obligations of the Project Company upon Termination). Any payment required to be made by the Project Company 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 Project Company'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 11.1 (Dispute Resolution Procedures).

(G) Completion or Continuance by the KRRC. Without limiting any other KRRC right or remedy provided for under this Project 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.

(H) Convenience Termination Rights as Consideration. The right of the KRRC to terminate this Project Agreement for its convenience and in its discretion in accordance with this Section constitutes an essential part of the overall consideration for this Project Agreement, and, except with respect to the determination as to the amount due the Project Company pursuant to this Section, the Project Company hereby waives any right it may have under Applicable Law to assert that the KRRC owes the Project Company 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 12.7. OBLIGATIONS OF THE PROJECT COMPANY UPON TERMINATION.

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

- (1) Stop any further Contract Obligations at the Project Site 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) Vacate possession of the Project Site and turn possession of the PacifiCorp Property over to PacifiCorp, if prior to the PacifiCorp Property Transfer Date,

or to the KRRC, if after the PacifiCorp Property Transfer Date, and turn the Adjacent and Related Lands over to the KRRC;

- (5) Clean up and remove all debris and trash from the Project Site;
- (6) Promptly remove from the Project Site all equipment, tools, or material owned by the Project Company, or its Subcontractors, agents or representatives;
- (7) 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 incorporated into the Project Implementation Work, and comply with the written instructions of the KRRC with respect to such matters;
- (8) Deliver a complete copy of all books, notes, and records of the Project Company pertaining to the Project Agreement performance or planned Project Implementation Work activities;
- (9) Promptly provide a list of all files (and make available to the KRRC for review or copying) all files pertaining to the Project Implementation Work, including any and all access and security codes, and including instructions and demonstrations that show how to open and modify such codes;
- (10) 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;
- (11) 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 Project Company being relieved of, all obligations under the Subcontract from the date of the assignment;
- (12) Cancel or terminate all Subcontracts that the KRRC does not elect to have assigned to the KRRC, in accordance with the written instructions of the KRRC;
- (13) Promptly assign and transfer to the KRRC all right, title, and interest of Project Company to any items ordered for the Contract Obligations (but not yet delivered to the Project Site or incorporated into the Project) as requested by the KRRC in its discretion; provided the KRRC (or Surety) assumes responsibility for payment thereof;
- (14) Promptly deliver and assign to the KRRC all warranties or guarantees by any vendor, supplier, manufacturer, or subcontractor pertaining to the Project;
- (15) Promptly notify the KRRC, in writing, of any pending or threatened Legal Proceedings against the Project Company relating to this Project Agreement or the Contract Obligations; and
- (16) 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 Contract Representative in writing.

With respect to any of the foregoing obligations that cannot reasonably be completed by the Termination Date, the Project Company shall complete such obligations as promptly as is practicable, but in no event later than 30 days following the Termination Date. Compliance with these obligations, to the extent applicable on the Termination Date, shall be conditions precedent to the payment of any sums otherwise due to the Project Company by reason of the termination. If any Subcontracts are assigned to the KRRC under this Section, the KRRC shall not be directly liable to any Subcontractors for amounts owed to such parties for Project Implementation Work performed prior to termination, and the Project Company shall remain liable to any such parties for such amounts.

SECTION 12.8. NO WAIVERS.

No action of the KRRC or the Project Company pursuant to this Project 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 Project Agreement. No course of dealing, failure or delay by the KRRC or the Project Company in exercising any right, power or remedy under this Project 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 Project Company under this Project 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 Project Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

SECTION 12.9. 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 Project Agreement, or the material inaccuracy of any representation made in this Project 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 a party to pay any liquidated damages specifically provided for under this Project Agreement.

ARTICLE 13

INSURANCE

SECTION 13.1. INSURANCE.

(A) Required Insurance. At all times during the Term, the Project Company shall obtain, maintain and comply with the insurance requirements set forth in this Article 13 (Insurance) and Appendix 9 (Insurance Requirements) hereto and shall pay all premiums with respect thereto as the same become due and payable. The Required Insurance shall be provided concurrently with the execution and delivery of this Project Agreement (or as otherwise specified in Appendix 9 (Insurance Requirements)) and remain in effect for the periods specified in Appendix 9 (Insurance Requirements). Proof of Required Insurance shall be furnished as provided in Appendix 9 (Insurance Requirements).

(B) Subcontractors. The Project Company shall ensure that all eligible Subcontractors secure and maintain all insurance coverage and other financial sureties pursuant to and as required by Appendix 9 (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.

(C) Compliance with Insurer Requirements. The Project Company shall comply promptly with the requirements of all insurers providing the Required Insurance pertaining to the Project. The Project Company 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.

(D) Maintenance of Insurance Coverage. If the Project Company fails to pay or cause to be paid any premium for Required Insurance, or if any insurer cancels any Required Insurance policy and the Project Company 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 Project Company, 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 Project Company. The Project Company shall not perform Project Work during any period when any policy of Required Insurance is not in effect. The Project Company 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 Project Agreement. The failure of the Project Company to obtain and maintain any Required Insurance shall not relieve the Project Company of its liability for any losses intended to be insured thereby. Should any failure to provide continuous insurance coverage occur, the Project Company shall indemnify, defend and hold harmless the Project Company Indemnitees in accordance with and to the extent provided in Article 15 (Indemnification) from and against all Loss-and-Expense arising out of such failure. The purchase of the Required Insurance to satisfy the Project Company's obligations under this Section shall not be a satisfaction of any Project Company liability under this Project Agreement or in any way limit, modify or satisfy the Project Company Indemnity.

(E) Reductions for Insurance Proceeds. Whenever this Project 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 Project Agreement or any policy of Required Insurance.

ARTICLE 14

UNCONTROLLABLE CIRCUMSTANCES

SECTION 14.1. UNCONTROLLABLE CIRCUMSTANCES GENERALLY.

(A) Extent of Relief Available to the Project Company. If an Uncontrollable Circumstance occurs, the Project Company may 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 Project Agreement expressly states that it is excused by Uncontrollable Circumstances.

(B) Mitigation Given Effect. Any relief to which the Project Company 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 Project Company in compliance with its duty to mitigate under Section 17.8 (General Duty to Mitigate).

(C) Applicable Law Compliance. Nothing in this Article shall be interpreted as relieving the Project Company of its obligation, following any and all Uncontrollable Circumstances, to perform its obligations under this Project Agreement in compliance with Applicable Law.

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

SECTION 14.2. UNCONTROLLABLE CIRCUMSTANCE CLAIM PROCEDURES.

(A) Notice and Written Report. In order to assert an entitlement based on the occurrence of an Uncontrollable Circumstance, the Project Company 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 Project Company has knowledge that the Uncontrollable Circumstance has caused or is likely to cause an entitlement under this Project Agreement. The Project Company'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 Project Company's obligations under this Project Agreement; and
- (4) Indicating the nature and scope of the Project Company's potential entitlement to relief.

(B) Updates. The Project Company 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 Project Company 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 Project Company 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 Project Company to the KRRC after the dates required under this Section, then the Project Company’s entitlement to relief hereunder due to the occurrence of the Uncontrollable Circumstance shall have been waived, and the Project Company shall have no rights to any further relief hereunder based upon the occurrence of an Uncontrollable Circumstance, but only to the extent the KRRC is prejudiced by the delay of such notice or required information.

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

(F) Burden of Proof and Mitigation. The Project Company 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 Project Company complied with its mitigation obligations under Section 17.8 (General Duty to Mitigate).

(G) KRRC Response. The KRRC may, but shall have no obligation to, respond to the Project Company’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 concurs with the Project Company’s request, and the reasons therefor.

(H) Agreement or Dispute. The agreement of the parties as to the specific relief to be given the Project Company on account of an Uncontrollable Circumstance shall be evidenced by a Contract Administration Memorandum, Change Order or a Contract Amendment. Either party may refer any dispute for resolution in accordance with Section 11.1 (Dispute Resolution Procedures).

(I) Certifications. Each submittal made under this Section by the Project Company shall be accompanied by a certification of the Project Company 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 Project Company; and that the requested relief accurately reflects the relief to which the Project Company reasonably believes it is entitled hereunder. The Project Company shall have no entitlement to relief for uncertified claims.

SECTION 14.3. UNCONTROLLABLE CIRCUMSTANCES RELIEF.

If and to the extent that an Uncontrollable Circumstance materially and directly interferes with, delays or increases the cost to the Project Company performing the Project Implementation Work in accordance herewith, the Project Company shall, subject to Section 14.4 (Schedule Relief and Related Price Relief), be entitled to:

- (1) Relief from its performance obligations;
- (2) An adjustment to the Project Implementation Schedule and any applicable Milestone Substantial Completion Date;
- (3) An adjustment to the Contract Compensation for such costs (including the costs reasonably incurred in connection with mitigation measures undertaken by the Project Company pursuant to Section 17.8 (General Duty to Mitigate)); or
- (4) A Base Guaranteed Maximum Price Adjustment (except as and to the extent provided in this Section, Section 14.2 (Uncontrollable Circumstance Claim Procedures) and Article 15 (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 Project Company or provide performance or schedule relief and only to the extent directly attributable to the Uncontrollable Circumstance. Any cost reduction achieved, or which should have been achieved, through the mitigation measures undertaken by the Project Company pursuant to Section 17.8 (General Duty to Mitigate) shall be reflected in a reduction of the amount of the additional Contract Compensation or Base Guaranteed Maximum Price Adjustment as appropriate to reflect such mitigation measures. The Project Company shall not be entitled to any price relief on account of any costs incurred as the result of Project Company Fault or an act, event or circumstance that the Project Company is obligated to insure against under Article 13 (Insurance), irrespective of any limits of coverage and of any deductible applicable under any policy of insurance maintained or required to be maintained thereunder. Except as expressly provided in subsection 14.4(B) (Compensable Uncontrollable Circumstance Delay), the Project Company shall not be entitled to any price relief on account of delays attributable to Uncontrollable Circumstances.

SECTION 14.4. SCHEDULE RELIEF AND RELATED PRICE RELIEF.

(A) Conditions to Schedule Relief. The Project Company shall not be entitled to an adjustment to any Milestone Substantial Completion Date, the number of days allowed for the achievement of any Milestone Final Completion, the number of days allowed for the achievement of Project Final Completion or any other schedule adjustment under this Project Agreement, unless the Project Company demonstrates:

- (1) That an Uncontrollable Circumstance has occurred and, subject to the time impact analysis requirements of Appendix 5 (General Project Implementation Work Requirements) during the Project Implementation Period, the impact of the Uncontrollable Circumstance is to one or more critical path activities in the Project Schedule, as updated, maintained and revised by the Project Company in accordance with the Contract Standards;
- (2) The Project Company, in view of all circumstances, exercised reasonable efforts to avoid and mitigate the delay; and

(3) The delay was not caused by a Project Company Fault.

(B) Compensable Uncontrollable Circumstance Delay. The Project Company shall be entitled to a Base Guaranteed Maximum Price Adjustment in an amount equal to the additional costs incurred by the Project Company to account for the impact of schedule delays caused by Uncontrollable Circumstances, determined in accordance with subsection (A) (Conditions to Schedule Relief) of this Section, as and to the extent provided in this Section. The amount of such Base Guaranteed Maximum Price Adjustment shall reflect, and the compensation to which the Project Company is entitled shall include, only reasonable and necessary additional time-related General Conditions Costs actually incurred by the Project Company, as provided in Appendix 8 (Contract Price), that are directly attributable to the period of Uncontrollable Circumstance delay, subject to subsection 14.1(B) (Mitigation Given Effect).

(C) Concurrent Delay. The Project Company's entitlement to price relief for Uncontrollable Circumstance delays under subsection (B) (Compensable Uncontrollable Circumstance Delay) of this Section shall be limited to the extent of any concurrent delay by the Project Company or to the extent performance was, or would have been, suspended, delayed, or interrupted by another cause for which the Project Company is responsible.

SECTION 14.5. UNUSUALLY SEVERE AND ABNORMAL CLIMATIC EVENTS. If the Project Company intends to seek Uncontrollable Circumstance relief on the basis of unusually severe and abnormal climatic events, the Project Company shall, in addition to fulfilling all other requirements of this Article, demonstrate that the actual weather encountered was unusually severe and abnormal compared with the five-year average weather statistics compiled by the United States National Oceanic and Atmospheric Administration for the time of year and localities of the Project Site.

SECTION 14.6. RELEASE.

The Project Company's acceptance of any performance, price or schedule adjustment under this Article shall be construed as a release of the KRRC by the Project Company (and all persons claiming by, through or under the Project Company) from any and all losses or expenses resulting from, or otherwise attributable to, the event giving rise to the adjustment claimed.

ARTICLE 15

INDEMNIFICATION

SECTION 15.1. PROJECT COMPANY'S OBLIGATION TO INDEMNIFY.

(A) Indemnity. The Project Company shall indemnify, defend and hold harmless the Project Company Indemnitees from and against (and pay the full amount of) any and all Loss-and-Expense that any Project Company 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 Project Company Indemnification Act, Event or Circumstance.

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

(1) **"Loss-and-Expense"** means any and all (1) loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, assessment, tax, cost or expense relating to any Project Company Indemnification Act, Event or Circumstance, and (2) 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 having a bearing on this Project Agreement or relating to the Project Company Indemnity, and all appeals therefrom.

(2) **"Project Company Indemnification Act, Event or Circumstance"** means any:

(a) Project Company Fault; or

(b) Any other specific act, event or circumstance as to which the Project Company is expressly obligated to provide an indemnity hereunder, including:

(i) Activities on the Project Site, as and to the extent provided in subsection 4.4(D) (Access to the Project Site Prior to the PacifiCorp Property Transfer Date);

(ii) Non-compliance by the Project Company with Applicable Law, as provided in subsection 4.6(C) (Fines, Penalties, Indemnification and Remediation);

(iii) Release of Regulated Substances, including any de minimis quantities, by any Project Company Person, as provided in subsection 6.5(A) (Project Company Responsibilities and Indemnity);

(iv) Labor disputes, as provided in subsection 8.2(C) (Labor Relations);

(v) Subcontractor claims, as provided in subsection 8.3(I) (Subcontractor Claims);

(vi) Intellectual Property claims, as provided in subsection Section 17.7(B) (Protection from Infringement); and

(vii) Failure by the Project Company to advise the KRRC of any potential infringement or unauthorized use resulting from a KRRC-directed Change Order, as provided in subsection 17.7(D) (Exceptions to Infringement Protection).

(3) **“Project Company Indemnitee”** means the KRRC, PacifiCorp, the States, the CPUC, the OPUC and their respective elected officials, trustees, board members, officers, employees, representatives and agents.

(4) **“Project Company Indemnity”** means the obligations of the Project Company under this Article.

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

(1) To the extent the Project Company Indemnification Act, Event or Circumstance was caused by KRRC Fault; or

(2) To the extent the Project Company’s obligation to indemnify is limited by Applicable Law, including anti-indemnity statutes; or

(3) For any Loss-and-Expense that is an economic loss, including a claim for a decline in the value of real or personal property, business interruptions or loss of profit or revenue.

(D) No Insurance Limitation. The Project Company 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 Project Company which is intended to respond to such events.

(E) Reductions. The Project Company Indemnitees’ right to indemnification pursuant to this Article shall be reduced by all proceeds actually received by the Project Company Indemnitees from any:

(1) insurance policy;

(2) settlement agreement; or

(3) other third-party indemnification agreement.

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

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

SECTION 15.2. INDEMNIFICATION PROCEDURES.

[Note: Prior to the Project Implementation Contract Amendment Date, the KRRC and Project Company shall coordinate with each Project Company Indemnatee to finalize the expected procedures that each Project Company Indemnatee will be obligated to follow pursuant to this Section 15.2.]

(A) Notice. If a Project Company Indemnatee receives any notice, demand, letter or other document concerning any claim for which it appears that the Project Company Indemnatee is, or may become entitled to, indemnification for a Loss-and-Expense under this Project Agreement in respect of the entire claim, the Project Company Indemnatee shall give notice in writing to the Project Company as soon as reasonably practicable. A delay by the Project Company Indemnatee in providing such notice beyond such period shall not waive any right to indemnification except to the extent that the Project Company 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 Project Company Indemnatee relating to the same facts or circumstances, the Project Company may, acting reasonably and in consultation with the Project Company Indemnatees named in the claims, require the consolidated administration and coordination of all such noticed claims by common counsel.

(C) Project Company Right to Dispute Claim. If notice is given as provided in subsection (A) (Notice) of this Section, the Project Company shall be entitled, acting reasonably and in consultation with the Project Company Indemnatees named in the claim, to dispute the claim in the name of the Project Company Indemnatee at the Project Company's own expense and take conduct of any defense, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Project Company Indemnatee will give the Project Company 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 Project Company pursuant to subsection (C) (Project Company Right to Dispute Claim) of this Section:

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

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

(3) The Project Company shall have full control, acting reasonably and in consultation with the Project Company Indemnatees 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 Project Company Indemnatees, or otherwise having a direct effect upon such Project Company Indemnatee's continuing operations, shall (1) contain a full release of the applicable Project Company 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 Project Company Indemnatee, which consent will be obtained by the KRRC and shall not be unreasonably withheld, conditioned or delayed. If requested by the Project Company, acting reasonably, the Project Company Indemnatee shall at the

sole cost and expense of the Project Company, cooperate with the Project Company and its counsel in contesting any claim which the Project Company elects to contest, including the making of any related counterclaim against the person asserting the claim or any cross-complaint against any person.

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

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

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

(3) The Project Company 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 Project Company Indemnatee. A Project Company Indemnatee may at any time, without limiting the Project Company's obligation to defend and indemnify the Project Company Indemnatees under this Article (including the obligation to pay Fees and Costs in connection with such indemnity), give notice to the Project Company 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) (Project Company Indemnatee Rights to Conduct Defense) of this Section applies. On receipt of such notice the Project Company will promptly take all steps necessary to transfer the conduct of such claim to the Project Company Indemnatee, and will provide to the Project Company Indemnatee all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim.

(G) Project Company Responsibility for Costs. If a Project Company Indemnatee is entitled and elects to conduct its own defense pursuant to subsection (E) (Project Company Indemnatee Rights to Conduct Defense) of this Section, all Fees and Costs incurred by the Project Company 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 Project Company Indemnity.

(H) Infringement of Intellectual Property Rights. In response to any claim of infringement or alleged infringement of the Intellectual Property rights of any person, the Project Company may replace such infringing or allegedly infringing item, provided that:

(1) The replacement is performed without additional cost to the KRRC; and

(2) The replacement has at least equal quality performance capabilities when used in conjunction with the Project.

SECTION 15.3. COORDINATION WITH THE KRRC IN SATISFACTION OF THE KHSa LIABILITY PROTECTION REQUIREMENTS.

The parties acknowledge and agree that: (a) KHSA section 7.1.3 and Appendix L require the KRRC to provide comprehensive liability protection for PacifiCorp and the States; (b) the Project Company Indemnity, and the Project Company's obligations under Article 13 (Insurance) and Article 16 (Security for Performance), are provided in part in order to satisfy this requirement; and (c) the KRRC will implement other means, including contracting with a third-party "liability transfer company" indemnitor for indemnification pursuant to KHSA Appendix L Part IV. The parties further acknowledge and agree that the Project Company, in discharging its Contract Obligations and without assuming any indemnification liability or responsibility beyond its indemnity obligations and responsibilities provided in this Article, shall reasonably assist, coordinate with and cooperate with the KRRC, and any other entity designated by the KRRC such as a third-party indemnitor, with respect to the KRRC's satisfaction of the KHSA's liability protection requirements.

ARTICLE 16

SECURITY FOR PERFORMANCE

SECTION 16.1. GUARANTOR.

(A) Guaranty Agreement. The Project Company shall cause the Guaranty Agreement to be provided by the Guarantor to be executed and delivered, following negotiations between the KRRC and the Guarantor, by no later than June 30, 2019, 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 Project Company 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 Project Company 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 Project Company, 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 Project Company 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.

SECTION 16.2. BONDS.

(A) Early Work Package Bonds. If the KRRC authorizes an Early Work Package, then the Project Company shall provide to the KRRC, on or before the Early Work Package Amendment Date, a Performance Bond and a Payment Bond covering the Project Company's faithful performance of such Early Work Package Amendment and the payment of its obligations arising thereunder (the "**Early Work Package Bonds**"). The penal sum of each of the Early Work Package Bonds shall be an amount equal to the Early Work Package Price applicable to the Early Work Package. If the KRRC authorizes additional Early Work Packages, then the Project Company shall, on or before each subsequent Early Work Package Amendment Date, provide to the KRRC, for each subsequent Early Work Package, an amendment to the above-referenced Early Work Package Bonds, executed by both the Project Company and the Surety, that: (a) increases the penal sum of each of the Early Work Package Bonds by an amount equal to the Early Work Package Price of such Early Work Package; and (b) affirmatively states that the obligations under such Early Work Package Bonds encompass the Project Company's performance and payment obligations under each Early Work Package Amendment.

(B) Amendment of Early Work Package Bonds on the Project Implementation Contract Amendment Date. If Early Work Package Bonds have been provided pursuant to subsection (A) (Early Work Package Bonds) of this Section, then the Project Company shall, on or before the Project Implementation Contract Amendment Date, provide to the KRRC an amendment to both Early Work Package Bonds, executed by both the Project Company and the Surety, that: (a) increases the penal sum of each Performance Bond and a Payment Bond to an amount equal to the Base Guaranteed Maximum Price; and (b) affirmatively states that such Performance Bond and a Payment Bond cover faithful performance of this Project Agreement and payment of obligations arising thereunder.

(C) New Project Implementation Work Performance and Payment Bonds on the Project Implementation Contract Amendment Date. If Early Work Package Bonds have not been provided pursuant to subsection (A) (Early Work Package Bonds) of this Section, then the Project Company shall, on or before the Project Implementation Contract Amendment Date, provide to the KRRC a Performance Bond and a Payment Bond that are in the penal sum of an amount equal to the Base Guaranteed Maximum Price and cover faithful performance of this Project Agreement and payment of obligations arising hereunder.

(D) Base Guaranteed Maximum Price Adjustments. The amount of the Performance Bond and the Payment Bond shall be increased by the Project Company to reflect any Base Guaranteed Maximum Price Adjustments at the time such adjustment is implemented by the parties and as a condition to its entitlement to the adjustment.

(E) Term of Bonds. The Payment Bond shall be security for the payment of all persons supplying labor and material in the performance of the Project Implementation Work and shall remain open until Milestone Final Completion for the Final Habitat Restoration Work. The Performance Bond shall secure the performance of the Project Implementation Work and shall remain open until Milestone Final Completion for the Final Habitat Restoration Work.

(F) Maintenance Bond. On or before the applicable Milestone Substantial Completion Date, the Project Company shall provide the Maintenance Bond as financial security for the faithful performance of the Warranty Work, including specifically the Project Company's correction, replacement, or restoration of any portion of the Project Implementation Work which is found to be not in compliance with requirements of this Project Agreement during the applicable Warranty Period. The Maintenance Bond shall be effective for the one-year period commencing on the applicable Milestone Substantial Completion Date and shall automatically renew for an additional one-year term if the KRRC elects to extend the Warranty Period in accordance with subsection 10.1(C) (Optional Extension of Warranty Periods). The penal sum of the Maintenance Bond shall be an amount equal to [___%] **[Note: To be finalized and incorporated on the GMP Contract Amendment Date based on the GMP Project Submittal, and confirmed or revised in the Project Implementation Contract Amendment]** of the applicable Guaranteed Maximum Price (as determined on the applicable Milestone Substantial Completion Date). To the extent required by Applicable Law, the Project Company shall provide such further performance and payment bonds as may be necessary under Applicable Law to secure the performance of any Warranty Work; and such performance and payment bonds shall comply with the requirements of Applicable Law and this Section.

(G) Surety Requirements. The bonds required to be provided pursuant to this Section shall be issued by a Surety: (1) approved by the KRRC having a rating of "A" in the latest revision of the A.M. Best Company's Insurance Report; (2) 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 (3) 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.).

(H) Monitoring of Sureties. The Project Company shall be responsible throughout the Term for monitoring the financial condition of any Surety issuing bonds under this Project 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 Project Company 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 Project Company of such an event, the KRRC shall not unreasonably withhold its approval of such assurance.

(I) Completion of Work. Without limiting any other right or remedy provided for under the Performance Bond, if this Project 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 Project Company under this Project 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 16.3. 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 Project Company's obligations hereunder shall be borne by the Project Company and included in the Guaranteed Maximum Price without additional reimbursement from the KRRC.

ARTICLE 17

MISCELLANEOUS PROVISIONS

SECTION 17.1. NO PROJECT COMPANY OWNERSHIP IN THE PROJECT.

The Project Company 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 Project. The Project Company shall not use the Project for any purpose other than the purposes contemplated by this Project Agreement or to serve or benefit any person other than the KRRC.

SECTION 17.2. RELATIONSHIP OF THE PARTIES.

The Project Company is an independent contractor of the KRRC and the relationship between the parties shall be limited to performance of this Project 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 Project 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 Project Agreement or the performance thereof.

SECTION 17.3. AFFILIATE TRANSACTIONS.

If any costs to be reimbursed by the KRRC to the Project Company under this Project Agreement arise from a transaction between the Project Company and any Affiliate of the Project Company, the Project Company 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 Project Company shall not enter into any such transaction, nor incur any such cost, absent the written approval of the KRRC in its discretion.

SECTION 17.4. CONTRACT ADMINISTRATION.

(A) Administrative Communications. The parties recognize that a variety of contract administrative matters will routinely arise throughout the performance of this Project 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 Project Agreement.

(B) Contract Administration Memoranda. The principal formal tool for the administration of routine matters arising under this Project 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 Project Company 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 Project 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 Project Company. The KRRC and the Project Company 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 Project Agreement.

(D) Effect. Executed Contract Administration Memoranda shall serve to guide the ongoing interpretation and application of the terms and conditions of this Project Agreement. Any material change, alteration, revision or modification of this Project Agreement, however, shall be effectuated only through a formal Contract Amendment in accordance with Section 17.5 (Contract Amendments).

SECTION 17.5. CONTRACT AMENDMENTS.

(A) Amendments Generally. Notwithstanding the provisions of Section 17.4 (Contract Administration), no material change, alteration, revision or modification of the terms and conditions of this Project Agreement shall be made except through a written amendment to this Project Agreement, duly authorized, approved or ratified by the Board of Directors and duly authorized by the Project Company (a “**Contract Amendment**”).

(B) Procedure. Contract Amendments (including Change Orders) shall be serially numbered, dated and signed by a Senior Supervisor for the Project Company and by the KRRC Contract Representative, as determined in accordance with subsection 17.6(B) (KRRC Contract Representative). The KRRC and the Project Company 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 Project Agreement.

SECTION 17.6. CONTRACT REPRESENTATIVES.

(A) Project Company Contract Representative and Senior Supervisors. The Project Company 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 Project Agreement and to bind the Project Company with respect to any Contract Administration Memorandum, Change Order or Contract Amendment (which may be the same or a different individual with respect to the Preliminary Services and the Project Implementation Work) (the “**Project Company Contract Representative**”), and (2) the corporate officials of the Project Company with senior supervisory responsibility for the Project and the performance of this Project Agreement (the “**Senior Supervisors**”). The Project Company 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 Project Manager and the Project Company Contract 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 Contract Representative. The KRRC shall appoint an individual or individuals to act as the “**KRRC Contract Representative**” for this Project Agreement. The KRRC Contract Representative shall have the authority to administer this Project Agreement,

subject to the Board of Directors' delegation of authority. The Project Company understands and agrees that any delegation of authority to the KRRC Contract Representative may provide only limited authority with respect to the implementation of this Project Agreement, which may include the authority to bind the KRRC with respect to any Change Order or Contract Amendment. Within such limitations, the Project Company shall be entitled to rely on the written directions of the KRRC Contract Representative. The KRRC Contract Representative shall have the right at any time to issue the Project Company a written request for information relating to this Project Agreement. Any written request designated as a "priority request" shall be responded to by the Project Company within three Business Days.

(C) KRRC Approvals and Consents. When this Project Agreement requires any approval or consent by the KRRC to a Project Company submission, request or report, the approval or consent shall, within the limits of the authority of subsection (B) (KRRC Contract Representative) of this Section, be given by the KRRC Contract 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 Project Agreement and the Document Submittal Procedures, and except for requests, reports and submittals made by the Project Company that do not, by their terms or the terms of this Project 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 Project Company 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 Project Company 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 Project Agreement shall be deemed acceptable to the KRRC if the KRRC shall not have objected thereto within 30 days of the receipt thereof.

SECTION 17.7. PROPERTY RIGHTS.

(A) Identification of all Intellectual Property. The Project Company shall identify to the KRRC all Deliverable Material that constitutes Intellectual Property developed by the Project Company or any third party as or through the use of the Project or otherwise in connection with the performance of the Contract Obligations.

(B) Protection from Infringement. The Project Company shall pay all royalties and license fees in connection with the Contract Obligations during the Term. Except as provided in subsection (D) (Exceptions to Infringement Protection) of this Section, the Project Company shall indemnify, defend and hold harmless the Project Company Indemnitees in accordance with and to the extent provided in Section 15.1 (Project Company's Obligation to Indemnify) from and against all Loss-and-Expense arising out of or related to the infringement or unauthorized use of any patent, trademark, copyright or trade secret relating to, or for the Contract Obligations. The Project Company's indemnity pursuant to this Section shall apply only when infringement occurs or is alleged to occur from the intended use for which the Deliverable Material, process or equipment was provided by the Project Company pursuant to this Project Agreement.

(C) Substitutes for Deliverable Material, Process or Equipment. Except as provided in subsection (D) (Exceptions to Infringement Protection) of this Section, in the event the Project Company or the KRRC is enjoined from using any Deliverable Material, process or equipment, the Project Company, at its sole cost and expense, shall:

(1) Acquire the right to legally use such infringing Deliverable Material, process or equipment (or any affected Project Implementation Work) under infringed patents or copyrights; or

(2) Modify or replace such Deliverable Material, process or equipment (or any affected Project Implementation Work) with noninfringing Deliverable Material, process or equipment (or any affected Project Implementation Work) equivalent in quality, performance, useful life and technical characteristics and development; provided, however, that any such modification or replacement shall be subject to the KRRC's approval, which shall not be unreasonably withheld or delayed.

(D) Exceptions to Infringement Protection. Unless otherwise agreed to by the parties, the Project Company's obligations under this Section shall not apply to:

(1) Infringement resulting from KRRC-directed Change Orders or Unilateral Change Directive;

(2) Infringement resulting from unauthorized additions, changes or modifications to the Deliverable Material, process or equipment made or caused to be made by the KRRC subsequent to delivery by the Project Company; or

(3) Any claimed infringement which is settled without the consent of the Project Company.

The Project Company shall promptly advise the KRRC as to whether any KRRC-directed Change Order or Unilateral Change Directive may result in any infringement or unauthorized use and, in the event of any failure by the Project Company to so advise the KRRC, the Project Company will indemnify the KRRC for any Loss-and-Expense resulting from any such infringement or unauthorized use.

(E) Intellectual Property Developed by the Project Company. All Intellectual Property developed by the Project Company at or through the use of the Project or otherwise in connection with the performance of the Contract Obligations shall be owned by the Project Company subject to the terms and conditions of this Section, and is hereby licensed to the KRRC on a non-exclusive, cost-free, perpetual basis for use by the KRRC and any successor operator of the Project (but, with respect to any successor operator, only in connection with the operation of the Project). Such Intellectual Property shall include technology, inventions, innovations, processes, know-how, proprietary algorithms, formulas, software, hardware and databases, whether protected as proprietary information, trade secrets, or patents that the Project Company developed or licensed from third parties. The KRRC shall have an irrevocable, perpetual and unrestricted right to use such Intellectual Property for any KRRC purpose, whether before or following the Termination Date or the Expiration Date, as applicable. The KRRC shall not license, transfer or otherwise make available such Intellectual Property to any third party without the written consent of the Project Company, which consent is hereby granted for purposes of operating the Project following the Termination Date or the Expiration Date, as applicable. The KRRC's use of any such Intellectual Property for purposes other than in connection with the Project shall be at its own risk and the Project Company shall have no liability therefor.

(F) Protection of Proprietary Rights of the KRRC. The Project Company agrees and covenants to protect any and all proprietary rights of the KRRC in any material provided to the Project Company. Such protection of proprietary rights by the Project Company shall include the insertion in any copy intended for publication of a copyright mark reserving all rights to the KRRC in any such material provided by the KRRC to the Project Company. Additionally, any materials provided to the Project Company by the KRRC shall not be released

to any third party without the written consent of the KRRC and shall be returned intact to the KRRC upon completion or termination of this Project Agreement. The provisions of this Section shall not apply to material in the public domain on the Contract Date or material that subsequently comes into the public domain by other than an unauthorized disclosure.

SECTION 17.8. GENERAL DUTY TO MITIGATE.

(A) Mitigation by the Project Company. In all cases where the Project Company 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, whether on account of Uncontrollable Circumstance or otherwise, the Project Company shall use all reasonable efforts to mitigate such amount required to be paid by the KRRC to the Project Company under this Project Agreement, or the length of the extension of time. Upon request from the KRRC, the Project Company 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 Project Company 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 Project Company 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 Project Company to the KRRC under this Project 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 liquidated damages 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 Project Agreement. Upon request by the Project Company, the KRRC shall promptly submit a detailed description, supported by all such documentation as the Project Company may reasonably require, of the measures and steps taken by the KRRC to mitigate and meet its obligations under this Section.

SECTION 17.9. ASSIGNMENT.

(A) By the Project Company. The Project Company shall not assign, transfer, convey, lease, encumber or otherwise dispose of this Project Agreement, its right to execute the same, or its right, title or interest in all or any part of this Project Agreement or any monies due hereunder whatsoever prior to their payment to the Project Company, 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 Project Company of its obligation to obtain the prior written approval of the KRRC to any further assignment. Any such assignment of this Project Agreement which is approved by the KRRC, shall require the assignee of the Project Company to assume the performance of and observe all obligations, representations and warranties of the Project Company under this Project Agreement which shall remain in full force and effect during this Project Agreement. The approval of any assignment, transfer or conveyance shall not operate to release the Project Company in any way from any of its obligations under this Project Agreement unless such approval specifically provides otherwise. In the event the Project Company 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 Project Agreement without the prior written consent of the Project Company, which may be given or withheld by the Project Company acting reasonably. The KRRC may, however, assign its rights and obligations under this Project Agreement, without the consent of the Project Company, to either of the States if such assignee assumes, and is legally capable of discharging the duties and obligations of the KRRC hereunder.

SECTION 17.10. COMPLIANCE WITH MATERIAL AGREEMENTS.

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

SECTION 17.11. BINDING EFFECT.

This Project Agreement shall inure to the benefit of and shall be binding upon the KRRC and the Project Company and any assignee acquiring an interest hereunder consistent with Section 17.9 (Assignment).

SECTION 17.12. AMENDMENT AND WAIVER.

(A) Contract Amendments. This Project Agreement may not be amended except by a written agreement signed by the parties in accordance with Section 17.5 (Contract Amendments).

(B) Waiver. Any of the terms, covenants, and conditions of this Project 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.

SECTION 17.13. NOTICES.

(A) Procedure. All notices, consents or approvals or written communications (unless otherwise provided in the communication plan required to be developed pursuant to Appendix 2 (Preliminary Services)) given pursuant to the terms of this Project 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

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

AECOM Technical Services, Inc.
300 Lakeside Drive, Suite 400
Oakland, CA 94612
Attn: Seth Gentzler
Telephone No.: (510) 874-3018
Email Address: seth.gentzler@aecom.com

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

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

Kiewit Infrastructure West Co.
2200 Columbia House Blvd.
Vancouver, WA 98661
Attn: Jamie Wisenbaker
Telephone No.: (360) 693-5582
Email Address: jamie.wisenbaker@kiewit.com

with a copy to:

Kiewit Infrastructure West Co.
2200 Columbia House Blvd.
Vancouver, WA 98661
Attn: Nick Drury
Telephone No.: (360) 693-1478
Email Address: nick.drury@kiewit.com

SECTION 17.14. NOTICE OF LITIGATION.

In the event the Project Company or the KRRC receives 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 17.15. FURTHER ASSURANCES.

The KRRC and Project Company 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 Project Agreement. The KRRC and the Project Company, in order to carry out this Project 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 Project 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 Project Agreement to be executed by their duly authorized representatives as of the day and year first above written.

KLAMATH RIVER RENEWAL CORPORATION

KIEWIT INFRASTRUCTURE WEST CO.

By: _____

Printed Name: Laura Hazlett

Title: Chief Financial Officer

By: _____

Printed Name: Jamie D. Wisenbaker

Title: Senior Vice President

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

KLAMATH RIVER RENEWAL CORPORATION

KIEWIT INFRASTRUCTURE WEST CO.

By: 

Printed Name: Laura Hazlett

Title: Chief Financial Officer

By: _____

Printed Name: Jamie D. Wisenbaker

Title: Senior Vice President

TRANSACTION FORMS

TO THE

PROJECT AGREEMENT

FOR

DESIGN, CONSTRUCTION, DEMOLITION AND HABITAT RESTORATION SERVICES

IN CONNECTION WITH

THE REMOVAL OF THE LOWER KLAMATH RIVER DAMS

between

THE KLAMATH RIVER RENEWAL CORPORATION

and

KIEWIT INFRASTRUCTURE WEST CO.

Dated

April 24, 2019

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TRANSACTION FORM A
FORM OF GUARANTY AGREEMENT

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GUARANTY AGREEMENT

from

KIEWIT INFRASTRUCTURE GROUP, INC.

to

THE KLAMATH RIVER RENEWAL CORPORATION

Dated as of

[_____], 2019

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GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT is made and dated as of [_____], 2019, between the Klamath River Renewal Corporation (the “KRRC”) and Kiewit Infrastructure Group, Inc., a corporation organized and existing under the laws of the State of Delaware (together with any permitted successors and assigns hereunder, the “Guarantor”).

RECITALS

The KRRC and Kiewit Infrastructure West Co., a corporation organized and existing under the laws of the State of Delaware and authorized to do business in the State of California (the “Project Company”), have entered into a Project Agreement for Design, Construction, Demolition and Restoration Services in connection with the Removal of the Lower Klamath River Dams, dated as of April 24, 2019, as amended from time to time (the “Project Agreement”), whereby the Project Company 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 Project Company is a subsidiary of the Guarantor.

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

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

In order to induce the execution and delivery of the Project 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 Project Agreement.

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

“Transaction Agreement” means any agreement entered into by the Project Company or the KRRC in connection with the transactions contemplated by the Project Agreement, including the Project 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 Delaware, 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 Project 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, Project Company 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 Project Company under the Project 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 Project Company 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 Project Company or exhausting any other remedies against the Project Company 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 Project Company 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 Project Company other than providing the Project Company with any notice of such payment or performance as may be required by the terms of the Project Agreement or required to be given to the Project Company 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 Project Company or to the enforcement of remedies under the Project Agreement. Upon any unexcused failure by the Project Company in the payment or performance of any Obligation and the giving of such notice or demand, if any, to the Project Company 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 Project Company 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 Project Company, 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 Project 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 Project 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 Project 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 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 Project Company 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 Project Company now or hereafter owned, directly or indirectly, by the Guarantor or any Affiliate, or any change in composition of the interests in the Project Company;
- (9) any failure on the part of the Project Company 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 Project Company as a condition to the enforcement of Obligations pursuant to the Project Agreement;

(11) any failure of any party to the Transaction Agreements to mitigate damages resulting from any default by the Project Company 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 Project Company 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) above, 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 Project Company pursuant to the terms of the Project 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 Project Company's rights, benefits, duties or obligations under the Project 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 Project Company'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 Project Company may have under the Project Agreement or under Applicable Law (other than bankruptcy or insolvency of the Project Company and other than any defense which the Project Company has expressly waived in the Project 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 Project Company is permitted to assert pursuant to the Project 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 Project Company required pursuant to the Project 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 Project Company;

(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 Project Company) or security;

(7) any requirement that the Project Company 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 Project Company; and

(9) all demands upon the Project Company 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 Project Agreement, or other applicable Transaction Agreement where such obligations are a condition to performance by the Project Company 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 Project Company 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 Project Company until the Project Company 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 Project Company 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 Project Agreement, or any applicable Transaction Agreement or the Project Company'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 Project Company 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 State of California; (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 State of California.

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:

Kiewit Infrastructure Group, Inc.
[ADDRESS]
Attn: [____]
Telephone No.: [____]
Email Address: [____]

with a copy to:

Kiewit Infrastructure Group, Inc.
[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.

KIEWIT INFRASTRUCTURE GROUP, INC, as
Guarantor

By: _____

Name: _____
Printed

Title: _____

ACCEPTED AND AGREED TO BY:

[Company Seal]

KLAMATH RIVER RENEWAL
CORPORATION

By: _____

Name: _____
Printed

Title: _____

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TRANSACTION FORM B
FORM OF PERFORMANCE BOND

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Bond No.: _____

FORM OF PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

That we, Kiewit Infrastructure West Co. as principal (the "Project Company"), 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 Project Company was awarded and entered into the annexed Project Agreement with the KRRC for Design, Construction, Demolition and Restoration Services in connection with the Removal of the Lower Klamath River Dams, dated as of April 24, 2019, as amended from time to time (the "Project Agreement"), whereby the Project Company 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 GMP Amendment Date (as defined in the Project Agreement) pursuant to the Project Agreement;

NOW, THEREFORE, if the Project Company, its heirs, executors, administrators, successors, and assigns shall well and truly do and perform all of the covenants and obligations of the Project 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 Project 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 Project Agreement, shall not in any way release either the Project Company or the Surety, nor shall any extensions of time granted under the provisions of the Project Agreement release either the Project Company or the Surety, and notice of such alterations or extensions of the Project Agreement is hereby waived by the Surety.

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 Project Company 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 _____, 2019.

(Seal)

Project Company

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.)

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TRANSACTION FORM C
FORM OF PAYMENT BOND

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Bond No. _____

FORM OF PAYMENT BOND FOR LABOR AND MATERIALS

KNOW ALL PERSONS BY THESE PRESENTS:

That we, Kiewit Infrastructure West Co. as principal (the "Project Company"), 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 Project Company was awarded and entered into the annexed Project Agreement with the KRRC for Design, Construction, Demolition and Restoration Services in connection with the Removal of the Lower Klamath River Dams, dated as of April 24, 2019, as amended from time to time (the "Project Agreement"), whereby the Project Company 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 GMP Amendment Date (as defined in the Project Agreement) pursuant to the Project Agreement;

NOW, THEREFORE, if the Project Company, 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 Project Company 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 Project Agreement, shall not in any way release either the Project Company or the Surety, nor shall any extensions of time granted under the provisions of the Project Agreement release either the Project Company or the Surety, and notice of such alterations or extensions of the Project Agreement is hereby waived by the Surety.

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 Project Company 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 _____, 2019.

(Seal)

Project Company

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.)

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TRANSACTION FORM D
FORM OF MAINTENANCE BOND

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Bond No.: _____

FORM OF MAINTENANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

That we, Kiewit Infrastructure West Co. as principal (the "Project Company"), 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 (\$_____), being [__]% of the Guaranteed Maximum Price (as defined in the Project Agreement) for the herein-mentioned project, 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. **[Note: The penal sum of Maintenance Bond will be incorporated as part of the GMP Contract Amendment, and confirmed or revised on the Project Implementation Contract Amendment Date.]**

The condition of the foregoing obligation is such that,

WHEREAS, the Project Company was awarded and entered into the annexed Project Agreement with the KRRC for Design, Construction, Demolition and Restoration Services in connection with the Removal of the Lower Klamath River Dams, dated as of April 24, 2019, as amended from time to time (the "Project Agreement"), whereby the Project Company 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 GMP Amendment Date (as defined in the Project Agreement) pursuant to the Project Agreement;

WHEREAS, the Project Company has completed the said project in accordance with the Project Agreement; and

WHEREAS, the KRRC has requested the Project Company to guarantee said work against defective workmanship, equipment and materials for the guarantee periods set forth in the Project Agreement;

NOW, THEREFORE, if the Project Company, its heirs, executors, administrators, successors, and assigns shall well and truly make good any defects in materials, equipment and workmanship which may arise in said work within the guarantee periods set forth in the Project Agreement, then this obligation shall be null and void, otherwise it shall be and remain in full force and effect.

The Surety's obligations under this bond will be maintained, and shall remain in full force and effect, until one year from the date of Milestone Final Completion for the Final Habitat Restoration Work (as defined in the Project Agreement) and shall automatically renew for an additional one-year term if the applicable Warranty Period (as defined in the Project Agreement) is extended by the KRRC for an additional one-year period in accordance with the Project 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 Project Company 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)

Project Company

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.)

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TRANSACTION FORM E
FORM OF PACIFICORP PROPERTY ACCESS AGREEMENT

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[Note: This form of PacifiCorp Property Access Agreement is provided for illustrative purposes only. The form is based on an existing site access agreement entered into between PacifiCorp and the KRRC. The definitive form and terms of the PacifiCorp Property Access Agreement are under development by PacifiCorp and the KRRC.]

**FORM OF
PACIFICORP PROPERTY ACCESS AGREEMENT**

PacifiCorp Property Access Agreement for [_____]

This PacifiCorp Property Access Agreement is between PacifiCorp, an Oregon corporation, and _____, a _____ Corporation.

Background

- A. PacifiCorp is Federal Energy Regulatory Commission (FERC) licensee of the Klamath Hydroelectric Project (Klamath Project), FERC No. 2082, located on the Klamath River in southern Oregon and northern California. PacifiCorp owns real property in the vicinity of the Klamath Project (PacifiCorp Lands).
- B. PacifiCorp and the Klamath River Renewal Corporation (KRRC) are parties to the Amended Klamath Hydroelectric Settlement Agreement (Amended KHSA). Under the Amended KHSA, PacifiCorp and KRRC filed a joint application asking FERC to transfer the license for certain Project facilities from PacifiCorp to the KRRC. The KRRC also filed an application asking FERC to surrender the license for the transferred Project facilities for purposes of dam removal.
- C. KRRC has retained _____ to assist KRRC with the facilities removal process and other technical work required under the Amended KHSA (Surrender Work).
- D. _____ proposes to conduct the Scope of Work described in Exhibit A.
- E. PacifiCorp is willing to grant _____ permission to access the Klamath Project to conduct the activities described in the Scope of Work.

Terms and Conditions

- 1. **Access.** Subject to the terms and conditions of this Agreement, PacifiCorp grants _____ and its employees permission to access the real property designated in Exhibit B as the Study Area (hereinafter the Site) for the limited purpose of conducting the activities described in Exhibit A (the Scope of Work). Exhibits A and B are incorporated by this reference. This Agreement does not authorize _____ to perform work beyond the work described in Exhibit A. This right of access is not exclusive and may be revoked by PacifiCorp as provided in Section 2.
- 2. **Term.** The access granted under this Agreement will become effective on the first day the Agreement has been executed by both parties, and will continue until _____, unless PacifiCorp terminates the right of access early, which PacifiCorp may do in its sole discretion by providing _____ seven business days written notice of termination.
- 3. **Site Restoration.** Upon completion of the Scope of Work described in Exhibit A or upon termination of the right of access, _____ will restore the Site as near as practicable to its condition immediately before commencement of access and the Scope of Work under this Agreement. This obligation will survive the termination or expiration of this Agreement.

4. **Insurance.** Before access occurs, _____ must provide PacifiCorp with a copy of its proof of insurance demonstrating the following requirements and including PacifiCorp as an additional insured:

Without limiting any liabilities or any other obligations of _____, _____ must, in advance of access to the Site or commencing the Scope of Work, secure and continuously carry with insurers having an A.M. Best Insurance Reports rating of A-VII or better such insurance as will protect _____ from liability and claims for injuries and damages which may arise out of or result from access to the Site or from engaging in the Scope of Work and for which _____ may be legally liable, whether such operations are by _____ or a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. _____ must insure the risks associated with access to the Site or the Scope of Work with minimum coverages and limits as set forth below:

Workers' Compensation. _____ must comply with all applicable workers' compensation laws and must furnish proof thereof satisfactory to PacifiCorp before accessing the Site or commencing the Scope of Work.

Employers' Liability. _____ must maintain employers' liability insurance with a minimum single limit of \$_____ each accident, \$_____ disease each employee, and \$_____ disease policy limit.

Commercial General Liability. _____ must maintain commercial general liability insurance on the most recently approved ISO policy form, or its equivalent, written on an occurrence basis, with limits not less than \$_____ per occurrence/\$_____ general aggregate for bodily injury and property damage (on a per location and/or per job basis) and must include the following coverages:

- a. Premises and operations coverage
- b. Independent contractor's coverage
- c. Contractual liability
- d. Broad form property damage liability

Business Automobile Liability. _____ must maintain business automobile liability insurance on the most recently approved ISO policy form, or its equivalent, with a minimum single limit of \$_____ each accident for bodily injury and property damage including sudden and accidental pollution liability, with respect to _____'s vehicles whether owned, hired or non-owned, assigned to or used in the performance of the Scope of Work.

Umbrella or Excess Liability. _____ must maintain umbrella or excess liability insurance with a minimum limit of \$_____ each occurrence/aggregate where applicable on a following form basis (or with coverage at least as broad as the primary policies) to be excess of the insurance coverage and limits required in employers' liability insurance, commercial general liability insurance and business automobile liability insurance above. _____ must immediately notify PacifiCorp, if at any time the full umbrella limit required under this Contract is not available, and must purchase additional limits, if requested by PacifiCorp.

Except for workers' compensation and employer's liability, the policies required herein must include provisions or endorsements including PacifiCorp, its parent, divisions, affiliates, subsidiary companies, co-lessees, co-venturers, officers, directors, designated agents, and employees, and insurers as additional insureds.

The Commercial General Liability additional insured endorsement must be ISO Form CG 20 10 or its equivalent.

To the extent of _____'s negligent acts or omissions, the commercial general liability, business automobile liability and pollution liability policies required by this Contract must include: (i) provisions or endorsements that such insurance is primary insurance with respect to the interests of PacifiCorp and that any other insurance maintained by PacifiCorp is excess and not contributory insurance with the insurance required hereunder; and (ii) provisions or endorsements that the policy contain a cross liability or severability of interest clause. Unless prohibited by applicable law, all required insurance policies must contain provisions or endorsements that the insurer will have no right of recovery or subrogation against PacifiCorp, its parent, divisions, affiliates, subsidiary companies, co-lessees, or co-venturers, designated agents, directors, officers, and employees, and insurers, it being the intention of the parties that the insurance as effected shall protect all of the above-referenced entities evidenced by waiver of subrogation wording. _____ must immediately notify PacifiCorp if at any time any one of _____'s insurers issues a notice of cancellation for any reason and must provide PacifiCorp with proof of replacement insurance before the effective date of cancellation.

Pollution Liability. _____ must maintain pollution liability insurance with a minimum limit of \$_____ each claim/aggregate

Before access occurs, PacifiCorp must acknowledge in writing that the certificate of insurance complies with the requirements of Section 4 (an email from PacifiCorp to _____ is sufficient for this purpose). However, such acknowledgement by PacifiCorp will not excuse any failure by _____ to enter into the required contract terms with its agents or contractors. This Section 4 will survive the termination or expiration of this Agreement.

Minimums. The insurance requirements specified in this Agreement are minimums, and do not cap or represent _____'s or its insurer's total financial responsibility for an incident.

5. **Agent or Contractor Access.** An agent or contractor of _____ may access the Site under the same terms and conditions as _____ *but only if*:
- A. Before access occurs, the agent or contractor has executed a contract with _____ and agreed to *all* terms and conditions contained in Exhibit C and _____ has provided PacifiCorp with a copy of the contract; and
 - B. Before access occurs, _____ has provided PacifiCorp with a copy of its agent's or contractor's proof of insurance demonstrating compliance with the insurance requirements of Exhibit C; and
 - C. Before access occurs, _____ has indicated to PacifiCorp whether its agent or contractor is an ISNetworld subscriber, and if so, provided PacifiCorp with the agent or contractor's ISNetworld subscriber number or other appropriate identifying information; and
 - D. Before access occurs, PacifiCorp must acknowledge in writing that the contract and the certificate of insurance comply with the requirements of Section 4 (an email from PacifiCorp to _____ is sufficient for this purpose).

Such acknowledgement by PacifiCorp will not excuse any failure by _____ to enter into the required contract terms with its agents or contractors. Exhibit C is attached and incorporated by this reference. This Section 5 will survive the termination or expiration of this Agreement.

6. **Indemnification.** _____ acknowledges and agrees that the Site contains potentially dangerous equipment and other hazards, including without limitation, hazards associated with high voltage electricity, rotating shafts and equipment, water hazards, and tripping and fall hazards. _____ agrees that _____, its employees, agents, and contractors will access the Site at their own risk, and that PacifiCorp and its employees and agents will not be held responsible or liable for injury, damage, or loss incurred by _____, its employees, agents, or contractors arising out of or in connection with access to the Site, the Scope of Work, or other activities under this Agreement, *except* to the extent that any such injury, damage or loss is caused solely by the willful misconduct or gross negligence of PacifiCorp, its employees or agents. This Section 5 will survive the termination or expiration of this Agreement.
7. **No Interference.** In exercising access privileges under this Agreement, _____, its employees, agents, and contractors will take reasonable steps not to interfere with PacifiCorp's operations at the Site. _____ will appraise PacifiCorp of all activity at the Site conducted under the authority of this Agreement and promptly answer any reasonable requests for information made by PacifiCorp regarding any aspect of _____'s access to, or use of, the Site. Regarding portions of the Site that are enclosed by a security fence or otherwise closed to the public, _____ or its contractors may only access or visit such areas if escorted by a PacifiCorp representative unless the parties agree to other arrangements in writing.
8. **Stop Work.** PacifiCorp may direct _____ and its employees, agents, and contractors to immediately cease all activity at the Site and leave the Site if PacifiCorp determines that: (1) cessation of activity or departure from the site is necessary to facilitate Klamath Project operations, to comply with the requirements of PacifiCorp's FERC license, or to reasonably safeguard human safety; (2) _____ or its employees, agents, or contractors have violated any of PacifiCorp's safety requirements contained in Exhibit D; or (3) _____ or its employees, agents, or contractors act inconsistently with the terms and conditions of this Agreement. _____ will immediately stop work if so directed by PacifiCorp or its employees or agents. The Parties agree to meet and confer in a reasonable amount of time after PacifiCorp issues a stop work order if: (1) _____ disagrees with the basis of a stop work order from PacifiCorp; and (2) the stop work order results in a material cost or schedule impact for _____.
9. **Compliance.** _____ will make itself and its employees, contractors and agents aware of and comply with all Site regulations, and applicable laws, rules or regulations, before visiting or performing any work at the Site, including without limitation all of those regulations pertaining to safety and security. PacifiCorp Energy Hydro Resources Contractor Orientation, Revision 1.8.3, December 19, 2013, is attached as Exhibit D and incorporated by this reference. _____ will share a copy of Exhibit D with its employees, agents, and contractors and require such individuals to review completely, and comply with, Exhibit D.
10. **Use of Photographs.** _____ consents to any present or future use by PacifiCorp of any photograph of _____ or its employees, agents, or contractors on or about the Site except that PacifiCorp may not use any photograph covered by this section for the purpose of directly or indirectly stating that _____ supports PacifiCorp or an activity of PacifiCorp in any manner without further written permission of _____.
11. **Access Restrictions.** _____ agrees to restrict its activities on the Site, and those of its employees, agents, or contractors, to only those locations and times as directed by PacifiCorp's representative.

12. **Medical Emergencies.** _____ agrees that any certified medical emergency professional may administer any type of medical treatment in the event any _____ employee, agent, or contractor is injured at the Site and becomes unable to render such permission.
13. **Visitor Tags.** _____ agrees to require its employees, agents, and contractors to clearly display a visitor tag number on their person while on the Site. PacifiCorp will not provide _____ with visitor badges, but _____ may create its own unique laminated ID cards issued to each person accessing the Site. _____ agrees to provide PacifiCorp with a list of all persons issued such a badge and the corresponding badge number. _____ also agrees that all its employees, agents, and contractors will wear a uniquely colored shirt or hardhat. _____ agrees that all vehicles brought onto the Site will display a door placard or dashboard sign identifying the ownership and activity (e.g. _____ – Biological Field Work) and contact information.
14. **Authorized Party.** Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.
15. **Information.** _____ will provide PacifiCorp with copies of all information and data (including but not limited to bathymetry, LIDAR, vegetation surveys, hazardous materials assessments, wetland delineations, monitoring well data) collected or generated by _____, its employees, agents, or contractors under the activities authorized in this Agreement. PacifiCorp will have the unrestricted right to possess and use such information and data.
16. **Discovery of Items of Cultural Significance.** If archaeological resources or human remains are found or believed to be found during field work activities, _____, and its employees, agents, and contractors will immediately stop all work within fifty (50) feet of such discovery and will immediately implement the Inadvertent Discovery Plan (IDP) attached as Exhibit E.
- i. All _____ Parties working on PacifiCorp property will be familiar with and adhere to the IDP throughout the life of this project. Only certified archaeologists conducting cultural resource investigations are exempt from the "Discovery of Archaeological Resources" section of the IDP. Archaeology personnel must follow the IDP in the event of discovery of human remains.
 - ii. _____ will participate as requested, and at no cost to PacifiCorp, in any consultations with Tribes or others required to satisfy PacifiCorp's IDP, PacifiCorp's HPMP, or any other requirement regarding the Klamath Project.
 - iii. _____ will document any inadvertent cultural resource findings and provide such documentation to PacifiCorp within 24 hours of any Inadvertent Discovery.
 - iv. Nothing in this Agreement limits PacifiCorp's right to manage the Site or cultural resources on the Site as required by or consistent with PacifiCorp's license for the hydroelectric project.
17. **Termination of Ground Disturbing Work.** _____ Parties will immediately stop any or all ground disturbing work upon written or verbal request by PacifiCorp. Such work will resume, if at all, only upon written clearance to resume by PacifiCorp. PacifiCorp will not require the termination of ground disturbing work that is otherwise

in compliance with the requirements of this PacifiCorp Property Access Agreement without reasonable cause.

18. **Scope of Ground Disturbing Work.** No ground disturbing work of any kind is authorized on the Site except as expressly provided in the Scope of Work (Exhibit A).
19. **Notices.** Notices under this Agreement must be in writing and will be effective when actually delivered. If mailed, a notice will be deemed effective on the second day after deposited as registered or certified mail, postage pre-paid, directed to the other Party at the address shown below:

If to PacifiCorp:

If to _____:

PacifiCorp
Attn: PacifiCorp Legal
825 NE Multnomah, Suite 2000
Portland, Oregon 97232
Fax: 503.813.7262

20. **Remedies.** The Parties will be entitled to equitable relief, including injunction and specific performance, if there is a breach of the provisions of this Agreement, in addition to all other remedies available to them at law or in equity. If Receiving Party commits a breach, or threatens to commit a breach of, of any material terms or conditions of this Agreement, Disclosing Party will have the right to seek and obtain all judicial relief (including but not limited to specific monetary damages and interest) as may be ordered or awarded by a court of competent jurisdiction. Receiving Party hereby acknowledges that legal remedies may be inadequate to fully compensate Disclosing Party for a breach of this Agreement. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE, OR TO REQUEST THE CONSOLIDATION OF, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.
21. **Beneficiary; Assignment; Governing Law.** This Agreement is for the benefit of each Party and will be governed by and construed in accordance with the laws of the state of Oregon. Neither Party may assign or otherwise transfer its rights or delegate its duties under this Agreement without prior written consent, and any attempt to do so without consent is void.
22. **Termination.** It is understood and agreed that termination of this Agreement for any reason whatsoever will not affect any obligation under this Agreement before termination.

[Signature Page Follows]

AGREED:

PacifiCorp

Signature

Signature

Name

Name

Title

Title

Date

Date

Exhibit A
Scope of Work

Notification Process:

 Days Before Scheduled Visit: _____ will email _____: (i) a copy of its fully executed contract with any _____ agent or contractor that will be accessing the Site; (ii) a copy of the agent's or contractor's proof of insurance demonstrating compliance with the insurance requirements of Exhibit C; and (iii) a statement of whether the agent or contractor is an ISNetworld subscriber, and if so, the agent's or contractor's ISNetworld subscriber number or other appropriate identifying information.

PacifiCorp will review for compliance with Section of the PacifiCorp Property Access Agreement and compliance with the requirements of Exhibit C.

No _____ agent or contractor may access the Site unless and until _____, or another authorized PacifiCorp representative has provided _____ with an email or other written acknowledgment that _____'s certificate of insurance (or its agent's or contractor's contract and certificate of insurance) comply with the requirements of Section 4 (or Section 5 if applicable).

_____ will email _____ a description of visit that includes at a minimum – date and general hours of visit, a list of visitor names, purpose of visit and number of vehicles. PacifiCorp will review for any conflicts with PacifiCorp work; if none, they will authorize and advise Klamath Hydroelectric Project personnel of _____'s visit. PacifiCorp will also advise _____ of any special access conditions.

Day of visit: _____ will email _____ confirmation via email or phone call.

Exhibit B
Site Map – Study Area

Exhibit C

Required Terms for _____ Agents and Contractors

Before any _____ agent or contractor may access the Site or conduct any portion of the Scope of Work on PacifiCorp Lands, _____ must enter into a written agreement ("Contract") with the agent or contractor (Counter-Party) and that agreement must include the following terms or conditions:

1. The Counter-Party must agree that PacifiCorp is an intended third party beneficiary of the Contract and shall have standing to enforce the Contract's provisions as they relate to PacifiCorp, the Site, or the Scope of Work.
2. The Contract will require the Counter-Party to carry insurance satisfying the following requirements and naming PacifiCorp and _____ as an additional insured:

Insurance. Without limiting any liabilities or any other obligations of Counter-Party, Counter-Party shall, in advance of access to the Site or commencing the Scope of Work, secure and continuously carry with insurers having an A.M. Best Insurance Reports rating of A-VII or better such insurance as will protect Counter-Party from liability and claims for injuries and damages which may arise out of or result from access to the Site or from engaging in the Scope of Work and for which Counter-Party may be legally liable, whether such operations are by Counter-Party or a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. SAIF Corporation (Oregon's not-for-profit, state chartered worker's compensation insurance company) does not have an A.M. Best Insurance Reports rating of A-VII or better but PacifiCorp agrees that SAIF Corporation is an acceptable insurer (for purposes of providing the required workers compensation or employer's liability insurance only) *provided* SAIF Corporation agrees to insure losses for work conducted at, or related to, the portion of the Site which is located in Oregon State. Counter-Party shall insure the risks associated with access to the Site or the Scope of Work with minimum coverages and limits as set forth below:

Workers' Compensation. Counter-Party shall comply with all applicable workers' compensation laws and shall furnish proof thereof satisfactory to _____ and PacifiCorp before accessing the Site or commencing the Scope of Work.

Employers' Liability. Counter-Party shall maintain employers' liability insurance with a minimum single limit of \$_____ each accident, \$_____ disease each employee, and \$_____ disease policy limit.

Commercial General Liability. Counter-Party shall maintain commercial general liability insurance on the most recently approved ISO policy form, or its equivalent, written on an occurrence basis, with limits not less than \$_____ per occurrence/\$_____ general aggregate for bodily injury and property damage (on a per location and/or per job basis) and shall include the following coverages:

- a. Premises and operations coverage
- b. Independent contractor's coverage
- c. Contractual liability
- d. Broad form property damage liability

Business Automobile Liability. Counter-Party shall maintain business automobile liability insurance on the most recently approved ISO policy form, or its equivalent, with a minimum single limit of \$_____ each accident for bodily injury and property damage including sudden and accidental pollution liability, with respect to

Counter-Party's vehicles whether owned, hired or non-owned, assigned to or used in the performance of the Scope of Work.

Umbrella or Excess Liability. Counter-Party shall maintain umbrella or excess liability insurance with a minimum limit of \$_____ each claim or occurrence/aggregate where applicable on a following form basis (or with coverage at least as broad as the primary policies) to be excess of the insurance coverage and limits required in employers' liability insurance, commercial general liability insurance and business automobile liability insurance above. Counter-Party shall provide notice to _____ and PacifiCorp, if at any time the full umbrella limit required under this Contract is not available, and will purchase additional limits, if requested by _____ or PacifiCorp.

Except for workers' compensation and employer's liability, the policies required herein shall include provisions or endorsements including PacifiCorp, its parent, divisions, affiliates, subsidiary companies, co-lessees, co-venturers, officers, directors, designated agents, insurers, and employees as additional insureds. The Commercial General Liability additional insured endorsement shall be ISO Form CG 20 10 or its equivalent.

To the extent of Counter-Party's negligent acts or omissions, the commercial general liability, business automobile liability and pollution liability policies required by this Contract shall include: (i) provisions or endorsements that such insurance is primary insurance with respect to the interests of PacifiCorp and that any other insurance maintained by PacifiCorp is excess and not contributory insurance with the insurance required hereunder; and (ii) provisions or endorsements that the policy contain a cross liability or severability of interest clause. Unless prohibited by applicable law, all required insurance policies shall contain provisions or endorsements that the insurer will have no right of recovery or subrogation against PacifiCorp, its parent, divisions, affiliates, subsidiary companies, co-lessees, or co-venturers, designated agents, directors, officers, insurers, and employees, it being the intention of the parties that the insurance as effected shall protect all of the above-referenced entities evidenced by waiver of subrogation wording. Counter-Party shall notify _____ and PacifiCorp immediately if at any time any one of Counter-Party's insurers issues a notice of cancellation for any reason and shall provide proof of replacement insurance before the effective date of cancellation.

Pollution Liability. Counter-Party must maintain pollution liability insurance with a minimum limit of \$_____ each claim or occurrence/aggregate.

A certificate of insurance shall be furnished to _____ and PacifiCorp confirming the issuance of such insurance before Counter-Party's access to the Site or commencement by Counter-Party of any part of the Scope of Work.

3. The Contract will include an indemnification and waiver of liability provision providing (at minimum) that the Counter-Party agrees to:

Release, waive, discharge, indemnify, defend, and hold harmless PacifiCorp, and its affiliates, directors, officers, employees, and designated agents (collectively "Beneficiaries") from and against any and all claims, demands, liabilities, suits, losses, costs, and damages, including reasonable attorneys' fees and litigation expenses, for or on account of any and all matters whatsoever relating to, arising from, or connected with Counter-Party's transportation to and from or presence upon the Site, including without limitation injury to or death of any person, including without limitation Counter-Party (or Counter-Party's employee's, agents, contractors, or subcontractors of any tier) or damage to any property, including without limitation property of Counter-Party (or Counter-Party's employee's, agents,

contractors, or subcontractors of any tier), or in any way connected with Counter-Party's visit to the Site, excepting only such injury or harm caused solely by the willful misconduct or gross negligence of the Beneficiaries.

4. The Contract will define the terms "Site" and "Scope of Work" to have the same meanings assigned in this Agreement (including the information contained in Exhibit A and Exhibit B to this Agreement).
5. The Contract will include a provision under which the Counter-Party acknowledges and agrees that the Site contains potentially dangerous equipment and other hazards, including without limitation, hazards associated with high voltage electricity, rotating shafts and equipment, water hazards, and tripping and fall hazards. The Counter-Party will agree that the Counter-Party, its employees, agents, contractors, and subcontractors of any tier will access the Site at their own risk, and that PacifiCorp and its employees and agents will not be held responsible or liable for injury, damage, or loss incurred by Counter-Party, its employees, agents, contractors, or subcontractors of any tier arising out of or in connection with access to the Site, the Scope of Work, or other activities under the Contract, *except* to the extent that any such injury, damage or loss is caused solely by the willful misconduct or gross negligence of PacifiCorp, its employees or agents. Such provision will survive the termination or expiration of the Contract.
6. In accessing the Site and conducting the Scope of Work, Counter-Party (and its employees, agents, contractors, and subcontractors of all tiers) will take reasonable steps not to interfere with PacifiCorp's operations at the Site.
7. PacifiCorp may direct Counter-Party and its employees, agents, and contractors to immediately cease all activity at the Site and leave the Site if PacifiCorp determines that: (1) cessation of activity or departure from the site is necessary to facilitate Klamath Project operations, to comply with the requirements of PacifiCorp's FERC license, or to reasonably safeguard human safety; (2) _____ or its employees, agents, or contractors have violated any of PacifiCorp's safety requirements contained in Exhibit D; or (3) _____ or its employees, agents, or contractors act inconsistently with the terms and conditions of this Agreement. Counter-Party will immediately stop work if so directed by PacifiCorp or its employees or agents.
8. Counter-Party will make its employees, agents, contractors, and subcontractors of all tiers aware of, and will comply with, all Site regulations identified by PacifiCorp, and applicable laws, rules or regulations, before visiting or performing any work at the Site, including without limitation all of those regulations pertaining to safety and security.
9. Counter-Party consents to any present or future use by PacifiCorp of any photograph of Counter-Party or its employees, agents, contractors, or subcontractors of any tier on or about the Site.
10. Counter-Party agrees to restrict its activities on the Site, and those of its employees, agents, contractors, or subcontractors of any tier, to only those locations and times as directed by PacifiCorp's representative.
11. Counter-Party agrees that any certified medical emergency professional may administer any type of medical treatment in the event any Counter-Party employee, agent, contractor, or subcontractor of any tier is injured at the Site and becomes unable to render such permission.

12. Counter-Party agrees to require its employees, agents, contractors, and subcontractors of any tier to clearly display a visitor tag number on their person and on all vehicles brought on the Site at all times.

Exhibit D

PacifiCorp Energy Hydro Resources
Contractor Orientation, Revision 1.8.3, December 19, 2013

Exhibit E
Inadvertent Discovery Plans

Exhibit E shall be interpreted liberally to apply the principles contained therein to the context of ground disturbing work authorized by this PacifiCorp Property Access Agreement. For purposes of this PacifiCorp Property Access Agreement, the language of Exhibit E shall be construed as follows: (a) references to PacifiCorp personnel and contractors in Exhibit E will be understood to also be references to _____ employees, agents, and contractors; (b) references to working on construction or O&M undertakings will be understood to include undertakings conducted by _____ employees, agents, and contractors under this PacifiCorp Property Access Agreement; (c) references to the Project will be understood to mean the Klamath Hydroelectric Project, the PacifiCorp Lands, and/or the Site as the context requires; (d) references to the Construction Supervisor will be understood to mean any survey crew lead who has authority to issue a stop work order; (e) HCC will mean PacifiCorp's hydro control center which can be reached 24 hours a day at 360-225-4410; (f) CRC will mean Russ Howison, PacifiCorp, at 503-813-6626 or his colleague Robert Roach at 541-776-5433.

Protocol for Inadvertent Discoveries

1. If any member of a construction, maintenance, or other field crew believes that he or she has **discovered human remains or an archaeological resource**, all work in the vicinity of the discovery will **stop and notify the work supervisor immediately**.
2. The work supervisor will notify the Production Manager and/or Cultural Resource Coordinator (CRC).
3. The Production Manager and/or Cultural Resource Coordinator (CRC) will notify the appropriate authorities including the federal land management agency if the discovery is on federal lands, law enforcement, County Medical Examiner's office, SHPO, and appropriate tribes.
4. The work supervisor will take appropriate steps to protect the discovery site. At a minimum, the immediate area of the discovery site will be secured. Vehicles, equipment, and unauthorized personnel will not be permitted to traverse the discovery site. Work in the immediate area will not be re-started until evaluation and needed treatment of the discovery has been completed.
5. PacifiCorp will direct that human remains and associated funerary objects or archaeological materials be left in place until the county medical examiner or designated professional archaeologist authorizes their removal.

APPENDICES

to the

PROJECT AGREEMENT

FOR

DESIGN, CONSTRUCTION, DEMOLITION AND RESTORATION SERVICES
IN CONNECTION WITH
THE REMOVAL OF THE LOWER KLAMATH RIVER DAMS

between

THE KLAMATH RIVER RENEWAL CORPORATION

and

KIEWIT INFRASTRUCTURE WEST CO.

Dated

April 24, 2019

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APPENDIX 1

PROJECT AND PROJECT SITE DESCRIPTION

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PROJECT AND PROJECT SITE DESCRIPTION

1.1. PURPOSE

The purpose of this Appendix is to describe the Project and the Facilities, show the location of the Project Site, and identify the Related Projects.

The Project, Project Site, Facilities and Related Projects are described in more detail in the Definite Plan, prepared by the KRRC and issued June 28, 2018.

1.2. PROJECT

The Klamath basin's hydrologic system consists of a complex of inter-connected rivers, lakes, marshes, dams, diversions, wildlife refuges, and wilderness areas. Alterations to the natural hydrologic system began in the late 1800s, accelerating in the early 1900s, including water diversions by private water users, water diversions by and to the United States Bureau of Reclamation's Klamath Irrigation Project, and by hydroelectric facilities operated by PacifiCorp.

The Project is designed to implement the Klamath Hydroelectric Settlement Agreement (the "KHSa"). The KHSa resolved disputes among numerous parties regarding the relicensing of the Klamath Hydroelectric Project (FERC No. 2082) (the "KHP"). The parties to the KHSa include, among others: the U.S. Department of Interior; the U.S. Department of Commerce; the State of California; the State of Oregon; Humboldt County, California; the Yurok Tribe; the Karuk Tribe; the Upper Klamath Water Users Association; various conservation and fishing groups and; PacifiCorp, as the licensee for the KHP.

The parties to the KHSa agreed to a process whereby PacifiCorp and a dam removal entity, now the Klamath River Renewal Corporation ("KRRC"), would apply to the Federal Energy Regulatory Commission ("FERC") to split the KHP into two projects, the KHP and the Lower Klamath Project, and proceed with the actions necessary to achieve dam removal, a free-flowing condition on the Klamath River, and volitional fish passage. As originally licensed, the KHP consisted of eight hydroelectric facilities, which were constructed between 1911 and 1962: (1) East Side Dam; (2) West Side Dam; (3) Keno Dam (non-generating); (4) J.C. Boyle Dam; (5) Copco No. 1 Dam; (6) Copco No. 2 Dam; (7) Fall Creek Dam; and (8) Iron Gate Dam. PacifiCorp operated the KHP under a 50-year license issued by FERC until 2006 when the license expired. Since 2006, PacifiCorp has continued to operate the eight facilities under an annual license.

In September 2016, PacifiCorp and KRRC submitted an application to FERC to amend the existing license for the KHP, establish a separate license for the Lower Klamath Project consisting of four of the original eight KHP facilities and their appurtenant structures (J.C. Boyle Dam, Copco No. 1 Dam, Copco No. 2 Dam, and Iron Gate Dam (collectively, the "Facilities")) and also the transfer of the newly-established license for the Lower Klamath Project from PacifiCorp to the KRRC. At that time, the KRRC also applied to surrender the license for the Lower Klamath Project, which would authorize the decommissioning and removal of the Facilities.

In March 2018, FERC (i) amended the KHP license by administratively removing the Facilities from the KHP license, and (ii) administratively placing the Facilities on a newly-created license for the Lower Klamath Project (FERC No. 14803). In June 2018, FERC stayed the effective date of the Lower Klamath Project license pending its final decision on the joint license transfer request.

The Project consists generally of the following key components:

General:

- (a) Achieving risk mitigation and liability protection consistent with the terms of the KHSa, but without any obligation to provide the KHSa Indemnity;
- (b) All associated field investigations, design (unless identified as “design by others”), permitting and construction for items (c) through (r) below. For those components being designed by others, the Project Company will be expected to provide design and constructability reviews at the 60% and 90% completion levels;
- (c) Adherence to all regulatory and Governmental Approval conditions and requirements, including monitoring, reporting and maintenance, unless otherwise stated herein;

Pre-Drawdown:

- (d) Mobilization and Site Preparation: Mobilization of contractor equipment and temporary on-site facilities; preparation of site including clearing and grubbing, stripping, and any other activity required to prepare the Project Site;
- (e) Instrumentation: Install and monitor instrumentation including survey monuments, piezometers and inclinometers to be used for surveillance of earthen embankments and the reservoir rim during drawdown, construction and post-construction. Design of these components shall be in general compliance with typical FERC and DSOD expectations surrounding slope stability in locations of concern;
- (f) Dam modification: Tunnel improvements, existing gate demolition and new gate installation will be required to facilitate drawdown at Copco No. 1 and Iron Gate reservoirs. It may be necessary to fast-track the gate design and procurement in order to receive the materials for drawdown. This would involve an Early Work Package Amendment to the Project Agreement (prior to GMP negotiation);
- (g) Construction access improvements: Includes temporary or permanent improvements to roads, bridges and culverts as necessary to accommodate construction vehicles, equipment and traffic while maintaining current levels of service. Initial assessments and improvement concepts were developed in the Definite Plan to address construction access for regulatory review, but may not be the most cost-effective or appropriate solution given the Project Company’s specific plan for construction. The Project Company will develop a design for construction access improvements that is specific to its construction plan and associated vehicles, equipment and traffic. The design should strive for consistency with the current regulatory Project description, which in many cases allows for either temporary or permanent solutions. In addition, some roads may require ongoing maintenance to maintain the existing or better road surface condition due to construction traffic-related road degradation. In addition, portions of roads adjacent to the reservoirs will require monitoring during drawdown and repairs or improvements on an as-needed basis to maintain the current level of service;

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- (h) Bridge and culvert improvements: In order to accommodate pre-dam (post-drawdown) river and creek geometry, improvements to existing facilities will be required, as further defined below. Some level of monitoring and/or improvements will be required at the following:
- (i) Replacement Jenny Creek Bridge: Jenny Creek Bridge crosses the mouth of Jenny Creek at Iron Gate Reservoir. The abutments are built on material deposited after the dam construction and the dam removal may cause significant erosion that could possibly undermine the abutments. The Project Company shall demolish the existing bridge, and construct a new bridge on the upstream side of the existing structure, on a modified alignment, to preclude damage to the structure after drawdown.
 - (ii) New Camp Creek Bridge: A 10-foot diameter CMP arch culvert currently passes beneath Copco Road at Camp Creek adjacent to Iron Gate Reservoir. Accumulated sediment erosion is anticipated in this area following drawdown. The Project Company shall replace the culvert with a bridge prior to drawdown, and provide suitable erosion protection to account for the potential drop in creek bed elevation. The Project Company shall construct a temporary structure and detour road just upstream of the culvert to maintain through-traffic during the work.
 - (iii) Replacement Culvert at Scotch Creek: A 120-inch-diameter CMP culvert passes beneath Copco Road at Scotch Creek, adjacent to Iron Gate Reservoir. Erosion is anticipated in the vicinity of the culvert following drawdown. The Project Company shall replace the culvert prior to drawdown, and provide suitable erosion protection to account for the potential drop in creek bed elevation. The Project Company shall construct a temporary structure and detour road just upstream of the culvert to maintain through-traffic during the work.
 - (iv) Timber Bridge Removal: A timber bridge spans the Klamath River immediately downstream of J.C. Boyle Dam. The Project Company shall remove this structure after dam removal.
 - (v) Spencer Bridge: Project Company shall inspect bridge embankments and bents for post-drawdown erosion and/or scour. Should erosion and/or scour occur within the two years post-drawdown, the Project Company shall repair and determine if further improvements are required to maintain current bridge function.
 - (vi) Topsy Grade Road culvert: Topsy Grade Road crosses an unnamed creek, roughly 1,900 feet to the east of the J.C. Boyle Dam. The road is found on an embankment roughly 400 feet long with three 24-inch culverts draining a watershed of roughly 5 square miles. J.C. Boyle as-built drawings indicate that the culverts do not align with the original thalweg of the creek. The Project Company shall monitor this location during and following drawdown. If erosion of reservoir sediments affects this culvert, the Project Company shall install riprap armor on the downstream face of the embankment and remove sediment and debris from the culverts, if needed, to protect the road embankment.
 - (vii) Unnamed culvert off Keno Access Road: Approximately 0.9 miles north of OR66, off Keno Access Road, an unnamed road crosses an unnamed

- creek. The road is found on an embankment, with two 36-inch-diameter corrugated metal pipe (CMP) culverts allowing drainage of the creek. The Project Company shall monitor this location during and following drawdown. If erosion of reservoir sediments affects this culvert, the Project Company will place riprap armor on the downstream face of the embankment and remove sediment and debris from the culvert, if needed, to protect the road embankment.
- (viii) Copco Road Bridge: Copco Road Bridge crosses Copco Lake immediately north of the junction of Copco Road and Ager Beswick Road. Both drawdown and post-project flows have the potential to cause erosion at the abutments or central pier. The Project Company shall further evaluate this during the detailed design phase, and shall provide erosion protection at the abutments or pier, if needed.
- (ix) Patricia Avenue culverts: Patricia Avenue passes over two unnamed creeks near Copco Lake and the Copco Lake Fire Department. Beneath each crossing is a 60-inch-diameter CMP culvert. The Project Company shall monitor this location during and following drawdown. If erosion of reservoir sediments affects this culvert, the Project Company will place riprap armor on the downstream face of the embankment and remove sediment and debris from the culvert, if needed, to protect the road embankment.
- (x) Numerous Copco Road culverts (Raymond Gulch, Beaver Creek, and near Brush Creek): The Project Company shall monitor these locations during and following drawdown. If erosion of reservoir sediments affects any culvert, the Project Company shall place riprap armor on the downstream face of the embankment.
- (xi) Additional culverts adjacent to the reservoirs may require monitoring during drawdown and repairs or improvements on an as-needed basis. Improvements and/or modifications at these crossings will require compliance with current fish passage criteria and regulations.
- (i) Downstream flood control: Flood improvement or protection actions at up to 36 habitable structures and three river crossings (two pedestrian bridge and one railroad crossing) required to protect against the 100-years flood elevation after removal of the dams. The parties acknowledge and agree that the Project Company received within two weeks of the selection of its Proposal as the winning proposal, conceptual design figures for 12 of the habitable structures identified in the Definite Plan, which have been discussed and generally agreed to with the property owner. Design concepts include either existing flood wall raises (<4') or new (<4') levee construction. All existing history, communication, and data associated with the conceptual design will be made available to the Project Company on the timeline stated above, as input for detailed design. The Project Company shall assume that they will need to complete initial outreach, data collection, development of conceptual design option(s), and subsequent discussion and negotiation with property owners for 20 of the habitable structures, as well as the pedestrian and railroad bridge(s), identified in the Definite Plan, as input for detailed design. The Project Company shall assume that they will be given contact information for property owners and that access will be coordinated through the KRRC. For the remaining four habitable structures identified in the Definite Plan, the Project Company shall assume that

they will be involved in initial outreach with property owners, but that no design solution will be required. All proposed improvements will be included in subsequent Design Completion Document submittals summarized in Appendix 2 (Preliminary Services). The construction of these facilities would need to be completed prior to reservoir drawdown;

- (j) Groundwater wells: Replacement or improved groundwater wells for parcels adjacent to the reservoirs that are anticipated to be impacted by reservoir drawdown;
- (k) City of Yreka Water System: City of Yreka waterline relocation and intake improvements (design by others). The construction of these facilities would need to be completed prior to reservoir drawdown. The Project Company shall work with owners of potentially impacted wells to determine a final engineered solution for each location;
- (l) Hatchery improvements: Improvements at both Iron Gate and Fall Creek Hatcheries improvements (design by others). The construction of these facilities would need to be completed several months prior to reservoir drawdown;
- (m) Rim stability improvements: The Project Company shall review previous reservoir rim stability analyses provided in the Definite Plan and confirm whether or not they agree with the approach and recommendations. The Project Company shall propose any additional geotechnical investigations and analyses they deem necessary to support the development of a conceptual design solution at locations of concern, which shall include, at a minimum, rim stability segments S4, S9, S11 and N16. Solutions should consider both engineering options (e.g. buttress, wall) and monitoring/temporary relocation options (that could result in long-term relocation depending on rim condition post-drawdown), and shall include figures, feasibility summaries, and rough order of magnitude costs. Once a solution is determined at any location, the Project Company will submit a scope and budget to complete the detailed design work, and the construction fee will be subsequently included in the GMP Contract Amendment;
- (n) Invasive exotic vegetation (IEV) control: The Project Company will be responsible for removal of invasive exotic vegetation before and after drawdown. The Project Company will prioritize Integrated Pest Management and will strive to implement IEV control techniques with minimal effects on humans, beneficial and non-target organisms, and natural habitats. This work will include ongoing IEV monitoring and adaptive management of IEV within the Project Site before and after restoration work begins;
- (o) Seed collection and propagation: In order to produce the large quantity of native ecotypic seed needed for the habitat restoration, the Project Company will complete required native seed collection in the Project vicinity and the Upper Klamath River Watershed within the 1,800'-4,300' elevation range. Subsequent large-scale seed propagation will be contracted by the Project Company to specialty farms with expertise in native plant seed propagation;

Drawdown:

- (p) Reservoir drawdown: The Project Company will be responsible for implementing drawdown at each reservoir to meet FERC and other regulatory approvals. In

general, the reservoirs must be drawn down between January and mid-March of the drawdown year to minimize the impact to downstream biological resources;

Post-Drawdown:

- (q) Dam and hydropower developments removal: Includes full dam and hydropower facility removal at each of the four Facilities, in addition to on-site waste disposal and offsite materials recycling and waste disposal;
- (r) Recreation facilities removal and new improvements: Includes full removal and habitat restoration of existing recreation sites and associated access at Pioneer Park, Mallard Cove, Copco Cove, Fall Creek, Jenny Creek, Wanaka Springs, Camp Creek, Juniper Point, Mirror Cove, Overlook Point, and Long Gulch. Also includes removal and habitat restoration of the boat launch, floating dock and fishing pier at Topsy Campground. New recreation facilities involve design and construction of proposed river access facilities for boat put-in/take-out and fishing at several locations along the Klamath River;
- (s) Restoration of former reservoir and other disturbed areas: Includes full restoration of previously inundated and other disturbed areas with native vegetation to meet regulatory expectations for habitat acreage, coverage and sustainability. This will also involve engineered habitat features, including excavation in select areas 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 and/or channel fringe complexity features in select locations.

The Project is to be designed and constructed in two phases using the Progressive Design-Build (PDB) delivery method:

- Preliminary Services: The design, planning, permitting and other pre-construction services to be performed by the Project Company pursuant to the Project Agreement prior to the execution and delivery of the GMP Contract Amendment. Key Preliminary Services submittals include the 60% design and GMP Submittal Package.
- Project Implementation Work: All work, besides the Preliminary Services, necessary to complete the Project, including final design, construction, demolition and removal, habitat restoration of former reservoir and other disturbed areas, monitoring, adaptive management maintenance and correction of deficiencies. The Project Implementation Work can generally be broken down into Pre-Drawdown work, Drawdown work, followed by Post-Drawdown work, as organized above.

Complete details regarding the Project Technical Requirements and the Project Implementation Work will set forth in Appendix 4 (Project Technical Requirements). Appendix 4 will be included as part of the overall amendment to this Project Agreement constituting the GMP Contract Amendment and will incorporate the Project design furnished by the Project Company through its performance of the Preliminary Services. Accordingly, Appendix 4 will augment and, to the extent of any inconsistencies, supersede this Appendix 1 in defining the Project and the Project Implementation Work the Project Company is required to perform hereunder.

1.3. PROJECT SITE

The Project Site is located along the Klamath River in the states of California and Oregon and consists of the PacifiCorp Property, which is currently owned by PacifiCorp and Adjacent and Related Lands, which are owned by various other parties.

1.3.1 PacifiCorp Property.

The PacifiCorp Property is described in Attachment 1A.

1.3.2 Adjacent and Related Lands.

The Adjacent and Related Lands are described in Attachment 1B.

1.4. FACILITIES

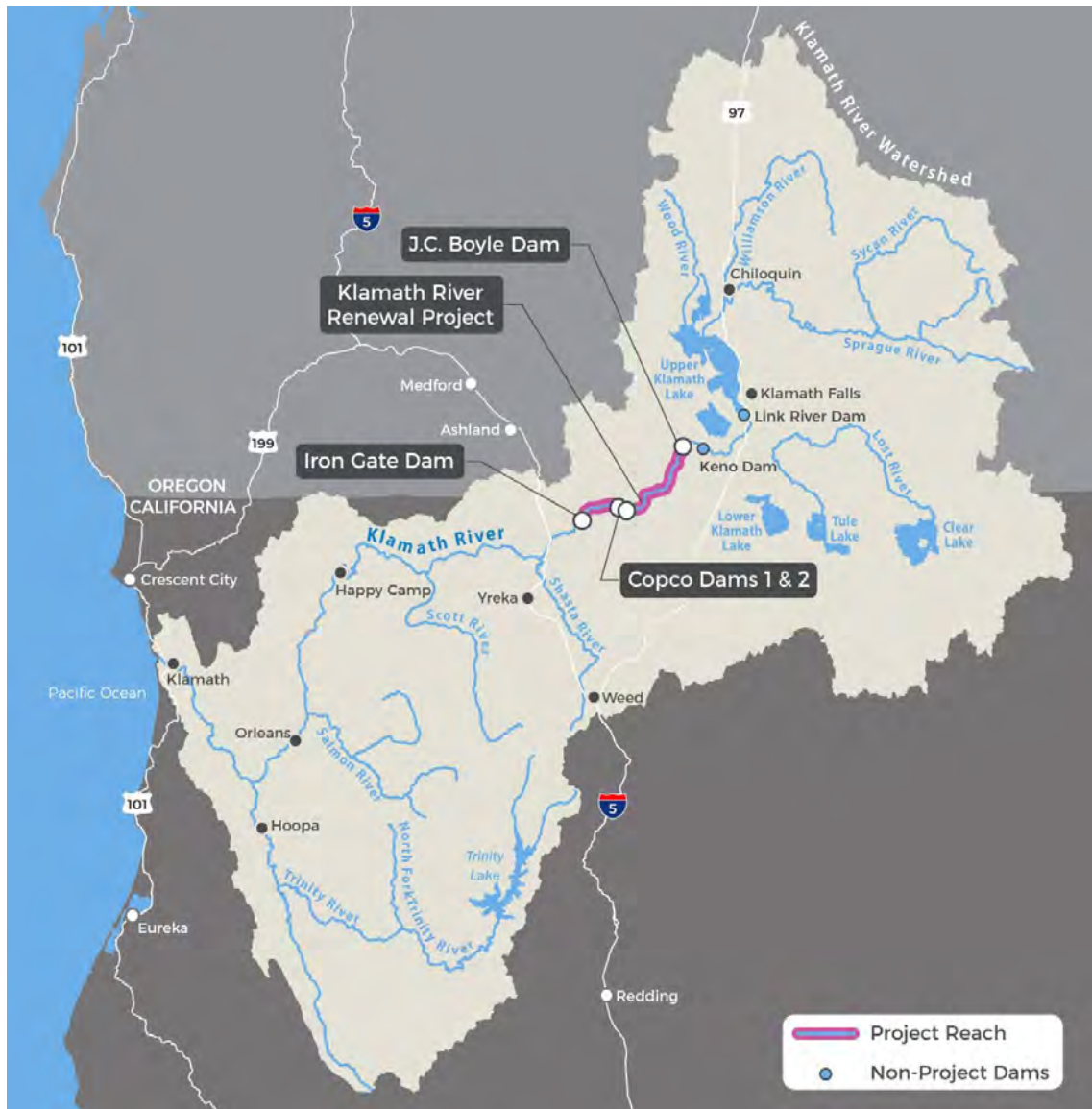
This Section describes the individual sites and features of the four Facilities (J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate dams and appurtenant structures, facilities and equipment) that the Project Company will remove as part of the Project. The April 2015 Supporting Technical Information Documents prepared by PacifiCorp for FERC provides additional detail on the four Facilities.

1.4.1 J.C. Boyle.

The J.C. Boyle Facility (originally known as Big Bend) consists of a reservoir, combination embankment and concrete gravity dam, gated spillway, diversion culvert, water conveyance system, and powerhouse located on the Klamath River between RM 234.1 and RM 226.0 in Klamath County, Oregon. Refer to Figure 2.1-1 of Appendix C (Figures – Other) to the Definite Plan for plan views of these features.

California-Oregon Power Company completed J.C. Boyle Dam in 1958 at RM 203.6, currently downstream of Keno Dam and upstream of Copco No. 1 Dam. The primary purpose of the J.C. Boyle Facility is to generate hydroelectric power. Structures at the site include an office building (known as the Red Barn), maintenance shop, fire protection building, communications building, two occupied PacifiCorp-owned residences near the dam, and a large warehouse near the powerhouse.

Figure 1.3-1 – Klamath River Watershed and Facilities Locations



Reservoir

J.C. Boyle Dam impounds a narrow reservoir (J.C. Boyle Reservoir) of 350 acres, and provides approximately 2,267 acre-feet of total storage capacity at reservoir water surface (RWS) elevation 3797.2. The maximum and minimum operating levels are between RWS elevations 3796.7 and 3791.7, a vertical operating range of 5 feet, although the reservoir is normally maintained at RWS elevation 3796.7, or 0.5 feet below the top of the spillway gates.

Dam, Spillway, and Diversion Culverts

The dam is composed of an earthen embankment section, fish ladder, spillway and diversion culverts, intake to the powerhouse, and concrete gravity section (from right abutment to left abutment, looking downstream).

The earthfill embankment portion is 68 feet tall (on the dam axis at its maximum height above the original streambed elevation 3735.7) with a 15-foot-wide crest and a crest length of 413.5 feet at elevation 3803.7. The zoned embankment has a central impervious clay core flanked by upstream and downstream shells composed of compacted sand and gravel, with a downstream filter blanket. The upstream face above elevation 3783.7 has a 2½H:1V slope with a 3-foot-thick riprap layer, and a 3H:1V slope below elevation 3783.7. The downstream face has a 2½H:1V slope, with a 2-foot-thick riprap layer below approximately elevation 3771.7. The dam includes a 3-foot-high concrete cutoff wall along the bedrock foundation about 7 feet upstream of the dam axis.

The concrete portion of the dam is 279 feet long and from right to left (looking downstream) is composed of a 117-foot-long spillway section, a 48-foot-long intake structure, and a 114-foot-long concrete gravity section with a maximum height of 23 feet.

The spillway section is a concrete gravity overflow structure with three 36-foot-wide by 12-foot-high radial gates, and upstream stoplog slots. The spillway crest is at elevation 3785.2, with the top of gates at elevation 3797.2 (0.5 feet above the normal operating level). The spillway includes a traveling gate hoist for operation of the spillway gates. The spillway bays discharge onto a 13-foot-long concrete apron stepped at three elevations generally following the profile of the bedrock surface. Below the apron is a vertical drop of 15 feet to the discharge channel, which was excavated in rock. The discharge channel is generally unlined. The estimated spillway discharge capacity at RWS elevation 3796.7 with all three gates open is 15,400 cubic feet per second (cfs).

A concrete box culvert with two 9.5- by 10-foot bays is located beneath the center and right spillway gates at invert elevation 3755.2 (30 feet below the spillway crest). This feature was used for diversion during construction of the dam, and has been sealed with concrete stoplogs at the upstream end. Approach and outlet channels for the diversion culvert were excavated in bedrock.

Intake, Fish Screens, and Fish Ladder

The intake structure is located to the left of the spillway and consists of a 40-foot-high reinforced concrete tower. It has four approximately 11-foot by 37-foot openings to the reservoir, each of which has a steel trash rack followed by a stoplog slot and a vertical traveling fish screen (with 0.25-inch-square openings) with high pressure spray cleaners. Spray water along with any screened fish are collected and diverted downstream of the dam through a 340-foot-long, 24-inch-diameter fish screen bypass pipe, which provides approximately 20 cfs to the Klamath River below the dam. A fabricated metal building was added to the intake structure in 1989. Downstream of the traveling fish screens is the entrance to a 14-foot-diameter steel

pipeline. The upstream end of the 14-foot pipeline includes a wheel-mounted slide gate and hoist, with upstream stoplog slots, for operation and maintenance purposes.

A concrete pool and weir fish ladder located along the abutment wall between the embankment and concrete sections provides upstream fish passage at the dam. The fish ladder is approximately 569 feet long with 63 pools. A 24-inch slide gate regulates reservoir releases to the fish ladder, and the fishway operates over a head range of approximately 61 to 66 feet.

Water Conveyance to Powerhouse

A water conveyance system connects the dam to the powerhouse and has a total length of 2.56 miles. The conveyance system from upstream to downstream consists of a steel pipeline, a headgate, a flume, a forebay, a tunnel, and two penstocks connecting to the powerhouse.

From the intake structure at the dam, the water flows through a 638-foot-long, 14-foot-diameter steel pipeline, supported on steel frames where it spans the Klamath River. The downstream end of the pipeline is equipped with a 14- by 14-foot automated fixed-wheel gate within a concrete headgate structure completed in 2002, which discharges into an open concrete-lined flume (the power canal).

The power canal is nearly 2.2 miles long and located along a bench cut in the slope of the river canyon. Depending on the terrain, the power canal either has walls on the down-slope side only or on both the down-slope and up-slope sides. The power canal is a concrete flume approximately 17 feet wide and 12 feet high, with shotcrete applied to the canyon walls where exposed. It has overflow structures at the upstream end (consisting of a siphon pipe) and at the downstream forebay (consisting of a gated overflow weir).

The forebay is a somewhat enlarged area at the end of the power canal that connects to the tunnel, the next downstream component in the water conveyance system. The forebay has an overflow or spillway equipped with two float-operated automatic spill gates, which release water from the power canal during a hydraulic surge following any load rejection at the powerhouse. The released water discharges through a short, concrete-lined chute and returns to the bypass reach of the Klamath River (between the dam and powerhouse) via a large eroded channel (or scour hole) in the hillside. A forebay sluiceway pipe has been abandoned in place.

A 60-foot-wide and 17.9-foot-high trash rack with 2-inch bar spacing draws water for power generation from the forebay into a 15.5-foot-diameter, concrete-lined, horseshoe-shaped tunnel, which is 1,644 feet long. The last 57-foot length of the tunnel before the downstream portal is steel-lined with the liner bifurcating into two 10.5-foot-diameter steel penstocks. A concrete anchor block encases the bifurcation and includes a 78-foot-high, 30-foot-diameter steel surge tank.

Descending to the powerhouse, the penstocks reduce in two steps to 9 feet in diameter. Ring girders seated on concrete footings support each 956-foot-long penstock. The downstream end of each penstock includes a 108-inch-diameter butterfly valve.

Powerhouse

A conventional outdoor-type reinforced concrete peaking powerhouse is located on the right bank of the river and approximately 4.6 river miles downstream of the dam, at RM 226.0, and is the largest power generating Facility in the Project. The two turbines are vertical-shaft, Francis-type units with a total rated discharge capacity of 2,850 cfs. The turbines are rated at 75,700 horsepower (hp) for Unit No. 1 (replaced in 1994) and 63,900 hp for Unit No. 2, with a net head of 440 feet. The system provides no bypass capacity. Four draft tube bulkhead gates

and slots, with two hoists, are provided downstream of the units. A single 150-ton gantry crane is currently located at the J.C. Boyle powerhouse, but can also be used at the Iron Gate powerhouse.

The generators are rated at 53 megavolt-amperes (MVA) for Unit No. 1, with a 0.95 power factor (50 megawatts (MW)), and 50 MVA for Unit No. 2, with a 0.95 power factor (48 MW). The power from the powerhouse is transmitted a very short distance to the adjoining J.C. Boyle substation. Two three-phase transformers step up the generator voltage for transmission interconnection. Line No. 58 (to Lone Pine) and Line No. 59 (to Klamath Falls) extend from the J.C. Boyle substation to a line tie. There is also a third line that pre-dates the substation. The 0.24-mile 69-kV transmission line (PacifiCorp Line No. 98) connects the J.C. Boyle powerhouse to a tap point on PacifiCorp's Line No. 18, but this line appears to have been removed.

Recreation Facilities

Recreation facilities include Topsy Campground and boat launch (managed by the Bureau of Land Management ("BLM")), Pioneer Park east and west units and boat launches (managed by PacifiCorp), Spring Island whitewater boating launch (managed by BLM), and numerous smaller dispersed shoreline recreation sites, including two picnic areas, 13 campsites, and 11 shoreline access points.

1.4.2 Copco No. 1.

The Copco No. 1 Facility consists of a reservoir, concrete dam, gated spillway, diversion tunnel, intake structure, and powerhouse located on the Klamath River between approximately RM 209.0 and RM 202.2 in Siskiyou County, California. Refer to Figure 2.2-1 to Appendix C (Figures – Other) of the Definite Plan for plan views of these features.

Siskiyou Power and Light Company (previously California-Oregon Power Company) constructed Copco No. 1 Dam between 1911 and 1922 at RM 202.2, currently downstream of J.C. Boyle Dam and upstream of Copco No. 2 Dam. The primary purpose of the Copco No. 1 Facility is to generate hydroelectric power. Structures at the site include an occupied residence with a small garage, vacant house, and a maintenance building.

Reservoir

Copco No. 1 Dam impounds a reservoir (Copco Lake) of approximately 972 acres and provides approximately 33,724 acre-feet of total storage capacity at RWS elevation 2611.0. The maximum and minimum reservoir operating levels are between RWS elevations 2611.0 and 2604.5, a vertical operating range of 6.5 feet, although the reservoir is normally maintained at RWS elevation 2609.5, or 1.5 feet below the top of the spillway gates.

Dam, Spillway, and Diversion Tunnel

The dam is composed of a concrete gravity arch which also functions as a spillway, diversion culverts and intakes to the powerhouse.

The dam is a concrete gravity arch structure approximately 133 feet tall from the pre-dam river bed elevation to the top of the spillway deck, with a 492-foot radius at the upstream face. The crest length between the rock abutments is approximately 410 feet at elevation 2616.5. The upstream face of the dam is vertical at the top, then battered at 1 horizontal to 15 vertical. The downstream face is stepped, with risers generally about 6 feet in height.

A 224-foot-long, ogee-type overflow spillway is located on the crest of the dam and is divided into 13 bays controlled by 14- by 14-foot radial (Tainter) gates, with a spillway crest at elevation 2597.0. Three traveling gate hoists are provided for operating the spillway gates, and stoplog slots are provided upstream of each opening.

As originally designed, the spillway crest was approximately 115 feet above the original river bed. After construction began, the river gravel was found to be over 100 feet deep at the dam site, and was excavated and then backfilled with concrete, making the total structural height of the dam 230 feet, measured from the lowest depth of excavation to the spillway crest, or 250 feet to the top of the spillway deck. The estimated spillway discharge capacity at RWS elevation 2611.0 with all 13 gates fully open is 35,000 cfs.

A 16- by 18-foot diversion tunnel was excavated through the left abutment for streamflow diversion during construction, but was later sealed by the construction of a concrete plug approximately 200 feet upstream from the downstream tunnel portal. A gated concrete intake structure, which regulated flows during construction, is located at the upstream end of the tunnel and has three 72-inch-diameter flap (or clack) valves, three 72-inch-diameter butterfly regulating valves, and three 12-inch-diameter filling lines with valves. All valves were manually operated using gate stems and wire ropes from hoists located on a concrete deck upstream of the left abutment of the dam. The current condition of the valves and upstream tunnel is unknown, as they are submerged by reservoir sediment. The existing hoists, stems and wire ropes were abandoned in place and are not currently operational.

Water Conveyance to Powerhouse

The intakes for the three penstocks, two 10-foot-diameter and one 14-foot-diameter, are located at the right abutment at approximately invert elevation 2,578.5. Each penstock includes two cast-iron slide gates with electric motor hoists located in two concrete gatehouses. The two 10-foot-diameter (reducing to 8-foot-diameter) steel penstocks closest to the river feed Unit No. 1 in the powerhouse, and the 14-foot-diameter (splitting and reducing to two 8-foot-diameter) steel penstock feeds Unit No. 2. Trash racks with bar spacing of 3 inches proceed each intake.

A third generating unit at the powerhouse was planned but never built. Some conveyance facilities (two slide gates and a short penstock section) were built to the right of the existing penstocks for this possible future expansion.

Powerhouse

The Copco No. 1 Powerhouse is a reinforced-concrete substructure with a concrete and steel superstructure located at the base of Copco No. 1 Dam, on the right bank of the river. It operates as peaking powerhouse. The two turbines are horizontal-shaft, double-runner Francis-type units with a total rated discharge capacity of 3,650 cfs. The turbines have a rated output of 21,759 hp and 18,600 hp for Unit No. 1 and Unit No. 2, respectively, with a net head of 125 feet. The system provides no bypass capacity.

The generators are each rated at 12,500 kilovolt-amperes (kVA) with a 0.8 power factor (10 MW). Unit No. 1 has three indoor, single-phase 5,000-kVA, 2,300/72,000-volt (V) transformers, and Unit No. 2 has three indoor, single-phase 4,165-kVA, 2,300/72,000-V transformers, to step up the generator voltage for transmission interconnection.

The Copco No. 1 Powerhouse has four associated 69-kV transmission lines. PacifiCorp Line Nos. 26-1 and 26-2 are each approximately 0.07 miles long and connect the Copco No. 1 Powerhouse to the Copco No. 1 switchyard, located on the right abutment upslope of the

powerhouse. PacifiCorp Line No. 15 is approximately 1.23 miles long and connects the Copco No. 1 switchyard to the Copco No. 2 Powerhouse, and Line No. 3 is approximately 1.66 miles long and connects the Copco No. 1 switchyard to the Fall Creek powerhouse.

Recreation Facilities

Recreation facilities include Mallard Cove and Copco Cove, each with boat launches (both managed by PacifiCorp), and smaller dispersed shoreline recreation sites.

1.4.3 Copco No. 2.

The Copco No. 2 Facility consists of a small reservoir, concrete diversion dam, embankment section, gated spillway, water conveyance system, and powerhouse located on the Klamath River between approximately RM 202.2 and RM 200.3 in Siskiyou County, California. Refer to Figure 2.2-1 of Appendix C (Figures – Other) to the Definite Plan for plan views of these features.

California-Oregon Power Company completed the dam in 1925 approximately 0.4 miles downstream of Copco No. 1 Dam at RM 201.8, while the powerhouse is located at RM 200.3, just upstream of Iron Gate Reservoir. The purpose of the Copco No. 2 Facility is to generate hydroelectric power.

Structures near the powerhouse include a control center building, maintenance building, and an oil and gas storage building. The nearby PacifiCorp-owned Copco Village includes a former cookhouse/bunkhouse, modern bunkhouse, garage/storage building, bungalow with a garage, three occupied modular houses, four older ranch-style houses, and a school house/community center, all of which are within FERC project boundary.

Reservoir

The reservoir created by Copco No. 2 Dam is approximately 0.3 miles long (unnamed), and has a total storage capacity of approximately 70 acre-feet at the normal operating RWS elevation 2486.5.

Dam and Spillway

The dam is composed of a concrete gravity section which also functions as a spillway, an earthen embankment section, a small penetration for bypass flows and a water conveyance intake for the powerhouse.

The dam is a concrete gravity structure with a gated side intake to a water conveyance tunnel at the left abutment, a central 145-foot-long spillway section with five 26- by 11-foot radial (Tainter) gates, and a 100-foot-long earthen embankment with gunite cutoff wall on the right abutment. The dam is 32 feet high, with an overall crest length of 305 feet and a crest width of 9 feet at elevation 2496.5.

A manually-operated slide gate controls a small sluiceway adjacent to the intake, but is not currently believed to be operational. A small corrugated metal half-pipe provides approximately 5 cfs of flow to the bypass reach below the dam. The concrete gravity spillway crest is at elevation 2476.5, with a downstream apron at elevation 2459.5, between two concrete retaining walls. The estimated spillway discharge capacity at RWS elevation 2486.5 is 13,500 cfs with the five spillway gates fully open.

The remnant of a cofferdam is located upstream of the dam below the normal waterline. An old rock-filled timber crib is located high above the left abutment of the dam.

Water Conveyance to Powerhouse

Water conveyance to the powerhouse is via the intake at the dam to a first tunnel, then through a wood-stave penstock, a second tunnel, and into a pair of steel penstocks to the powerhouse.

The intake structure incorporates a large trash rack and a 20- by 20-foot roller-mounted (caterpillar) gate at invert elevation 2459.5. The trash rack is 36.5 by 48 feet with 4-inch bar spacing.

The water conveyance system for the powerhouse includes 2,500 feet of concrete-lined tunnel (including an adit and an air vent shaft), 1,330 feet of wood-stave pipeline, an additional 1,110 feet of concrete-lined tunnel, an underground surge tank (including an air vent and overflow spillway), and two steel penstocks. The diameter of the tunnel and wood stave pipeline sections is 16 feet. The two penstocks, one 405 feet long and one 410 feet long, range from 16 feet in diameter at the upstream ends to 8 feet in diameter at the turbine spiral casings. A 138-inch butterfly valve is provided near the downstream end of each penstock.

Powerhouse

The Copco No. 2 Powerhouse is a reinforced-concrete structure located 1.6 miles downstream of Copco No. 2 Dam on the left bank of the river. It operates as peaking powerhouse. The two turbines are vertical-shaft, Francis-type units with a total rated discharge capacity of 2,786 cfs. Each turbine has a rated output of 26,285 hp and 20,000 for Units No. 1 and No. 2, respectively, with a net head of 145 feet and 140 feet for Units No. 1 and No. 2, respectively. No bypass capacity is provided.

The synchronous generators are each rated at 15,000 kVA with a 0.9 power factor (13.5 MW). There are three outdoor, single-phase 10/20-MVA, 6,600/72,000-V transformers for each generator to step up the voltage. There are also three outdoor, single-phase 10/20-MVA, 73,800/230,000-V step-up transformers for interconnection to the transmission system.

A 69-kV transmission line (also Line No. 15) is approximately 0.20 miles long and connects the Copco No. 2 Powerhouse to the Copco No. 2 switchyard. A distribution line approximately 0.21 miles long connects to Copco No. 2 Dam. Line No. 62 runs along the north side of Iron Gate reservoir for approximately 6.32 miles, from the Iron Gate powerhouse to the Copco No. 2 switchyard. Drawings provided by PacifiCorp also note Lines 1, 2, 4, 14, 18, 19, and 67 connecting to the Copco No. 2 switchyard.

Recreation Facilities

Two water access points exist directly upstream of the Copco No. 2 dam, but they are not publicly accessible.

1.4.4 Iron Gate.

The Iron Gate Facility consists of a reservoir, embankment dam, side-channel spillway, diversion tunnel, intake structures, and powerhouse located on the Klamath River between RM 200.3 and RM 193.1, about 17 miles northeast of Yreka, California, in Siskiyou County. Refer to Figure 2.4-1 of Appendix C (Figures – Other) to the Definite Plan for plan views of these features.

California-Oregon Power Company completed the facility in 1962 at RM 193.1. It is the farthest downstream hydroelectric facility of the Project. The primary purpose of the Iron Gate Facility is to generate hydroelectric power. Structures at the site include a communications building, a restroom building, a maintenance shop, two occupied residences, and a fish spawning building.

Reservoir

Iron Gate Dam impounds a reservoir of 942 acres (Iron Gate Reservoir) and provides approximately 50,941 acre-feet of total storage capacity at RWS elevation 2331.3. The maximum and minimum operating levels are between RWS elevations 2331.3 and 2327.3, a vertical operating range of 4 feet.

Dam, Spillway, and Diversion Tunnel

The dam is composed of a side channel spillway, earthen embankment section, diversion tunnel, intake to Iron Gate hatchery water supply, and intake to the powerhouse (from right abutment to left abutment, looking downstream). A fish ladder and trapping and holding facilities are located at the downstream base of the dam.

The dam is a zoned earthfill embankment with a current height of 189 feet from the rock foundation (elevation 2157.5) to the dam crest at elevation 2346.3. The dam crest is 20 feet wide and approximately 740 feet long. The embankment includes a central impervious clay core, with filter zones and a downstream drain, and is flanked by compacted pervious shells. The upstream face has a 2H:1V slope above elevation 2331.3, a 2½H:1V slope between elevations 2331.3 and 2303.3, and a 3H:1V slope below elevation 2303.3, with a 29-foot-wide bench at elevation 2278.3. The upstream face includes a 10-foot-thick riprap layer for slope protection.

The downstream face has a 1.75H:1V slope above and a 2H:1V slope below elevation 2326.3, with a 10-foot-wide bench at elevation 2278.3. The downstream face includes a 5-foot-thick riprap layer for slope protection. The dam is founded on a sound basalt rock foundation, with a grout curtain beneath the impervious core.

PacifiCorp completed modifications in 2003 to raise the dam crest five feet from elevation 2341.3 to elevation 2346.3 by over-steepening the upstream and downstream slopes and decreasing the crest width from 30 feet to 20 feet. A sheet pile wall was also driven upstream of the dam centerline to extend five feet above the dam crest to provide freeboard in addition to the 5-foot crest raise. The top of the sheet pile wall is at elevation 2351.3. Additional riprap materials were placed on the upstream face of the dam to protect those areas inundated by the higher reservoir elevations during large flood events.

The spillway is excavated in rock on the right abutment, and consists of an ungated side-channel spillway crest with a concrete-lined chute. The spillway crest is at elevation 2331.5, or 15 feet below the raised dam crest. The spillway crest is 727 feet long and consists of a concrete ogee crest and slab placed over the excavated rock ridge. Concrete partly lines the upper part of the channel. The downstream end of the spillway crest includes a 10- by 8-foot hinged trash/slucice gate for sluicing sediments and debris.

A flip-bucket terminal structure is located at the downstream end of the spillway chute. The spillway has an estimated discharge capacity of 22,350 cfs at RWS elevation 2336.3. The modifications completed in 2003 included shotcrete protection at the top of the spillway crest and chute.

The diversion tunnel used during construction of the dam was driven through bedrock in the right abutment and terminates in a reinforced concrete outlet structure near the downstream toe of the dam. The diversion tunnel intake is a reinforced concrete structure equipped with four 10- by 33-foot trash racks and is located approximately 520 feet upstream from the dam axis near the upstream toe. A two-piece concrete slide gate located in a gate shaft approximately 119 feet upstream of the dam axis controls flow in the tunnel. A reinforced concrete tower accessible by footbridge from the dam crest houses the slide gate hoist and controls. Operation of the upper sluice gate is limited to an opening of 23.5 inches at RWS elevation 2331.3, with a corresponding discharge capacity of 1,750 cfs; under emergency conditions, a full gate opening of 57 inches would produce a release of 2,700 cfs. The lower diversion gate is currently welded in place. Recent modifications added a 9-foot-diameter hinged blind flange and concrete ring approximately 20 feet downstream of the concrete slide gate (designed for full reservoir head) to permit underwater inspection of the gate.

Water Conveyance to Powerhouse

Water conveyance to the powerhouse consists of an intake structure and penstock.

The intake structure for the powerhouse is a 45-foot-high, free-standing, reinforced-concrete tower, located in the reservoir immediately upstream of the left abutment and accessible by footbridge from the abutment. It houses a 12- by 17-foot wheel-mounted slide gate, which controls the flow into a 12-foot-diameter, welded-steel penstock. The penstock is concrete-encased where it penetrates the dam approximately 35 feet below the normal maximum reservoir level. Concrete supports down the dam abutment support the penstock. There is a 17.5- by 45-foot trash rack at the penstock intake with 4-inch bar spacing.

Powerhouse

The Iron Gate Powerhouse is an outdoor-type facility located at the downstream toe of the dam on the left bank and consists of a single vertical-shaft, Francis-type turbine with a rated discharge capacity of 1,735 cfs. The turbine has a rated output of 25,000 hp with a net head of 154 feet. In the event of a turbine shutdown, a synchronized Howell-Bunger bypass valve located immediately upstream of the turbine diverts water around the turbine to maintain flows downstream of the dam. The synchronous generator is rated at 18,975 kVA with a 0.95 power factor (18 MW).

There is a single outdoor, three-phase 19-MVA, 6,600/69,000-V step-up transformer at the powerhouse for interconnection to the transmission system. A 69-kV transmission line is approximately 0.21 miles long and connects the Iron Gate switchyard to Tower P 2/007. A second 69-kV transmission line is approximately 0.33 miles long and connects the Iron Gate switchyard to the Iron Gate Hatchery tie-in. Two distribution lines totaling 0.21 miles provide local distribution around the dam and powerhouse area.

Fish Trapping and Holding Facilities

There are fish trapping and holding facilities located on “random fill” at the downstream toe of the dam. The top of the random fill area is at elevation 2192.3. The fish facilities at the dam include six fish holding tanks, a spawning building, a fish ladder, and an aerator for the hatchery water supply. High-level (elevation 2313.3) and low-level (elevation 2253.3) intakes for the fish facility cold water supply are incorporated in the dam on the left abutment.

Iron Gate Fish Hatchery

The Iron Gate fish hatchery was constructed in 1966 and is located on the left bank, downstream of Iron Gate Dam, adjacent to the Bogus Creek tributary. The hatchery complex includes an office, warehouse, hatchery/incubator building, four fish rearing ponds, a fish ladder with trap, visitor information center, and four employee residences. Up to 50 cfs of water is diverted from the Iron Gate reservoir to supply the 32 raceways and fish ladder. The hatchery provides the capacity to capture, hold, and spawn returning adult Chinook salmon, steelhead trout, and Coho salmon and to hatch and rear fish until their release. CDFW operates the hatchery, with a large portion of the operations and maintenance costs currently funded by PacifiCorp.

Recreation Facilities

Recreation facilities include Fall Creek day-use area and boat launch, Jenny Creek campground, Wanaka Springs day-use area and campground, Camp Creek campground and boat launch, Juniper Point campground, Mirror Cove campground, Overlook Point day-use area, and Long Gulch campground and boat launch (each managed by PacifiCorp), and smaller dispersed shoreline recreation sites. Among the referenced facilities, there exist a visitors' center at Iron Gate hatchery, two interpretive displays, five boat launches, one fishing platform, two picnics areas, six campgrounds (with sixty-six campsites), five dispersed camping areas (with 20 campsites), and four other water access points.

1.5. RELATED PROJECTS

The text below summarizes likely related projects that should be considered by the Project Company in development of their Proposal.

1.5.1 KRRC Related Projects.

KRRC activities associated with Project implementation that are not within the Project Company scope of work include the following:

1. Hatchery Design: Site investigations and final detailed design, including development of final drawings and specifications for improvements at Fall Creek and Iron Gate hatcheries. Additional details concerning these activities can be found in Section 7.8 of the Definite Plan.
2. Waterline Design: Site investigations and final detailed design, including development of final drawings and specifications for relocation of the City of Yreka's waterline across Iron Gate Reservoir and improvements at the City of Yreka's intake. Additional details concerning these activities can be found in Section 7.5 of the Definite Plan.
3. Implementation of aquatic resource measure and reporting: Additional details concerning these activities can be found in Section 7.2 and Appendix I of the Definite Plan.
4. Implementation of terrestrial resource measure and reporting: Additional details concerning these activities can be found in Section 7.3 and Appendix J of the Definite Plan.
5. Completion of water quality monitoring and reporting: Additional details concerning these activities can be found in the Oregon Department of Environmental Quality (ODEQ) final Clean Water Act section 401 water quality certification (issued

- September, 2018) for the removal of the J.C. Boyle Dam located in Klamath County, OR, and the California State Water Resource Control Board's (SWRCB) draft Clean Water Act section 401 water quality certification (issued June 7, 2018) for the removal of Copco No. 1, No. 2 and Iron Gate Dams located in Siskiyou County, CA.
6. Cultural resource support: Additional details concerning these activities can be found in Appendix L of the Definite Plan.

The Project Company will need to coordinate with contractors selected for the related work, and accommodate activities associated with all KRRC related work. At the KRRC's discretion, the Project Company may be asked to be involved in contractor selection.

1.5.2 PacifiCorp Related Projects.

Prior to license transfer, PacifiCorp will retain ownership of all their current property and existing Facilities, and will continue to operate and maintain the Facilities according to their current operating license with FERC and any Governmental Approvals issued by federal and state regulatory agencies. The Project Company shall consider ongoing PacifiCorp operations and maintenance, as well as any PacifiCorp access related requirements (see Section 1.6 (PacifiCorp Property Access)) for outside contractors in development of their Proposals, particularly with respect to Project Company field investigations and Preliminary Services design site visits.

Post-license transfer, property and Facilities ownership will transfer to the KRRC. Through an existing operations and maintenance agreement (see Reference Document 12 (PacifiCorp Operations and Maintenance Agreement)), PacifiCorp will continue to operate and maintain the Facilities according to the current operating license with FERC and any permits issued by federal and state regulatory agencies. PacifiCorp's operations and maintenance continue up to the start of drawdown. The Project Company shall consider ongoing PacifiCorp operations and maintenance, in development of their Proposals, particularly with respect to Project Company work or activities on or within the existing Facilities.

The Project Company will need to coordinate with PacifiCorp staff and contractors selected for the related work, and accommodate activities associated with all PacifiCorp related work.

1.6. PACIFICORP PROPERTY ACCESS

Primary access to the Iron Gate and Copco Facilities is from Interstate 5 to Copco Road, and primary access to the J.C. Boyle Facility is from US 97 to Oregon State Route 66.

1.6.1 J.C. Boyle Site Access.

Oregon Route 66 (OR66, Green Springs Highway) and Topsy Grade Road provide site access via a network of unpaved project access roads. A small timber bridge crosses the Klamath River downstream of the dam.

1.6.2 Copco No. 1 Site Access.

Copco Road from Interstate 5 provides site access, and access continues via a steep and narrow access road to the dam right abutment and powerhouse. Copco Road provides access to the north side of the reservoir. Ager-Beswick Road provides access to the south side of the reservoir, and is an extension of the Topsy Grade Road in Oregon.

1.6.3 Copco No. 2 Site Access.

Copco Road from Interstate 5 provides site access. Access to the dam is provided via a steep and narrow access road (the same access road as for Copco No. 1). Access to the powerhouse is provided via the Daggett Road crossing of the Klamath River on a single-lane bridge.

1.6.4 Iron Gate Site Access.

Site access is provided from Interstate 5 via Copco Road and then by Lakeview Road to the dam crest and reservoir area, or by a project access road to the powerhouse. The single-lane Lakeview Road Bridge crosses the Klamath River downstream of the dam.

1.7. ADJACENT AND RELATED LANDS ACCESS

[Site access to Adjacent and Related Lands to be provided here.]

1.8. KRRC OBJECTIVES:

The KRRC's goal for delivery of the Project is completion of the Project Preliminary Services and Project Implementation Work on-time and within budget, subject to the objectives below.

- Safety – Implement an effective safety program incorporating industry best practices.
- Public – Provide a safe and effective project that minimizes nuisance impacts to the public.
- Quality – Provide the highest quality design and construction submittals, and complete the Project in a manner that is consistent with the KHSA, and meets all tribal, federal, state and other agency expectations.
- Cost – Obtain the most cost effective design and construction approach to accomplish the defined Project for a Guaranteed Maximum Price and while meeting the other stipulated cost constraints, including constraints embodied in the KHSA.
- Schedule – Achieve the scheduled completion dates for design, construction, and post-construction monitoring of the Project, including planning to accommodate foreseen and unforeseen change.
- Local and Tribal Participation – Obtain the highest level of local and tribal involvement in the performance of the Project Work as is practicable and feasible, including direct hires of local workers by the Project Company, as well as subcontracting with local firms and tribes.
- Women, Minority, Disabled Veteran, Lesbian, Gay, Bisexual, and Transgender Participation – Obtain the highest level of women, minority, disabled veteran, lesbian, gay, bisexual, and transgender involvement in the performance of the Project Work as is practicable and feasible.
- Accountability – Obtain in the Project Company a single point of accountability for performance of all services under the Project Agreement.
- Aesthetics – Achieve full native habitat restoration that blends seamlessly with the adjacent habitat communities.

- Sustainability – Meet all other design and habitat goals in the short and long-term while requiring minimal long-term maintenance and monitoring outside of regulatory requirements.
- Collaboration – Provide for coordinated design development, with the Project Company eliciting the KRRC input in a manner that preserves Project Company’s sole responsibility for the achievement of Project performance objectives while meeting the other KRRC objectives listed above.

ATTACHMENT 1A
DESCRIPTION OF PACIFICORP PROPERTY

[Metes and bounds description of PacifiCorp Property to be provided here.]

ATTACHMENT 1B

DESCRIPTION OF ADJACENT AND RELATED LANDS

[Metes and bounds description of Adjacent and Related Lands to be provided here.]

APPENDIX 2
PRELIMINARY SERVICES

APPENDIX 2

PRELIMINARY SERVICES

2.1. GENERAL REQUIREMENTS

2.1.1 Scope of Base Preliminary Services.

The Base Preliminary Services shall consist of the following nine Preliminary Services Tasks:

- Task #1: Project Management
- Task #2: Project Site and Project Conditions Verification
- Task #3: Permitting Support and Compliance Program
- Task #4: Initial Cost Model and Schedule
- Task #5: Design Criteria Report
- Task #6: 30% Design Completion Documents
- Task #7: 60% Design Completion Documents
- Task #8: GMP Project Submittal and Supporting Cost Estimates
- Task #9: 90% Design Completion Documents

Unless specifically excluded from this Project Agreement, the Project Company shall provide to the KRRC all architectural, engineering, geotechnical, landscape, Project management, cost estimating and other professional services necessary to perform the Base Preliminary Services required by this Project Agreement.

2.1.2 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 Project Company shall promptly correct deficiencies in Deliverable Material and shall promptly make modifications to conform to Project 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 Project Company shall provide electronic copies of all final deliverables in .pdf format. For draft and final design drawing, design report and specification deliverables, the Project Company shall provide six (6) hard copies to the KRRC or their designated representative. Drawing hardcopies shall be ½-size printed single sided on 11 x 17 paper and spiral bound.

2.1.3 Plans and Reports.

The Preliminary Services Tasks provide for the preparation of all plans, reports and other deliverables listed in Attachment 2C, Preliminary Services Project Company Submittals.

2.2. PRELIMINARY SERVICES TASK #1 – PROJECT MANAGEMENT

2.2.1 Project Management.

The Project Company shall provide Project management of the Project Company team in terms of staffing, budget, schedule, scope, as well as communication and coordination with the KRRC. The Project Company management team will be co-located during the duration of Preliminary Services in Kiewit's Fairfield office.

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
 - Maintenance of Facilities Operations Plan
 - Emergency Operations and Response Plan
- Health and Safety Plan
- Project Execution Plan, which shall include:
 - Project Team Structure and Staffing Plan
 - Communications Plan
 - Scope Management Plan
 - Change Management/Integration Management Plan, which shall include a Trend Management Log and Project Decision Log
 - Schedule Management Plan
 - Budget Management Plan
 - Risk Management Plan, which shall include risk register
 - Procurement Management Plan
 - Project Implementation Quality Management Plan, which shall meet the requirements set forth in Appendix 6 (Project Implementation Work Quality Control Requirements) (including QA/QC requirements)
 - Document Control Plan
- Preliminary Services Schedule and Initial Project Implementation Schedule
- FERC-Required Plans and Submittals
- Monthly Progress Reports

Requirements associated with the various plans and submittals listed above are included in Sections 2.2.8 (Mobilization and Site Access Plan) through 2.2.12 (FERC and DSOD-Required Plans and Submittals) below.

The Project Company 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 Project Company shall also conduct weekly Project management meetings with the Project Company Project managers and KRRC Project managers. An agenda will be distributed to the KRRC prior to the meetings and the Project Company 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) Project risks
- (e) Issues
- (f) Decisions and actions
- (g) Change management
- (h) Health and safety

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 Project Company and KRRC Project managers. An agenda (including desired outcomes) as well as technical background documents will be distributed to workshop attendees prior to the meetings. The Project Company 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) Project Kickoff and Partnering
- (b) Risk Identification, Evaluation and Management
- (c) Design Submittals and Challenges
- (d) Schedule and Project Implementation Work Sequencing
- (e) Permitting and Compliance
- (f) 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 Contract Date
- Draft and final Health and Safety Plan; draft shall be submitted within 30 calendar days of Contract Date
- Draft and final Project Execution Plan; draft shall be submitted within 30 calendar days of Contract Date
- Draft and final Preliminary Services Schedule; draft shall be submitted within 30 calendar days of 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

2.2.2 Document Submittal Procedures.

Within 10 days following the Contract Date, the Project Company 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 Project Company, 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 Project Company 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 Project Company's design progress meetings during various phases of the design. The Document Submittal Procedures shall require the Project Company 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 Project Company to distribute the document submittals as directed by the KRRC.

Unless otherwise noted herein for specific tasks/submittals, the Project Company shall anticipate a review duration of two weeks for any submittals/applications to agencies or other stakeholders.

The Project Company may propose to create a project 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 2.2.5 (Records Management System). Implementation of the project 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

2.2.3 Monthly Progress Report Requirements.

The Project Company shall submit Monthly Project Reports during the Preliminary Services Period which meet the requirements set forth in Section 4.9 (Monthly Progress Reports) of this Project Agreement.

Deliverables:

- Monthly Progress Reports

2.2.4 Kickoff Meeting and Partnering.

Within two weeks after each Preliminary Services Task Notice to Proceed, key staff members of the KRRC and Project Company will participate in a Project kickoff/partnering workshop. The goal of the workshops is to deepen working relationships, develop common goals and objectives for the Project, and achieve a cooperative partnership environment among Project participants. The workshop attendees, agendas, facilitation, and venue will be coordinated by the KRRC and Project Company's Project managers immediately following the Preliminary Services Task Notice to Proceed. The Project Company will develop a Draft and Final Partnering Charter for

review and execution by the KRRC. The Project Company 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

2.2.5 Records Management System.

The Project Company will 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 Project. The system will be utilized by the KRRC, Project Company, and their Subcontractors and vendors to transmit, review and respond, log, and store Project related documents. The records management system will incorporate the following:

- (a) Overall Project 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) Project related communication; and
- (m) Dashboards of Project 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

2.2.6 Constructability Reviews.

2.2.6.1 30% and 60% Design Stage. The Project Company 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 Project Company team primarily responsible for Project Implementation Work who will undertake constructability reviews on behalf of the Project Company;
- (b) Submit 30% or 60% design submittal, as applicable, to Project Company's constructability review team and to the KRRC for constructability review;
- (c) Schedule and conduct constructability workshop with Project Company'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

2.2.7 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 Project Company 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 Project Company shall review such report and prepare responses to the value engineering recommendations, including a discussion of cost and Project Implementation Schedule impacts. The Project Company 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 Project Company 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

2.2.8 Mobilization and Site Access Plan.

The Project Company 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 6.3 (Project Implementation Commencement Date) of the Project Agreement for additional requirements associated with laydown areas, utilities, and temporary project site facilities.

The plan shall clearly identify the number and type of temporary office facilities for the Project Company and the KRRC, including at a minimum the requirements outlined in Section 5.5 (Project Implementation Work Generally) of this Appendix. A schematic will be provided showing areas to be used by the Project Company 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 Project Site.

The plan shall identify the approach to providing site security for all areas where the Project Implementation Work will occur. In addition, the Project Company 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)).

The Project Company shall provide one Helicopter pad in each State within the Project Site to accommodate emergency helicopter access in the event of an emergency. Helicopter pads shall be 75 feet in diameter, graded flat, and shall be stable to accommodate the weight of an emergency helicopter. The location of the helicopter pads shall be submitted to the local Fire District Contact within two weeks after the start of construction activities.

A plan for photographic documentation throughout the duration of the Project Implementation Work shall be developed. The Project Company 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 Project Site shall be taken on an annual basis.

2.2.9 Health and Safety Plan.

The Project Company shall develop and implement a written Project Site-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 Project and shall be maintained at the Site (at office facilities in CA and OR) and available for review upon request. See Section 5.7 (Project Safety and Security) of this Appendix for additional Health and Safety requirements to be included in the plan.

2.2.10 Project Execution Plan.

2.2.10.1 Submission of Project Execution Plan. In accordance with the Preliminary Services Schedule, the Project Company shall develop and submit a Project Execution Plan to the KRRC for review and comment. A Project Execution Plan shall serve as a Project management tool for the KRRC and Project Company (including Subcontractors) and will include guidelines and procedures for execution of the work and issues resolution. The Project Execution Plan will be in compliance with the Contract Standards and include:

- (a) A Project Team Structure and Staffing Plan that provides guidance on how the Project will be staffed, managed, and eventually released, including:
 - (1) a description of Project Company's organization;
 - (2) roles and responsibilities defining positions, skills and competencies that the Project demands;
 - (3) Project organization charts that identifies all key discipline design leads for the Project and the engineer-of-record for each discipline; and
 - (4) a staffing management plan delineating the time periods each Project team member will be needed and other information important to engage the Project team;
- (b) A Communications Plan that provides the following:
 - (1) contact information for both the Project Company and the KRRC (including phone numbers, facsimile numbers, e-mail addresses, and points of contact);
 - (2) communication requirements for the Project Company 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 Project of the status of Project Implementation 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 Project Implementation Work;
 - (6) the Project Company'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 Project Implementation 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 Project 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 Project 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 Drawings and 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, Project documents, the Project Execution Plan, and communicating their disposition;
 - (4) Trend Management Log; and
 - (5) Project Description Log;

The Project Company shall prepare and maintain a change management log for the duration of the Base Preliminary Services. The change management log shall integrate with the Project decision log and be used to document proposed and approved changes to the price, schedule, or changes to the Project 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
- (2) Brief description of change
- (3) Status of change (pending, approved, rejected)
- (4) Dates associated with change including initial proposal date and the date on which the change was accepted or rejected
- (5) Back-up information including cost, schedule, and technical information

Change management shall be a standing agenda item at Project management meetings. Following approval of the Design Criteria Report (DCR), the change management log shall be used to track changes to the approved Project and their associated cost and schedule impacts.

- (e) A Schedule Management Plan that describes the criteria and activities for developing, monitoring, and controlling the Project Implementation Schedule, including:
 - (1) Project Implementation 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) Project Implementation Schedule model maintenance and the process used to update status and record progress of the Project 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 Project 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 Project in accordance with the Contract Standards.
 - (2) the methodology, approaches, tools, and data sources that will be used to perform risk management on the Project;
 - (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 Project life cycle; and
- (6) protocols for application of schedule contingency reserves and risk management activities associated with the Project Implementation 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 Project risk and opportunities for avoiding and minimizing risks.

The Risk Management Plan will include a risk register developed and maintained by the Project Company. The register shall be initially populated with risks identified in the risk management workshop. The risk register shall include the following information:

- (1) Risk identification;
- (2) Activities affected (tied to schedule activities);
- (3) Risk description including qualitative categorization of risk;
- (4) 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);
- (5) Phase of Project that risk could impact;
- (6) Potential schedule impact should risk occur;
- (7) Potential cost impact should risk occur;
- (8) Potential health and safety impacts should risk occur;
- (9) Risk trigger;
- (10) Risk owner; and
- (11) Risk strategy (transfer, mitigate, accept, exploit).

Risks shall be reviewed at the weekly Project 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:

- (1) During the development of the DCR
- (2) Upon submission of the 30% DCD
- (3) Upon submission of the 60% DCD

Ongoing qualitative risk analysis shall be conducted by Project Company with review and input from the KRRC.

- (h) A Procurement Management Plan that describes how the Project Company 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 Project Implementation Quality Management Plan that meets the requirements set forth in Appendix 6 (Project Implementation Work Quality Control Requirements);
- (j) A Document Control Plan that identifies how documents will be managed throughout the Project 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.

2.2.10.2 Establishment and Compliance with Project Execution Plan. The KRRC will review the draft Project Execution Plan and return comments in accordance with the Preliminary Services Schedule. The Project Execution Plan will be accepted by the KRRC only after the Project Company has addressed all KRRC comments to the reasonable satisfaction of the Project Director. Any subsequent amendments or updates to the Project Execution Plan will be submitted to the Project Director for review and comment in the same manner as the initial Project Execution Plan. The Project Company will implement and comply with the accepted Project Execution Plan, and any accepted amendments or updates thereto, in connection with the performance of the Project Implementation Work.

2.2.11 Preliminary Services Schedule.

The Project Company 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 Project Company 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 Project Company intends to utilize in taking the Project from execution of this Project Agreement to the GMP Contract Amendment.

The Project Company shall submit the Initial Preliminary Services Schedule on the Contract Date. During the Preliminary Services Period, the Project Company 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 Project Company shall undertake and complete the Preliminary Services in accordance with the Preliminary Services Schedule. Updates on the Project Company's compliance with the Preliminary Services Schedule shall be submitted monthly with the Monthly Progress Report required by Section 2.2.3 (Monthly Progress Report Requirements) of this Appendix and Section 4.9 (Monthly Progress Reports) of this Project Agreement. The Initial Preliminary Services Schedule, prepared in accordance with the requirements set forth in this subsection, is included as Attachment 2A (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 Project management meeting following receipt of any comments provided by the KRRC. The Project Company shall provide a revised Preliminary Services Schedule, as applicable, based on agreed-to changes at the next weekly Project 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 Project management meeting following receipt of any comments provided by the KRRC. The Project Company shall provide a revised draft Preliminary Services Schedule based on agreed-to changes at the next weekly Project management meeting.

2.2.12 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 Project Company 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 Project Company 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 Project Company 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 Project Company 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 Project Company

should anticipate additional effort to organize the design information into separate plan submittals to FERC/DSOD on the various topics. The Project Company 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 Project Company'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

2.3. PRELIMINARY SERVICES TASK #2 – PROJECT SITE AND PROJECT CONDITIONS VERIFICATION

2.3.1 Existing Conditions Assessment Report.

The Project Company shall complete a comprehensive review of the Project Site, the Project conditions, and contiguous areas that may be affected by the Project, including legal and regulatory requirements that may affect the Project. All reviews performed under this Preliminary Services Task shall be performed to the maximum extent reasonably possible in the circumstances and in a manner that provides a reasonable basis for the Project Company to undertake the risks assumed under Section 6.4 (Differing Site Conditions) and subsections 6.6(B) (Project Company Governmental Approval Responsibility Generally) and 6.7(B) (Sole Design Responsibility and Liability) of this Project Agreement.

The Project Company's review shall include, but is not limited to:

Site Constraints:

- (a) Project Site ingress and egress requirements and restrictions, traffic conditions, time of work restrictions, and requirements of public and private authorities with jurisdiction over roadways to and from the Project Site, parking, and any other restrictions or considerations that may affect the Project Company's work;
- (b) The Facilities, Governmental Approvals, requirements, regulations, constraints, and the KRRC's requirements set forth in Appendix 2 (Preliminary Services) and Appendix 4 (Project Technical Requirements) and objectives set forth in Section 1.7 (KRRC Objectives) of Appendix 1 (Project and Project Site Description) for the Project;
- (c) Title report easement or other restrictions or constraints;

Existing Conditions:

- (d) Existing conditions information at the Project provided by the KRRC, including all available as-built information, geotechnical reports, engineering studies and reports, environmental studies, data, construction photographs, memos, reports, surveys, and site measurements; and
- (e) Any other investigations deemed necessary by the Project Company to fully acquaint itself with existing conditions for purposes of performing the Base Preliminary Services.

Based on the review of existing drawings and information provided by the KRRC and supplemental discussions with the KRRC, the Project Company will prepare a report describing and identifying the locations of existing surface and subsurface utilities at the Project Site and the locations of man-made objects or structures. For circumstances where existing information is either conflicting or not available, the Project Company will coordinate and engage the services of a utility location Subcontractor and or surveyor for identifying, designating, locating, and mapping existing and abandoned utility or other pertinent infrastructure. Identification techniques may include magnetic, sonic, and acoustic technologies, ground penetrating radar (GPR), and radio frequency detection. The utility descriptions will be considered current as of the date of the investigation. The Project Company shall complete investigations required to verify surface and subsurface facilities, and

shall coordinate with the KRRC and PacifiCorp prior to requesting access. At a minimum, the report should cover the following areas:

- (a) Project Site;
- (b) Downstream flood improvement limits of work, as necessary;
- (c) New recreation improvements limits of work, as necessary; and
- (d) Hatchery improvement limits of work at Fall Creek and Iron Gate.

Specific investigations identified by the Project Company for inclusion in this task are as follows:

- (a) Geotechnical investigation as summarized in Section 2.3.2
- (b) Buried structure location investigation
- (c) Detailed geotechnical inspection of the diversion tunnels
- (d) Detailed geotechnical inspection of the J.C. Boyle scour hole
- (e) Topographic surveys at downstream up to 36 flood properties, 2 pedestrian bridges and CORP railroad bridge
- (f) Reference reach surveys of the Klamath River will be performed at 9 locations between JC Boyle and Iron Gate reservoirs. The survey consists of approximately 500 linear feet of river profile and 5 cross sections

The Project Company will perform the aforementioned investigations promptly after commencement of the Project. The Project Company will report to the KRRC in writing any additional information that is needed in order to complete the assessment of existing conditions. The KRRC shall respond to the Project Company requests for additional information and indicate whether or not requested information is available and if so when the KRRC will provide it to the Project Company.

Deliverables:

- Draft and final work plan for additional investigations
- Draft and final Existing Conditions Assessment Report, summarizes existing conditions and site constraints

2.3.2 Geotechnical Investigations.

The Project Company will review various sources of geotechnical information concerning the overall Project Site. Such sources will include geologic maps, seismologic literature, and other published documents. Any available soil logs and laboratory test results associated with previous subsurface explorations performed on or near the Project Site will also be reviewed. Field exploration data, laboratory testing data, and research findings will be evaluated by the Project Company to determine what additional geotechnical investigation may be required to inform the Project Company's design and associated regulatory approvals.

Additional geotechnical investigations and laboratory testing has been included to collect geotechnical data related to the following project components. The proposed geotechnical site

investigations are based upon discussion between the Project Company and KRRC. Should the Project Company and KRRC determine that additional investigations are required to complete the design, additional budget will be negotiated and allocated via amendment:

- (a) Dam sites (drilling with SPT, as required):
 - (i) major driller mob/demob to 4 dam sites
 - (ii) minor driller mob/demob at dam sites
 - (iii) 12 boreholes (average length ~25ft) for disposal/borrow sites/diversion improvement
 - (iv) 6 boreholes (average length ~25ft) for dam embankments, if/as required
 - (v) lab testing, if/as required, for index and/or strength properties
- (b) Roads & bridges:
 - (i) driller mob/demob to 14 sites (all bridges and culverts, 50% roads)
 - (ii) 26 boreholes (average length ~25ft)
 - (iii) 14 boreholes (average length ~25ft) for roads
 - (iv) field mapping/inspection for roads
 - (v) drilling with SPT, as required for design and state DOT codes
 - (vi) lab testing for index and/or strength properties, as required for design and state DOT codes
- (c) Downstream flood properties: 14 boreholes at residences and 2 boreholes at the pedestrian bridges (along with lab testing)

Planning for geotechnical investigations include:

- (a) Review existing geologic information, prior borings, and general site conditions in the vicinity of proposed borings to develop an understanding of expected conditions.
- (b) Prepare a Geotechnical Investigation and Laboratory Testing Plan (draft and final), which will define the scope of the planned explorations (geophysics, soil borings, concrete coring) and laboratory testing (soil sample, rock cores, concrete cores). The plan will identify boring locations, planned depths, drilling methods, test methods, staffing and other field procedures.
- (c) The Geotechnical Investigation and Lab Testing Plan will be submitted for review by KRRC, and comments will be incorporated in the final version of the report for approval.
- (d) A Geotechnical Drilling Site Access Plan will be prepared for KRRC review. This plan will include the requirements for utility clearance, permitting, traffic

control, floating plant access, and subcontractor coordination details specific to the geotechnical explorations.

- (e) A Geotechnical Drilling Health and Safety Plan will be prepared for KRRC review. This plan will be specific to the field work activities for the geotechnical explorations (geophysical surveys, land borings, water borings, and concrete coring).

The Project Company will provide an experienced geologist or engineer to continuously observe all drilling completed by the Project Company or their Subcontractors, log the subsurface conditions, collect representative soil samples, and transport all samples to the Project Company's laboratory for further visual examination and testing. Soil samples will be stored for 90 days after submittal of Project Company's report and then discarded unless KRRC requests longer-term storage.

Before drilling, the Project Company shall ensure that a local utility locating service has marked any underground utilities at each exploration location. The Project Company will obtain necessary encroachment permits and drilling permits prior to site exploration. All borings will be backfilled as required by the permit. The geotechnical Subcontractor will exercise due care while working at the Project Site, but anticipates that some surface disturbances will be unavoidable and that safe and adequate restoration will be provided.

It is assumed that water for drilling/coring operations will be pumped from adjacent rivers, creeks or reservoirs. If this is not allowed, water will be cost reimbursable. It is also assumed drill cuttings will be disposed of offsite.

Any new field exploration data, laboratory testing data, and research findings will be compiled with previous geotechnical information into a Geotechnical Data Report for the Project. The report will include the following specific items:

- (a) Site plan showing approximate previous and new exploration locations;
- (b) Descriptive logs of subsurface explorations;
- (c) Description of surface, soil, groundwater, and seismic conditions;
- (d) Mapping of geologic conditions;
- (e) Explanation of report limitations; and
- (f) Recommendations for further geotechnical study, if necessary.

A rim stability analysis will be performed with the goal to identify potentially unstable areas susceptible to landslide during the reservoir drawdown including private properties and adjacent public roads at higher risk. In addition, conceptual approaches for mitigation, which may include passive (monitoring) or active (engineered) approach will be developed.

Deliverables:

- Draft and final Geotechnical Investigation & Laboratory Testing Plan
- Draft and final Geotechnical Drilling Site Access Plan
- Draft and final Geotechnical Drilling Health and Safety Plan
- Draft and final Geotechnical Data Report
- Draft and final Rim Stability Memo

2.4. PRELIMINARY SERVICES TASK #3 – PERMITTING SUPPORT AND COMPLIANCE PROGRAM

The Project Company shall identify, understand and comply with all Applicable Law and Governmental Approvals. Table 3-1 in Appendix 3 identifies which Governmental Approvals will be managed by the KRRC and Table 3-2 in Appendix 3 identifies which Governmental Approvals will be managed by the Project Company. The Project Company is responsible for all activities associated with Governmental Approvals not specifically listed as the responsibility of KRRC. The Project Company is also responsible for any Governmental Approvals not included in Tables 3-1 and 3-2.

For KRRC-Managed Governmental Approvals, the Project Company shall provide draft applicable reviews and attend up to five (5) agency coordination meetings for each Governmental Approval. In addition, as part of their design work under Preliminary Tasks #5 through #7, the Project Company 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 Project Company-Managed Governmental Approvals, draft application submittals shall be supplied to the KRRC a minimum of 1 month prior to anticipated agency submittal for review and comment. The Project Company 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 (5) working days prior to direct communication with agencies pertaining to the Project. The KRRC shall be given the opportunity to be involved in all communication and coordination activities with agencies.

For some KRRC-Managed 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 Project Company shall consider documented requirements coming out of the process as mandatory, and shall implement accordingly.

The Project Company 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 Governmental Approvals and implementation of all associated requirements and conditions. The initial plan shall also contain a matrix identifying all required Governmental Approvals, status of those approvals, and any known or assumed conditions. They Project Company shall develop the matrix in an excel database. The Project Company will be responsible for identifying any conflicts between the various Governmental Approval requirements, and proposing an approach to resolve such conflicts.

As Governmental Approvals are issued, the Project Company will review and include all requirements in the Initial or Final Environmental Compliance Plan. This plan will organize requirements of all governmental approvals 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 Governmental Approvals including, but not limited to, ESA or cultural resources conditions.

The Project Company shall acknowledge and consider that regulatory requirements may constrain their proposed schedule, methods, and sequence of performing the Work. In the event that Project Company proposes to alter the Project in a way that is not in compliance with existing Governmental Approvals, Project Company shall obtain necessary Governmental Approvals at no additional expense to the KRRC, including but not limited to, preparing any analysis or studies related to the Governmental Approvals.

If the KRRC or their representative notifies the Project Company in writing of any observed noncompliance with Project Agreement requirements, Applicable Law or Governmental Approvals, the Project Company shall inform the KRRC of proposed corrective action and take such action to correct the noncompliance. If the Project Company fails to promptly comply, the KRRC may issue an order stopping all or part of the Work until satisfactory corrective action is taken. No time extensions will be granted or costs or damages allowed to the Project Company for any such suspension.

During investigations and construction, some agencies may have the authority to approve or inspect certain elements of the work. Project Company shall coordinate its construction activities with agencies as required by the Government Approvals, and shall allow agency representatives access to locations within project boundaries as required by Governmental Approvals.

Deliverables:

- Initial Environmental Compliance Plan: Plan to be developed by the Project Company, for KRRC review and acceptance
- Final Environmental Compliance Plan: Within 45 calendar days of the date of issuance of the FERC Surrender Order, the Project Company 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 Project Company'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 Project Company of any and all responsibility to adhere to all requirements associated with Governmental Approvals and other Applicable Law.
- Amended Environmental Compliance Plans: The Environmental Compliance Plan shall be updated throughout the Project Implementation 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 Project Implementation 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 Project Company-Managed Governmental Approvals
- Plans: Project Company 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. Project Company shall prepare and submit these plans as required by the Governmental Approvals. Project Company shall comply with all aspects of the plans as they pertain to the Project Implementation Work.
- Bound hardcopies of all Governmental Approval documents must be available on site at all times.
- Acceptance is conditional and is predicated upon satisfactory performance during construction. The KRRC reserves the right to require the Project Company to make changes in the Environmental Compliance Plan or operations if the KRRC determines that environmental protection requirements are not being met.

2.5. PRELIMINARY SERVICES TASK #4 – INITIAL COST MODEL AND IMPLEMENTATION SCHEDULE

2.5.1 Initial Cost Model Report.

The Project Company shall prepare an Initial Cost Model Report and estimate using cost model and procedures they plan to use for DCD construction cost submittals and the GMP Project Submittal. Design and regulatory information and assumptions shall be based on the Project Company's latest understanding of the Project Implementation Work and regulatory requirements, as informed by the Project Agreement, the Definite Plan, in addition to any clarifications and updates identified by the Project Company or KRRC since completion of the Definite Plan.

The Initial Cost Model shall include estimated costs for all Project Company services, equipment and materials and other fees that may be incurred by the Project including appropriate contingencies due to uncertainties regarding cost estimates, site conditions and other factors. The Initial Cost Model shall be broken down into logical cost categories such as regulatory requirements and tracking, engineering services during the Project Implementation Work, construction (by component), self-performed work, procured Subcontractor work, major equipment purchases (gates, etc.), major material purchases and other categories with appropriate supporting documentation that will assist the KRRC in its evaluation of the Project cost estimate. At a minimum, the construction portion of the estimate shall be broken down by each key component, as listed in Section 1.2 (Project) of this Appendix.

An initial cost model and project implementation schedule will be developed early in the project. This task will consist of reviewing the Definite Plan cost estimate, developing the initial structure to support the development of future cost models, updating crew and unit costs per construction industry standards, and development of an initial project implementation schedule, as well as updating the model and schedule to accommodate recommendations from the Proof of Concept deliverable (Task #6). The design team will provide support related to providing information on project constraints, work sequencing and design approach elements, and engineering support during implementation support.

The Project Company shall also provide a preliminary estimate of cash flow requirements by month from commencement of Project Implementation Work through Project Final Completion.

Deliverables:

- Draft and final Initial Cost Model; draft shall be submitted within 60 calendar days of Contract Date

2.5.2 Initial Project Implementation Schedule.

The Project Company shall prepare the Initial Project Implementation Schedule using Primavera P6 scheduling software (latest version), and shall submit as electronic files (native and pdf) and hardcopy. Design and regulatory information and assumptions shall be based on the Project Company's latest understanding of the Project Implementation Work and regulatory requirements, as informed by the Project Agreement, the Definite Plan, in addition to any clarifications and updates identified by the Project Company or KRRC since completion of the Definite Plan. The Initial Project Implementation Schedule shall be coordinated with the Draft Cost Model estimate and associated production rates and other constraints. The Project Company shall provide licenses for up to three KRRC personnel to access the Project Implementation Schedule at any given time.

The Project Company shall submit the draft Initial Project Implementation Schedule within 60 calendar days of the Contract Date, and shall update the draft Initial Project Implementation Schedule during the Preliminary Services Period in accordance with this Appendix. The Project Implementation Schedule shall meet the requirements set forth in this Appendix and Appendix 5 (General Project Implementation Work Requirements).

During the Project Implementation Period, the Project Company shall update the Initial Project Implementation Schedule in accordance with the requirements set forth in Section 5.3 (Project Implementation Schedule) of Appendix 5 (General Project Implementation Work Requirements).

At a minimum, the Project Implementation 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 draft Initial Project Implementation Schedule within 30 days of receipt. Comments on the draft Initial Project Implementation Schedule shall be discussed at the weekly Project management meeting following receipt of any comments provided by the KRRC. The Project Company shall provide a revised draft Initial Project Implementation Schedule, as applicable, based on agreed-to changes at the next weekly Project management meeting.

The KRRC shall review and comment on the update to the draft Initial Project Implementation 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 draft Initial Project Implementation Schedule shall be discussed at the weekly Project management meeting following receipt of any comments provided by the KRRC. The Project Company shall provide a revised draft Initial Project Implementation Schedule based on agreed-to changes at the next weekly Project management meeting.

Deliverables:

- Draft and final Initial Project Implementation Schedule

2.6. PRELIMINARY SERVICES TASK #5 – DESIGN CRITERIA REPORT

This task involves comprehensive documentation of project goals, objectives and potential component failure modes, and final selection of engineering and ecological design criteria for each primary project component, in addition to other temporary and permanent design features and construction methods. Engineering design criteria will address: (1) normal operating or ‘sustained’ conditions, which may include a range of design flows or other criteria; (2) a design flood event; and (3) a design earthquake event, as appropriate. Ecological design criteria for all components will be selected to create an optimum condition for potential success of native flora and fauna defined by the project goals and objectives. CAD standards shall also be finalized based on information provided in Reliance Document 9 (CAD Drawings Standards).

Appendix 4 provides additional information pertaining to specific design criteria for various Project components and disciplines.

The first step in this process will involve development of specific functional goals and objectives for each component based on the overall project goals as defined below:

- (a) Provide a safe and effective project that minimizes nuisance impacts to the public.
- (b) Provide the highest quality design and construction submittals, and complete the Project in a manner that is consistent with the KHSA, and meets all tribal, federal, state and other agency expectations.
- (c) Obtain the most cost-effective design and construction approach to accomplish the defined Project for a Guaranteed Maximum Price and while meeting the other stipulated cost constraints, including constraints embodied in the KHSA.
- (d) Achieve the scheduled completion dates for design, construction, and post-construction monitoring of the Project, including planning to accommodate foreseen and unforeseen change.
- (e) Achieve full native habitat restoration that blends seamlessly with the adjacent habitat communities.
- (f) Meet all other design and habitat goals in the short and long-term while requiring minimal long-term maintenance and monitoring outside of regulatory requirements.

Design criteria categories will be developed to address each component specific objective and address the associated potential failure modes. Practical performance criteria will be developed for each category such that the built Project will perform to the expectations of the KRRC, regulatory agencies and stakeholders, to the greatest extent possible.

Design standards and criteria will be selected from the appropriate governing body or industry standard as appropriate for each component under the various conditions, and final standards, manuals or guidance material shall be documented in the Report. However, where additional analyses are required to provide additional information to determine design criteria, those criteria categories will be highlighted as such. The Project Company will be responsible for completing those analysis to finalize the criteria selection.

The Project Company shall identify any regulatory design standards or conditions and incorporate into the Project design criteria, as appropriate. In addition, any agency reviews or approvals will be identified and summarized with respect to schedule and cost.

An administrative draft Design Criteria Report (DCR) will be developed by the Project Company and refined through an iterative process with the KRRC. It is anticipated that the DCR will include a matrix or table to summarize the objectives and associated design criteria, along with additional text and bulleted lists as appropriate. The memorandum format will be refined with input from the KRRC prior to the administrative draft submittal.

The Project Company shall meet with the KRRC staff to present a summary of the administrative draft DCR and discuss KRRC comments on the draft DCR and obtain KRRC approval on the recommended criteria prior to proceeding with draft DCR, which will be submitted to FERC and DSOD for review. The Project Company shall anticipate a 2-week review duration from FERC/BOC/DSOD for this submittal

The Project Company shall prepare a final DCR incorporating FERC and DSOD comments on the draft DCR.

Deliverables:

- Administrative Draft, Draft and final Design Criteria Report
- Meeting agenda and notes

2.7. PRELIMINARY SERVICES TASK #6 – 30 PERCENT DESIGN COMPLETION DOCUMENTS (DCD)

General Design Approach:

The project will be sub-divided into design packages considering project scope, discipline and design teams. The following design packages are anticipated.

- (a) Gate Procurement Package
- (b) Intake/Outlet Works/Diversion Tunnel Modifications
- (c) Roads, Bridges & Culverts (post-drawdown transportation improvements will move directly into detailed design, while construction access improvements will be assessed by the Project Company at a feasibility level to confirm approach and solution).
- (d) Downstream Flood Improvements
- (e) Recreation
- (f) Restoration
- (g) Reservoir rim engineered solution
- (h) Dam Site Packages (JC Boyle, Copco No. 1 & 2, Iron Gate): 4 packages anticipated to address pre-drawdown modifications, drawdown sequencing, dam removal, facilities decommissioning, disposal areas and erosion protection and sediment control.

The objective of this task is to allow for the Project Company to propose modifications to, or refine, key design components prior to incorporating into the 60% DCDs. It is anticipated that the Project Company will make modifications to the construction access plan based on their proposed means and methods for the Project Implementation Work. In addition, based on Project Company outreach to property owners associated with downstream flood impacts and potential reservoir rim instability impacts, engineered solutions will need to be documented. The extent of potential temporary construction easements required to complete the Work associated with downstream flood control and/or reservoir rim stability shall also be identified.

The Project Company may choose to propose modifications to other Project components that deviate from the approach and concepts summarized in the Definite Plan. The KRRC would need to review and concur with the revised approach and concepts prior to the Project Company beginning 60% design on those components.

Task #6 also includes completion of seed collection, seed propagation and invasive and exotic vegetation species removal required to support the restoration design and implementation.

No detailed design scope or budget is provided for construction access improvements, as generally defined in Table 2.7-1. Should it be determined, based on the feasibility study being completed under this task, that additional improvements are required, additional negotiated design budgets will be allocated via amendment.

Table 2.7-1

Construction Access Feasibility Study	Post-Drawdown Improvements Detailed Design
Fall Creek Bridge	Topsy Grade Culverts
Daggett Bridge	Raymond Gulch
Lakeview Bridge	Beaver Creek
Dry Creek Bridge	North Mirror Cove
OR 66 Green Springs Intersection	Jenny Creek
Construction Access – J.C. Boyle	Camp Creek
Construction Access – Iron Gate and Copco	Scotch Creek
Construction Access – Copco Road	

2.7.1 Period of Performance.

After the Project Company receives the KRRC's written notice that the KRRC's comments, if any, have been satisfactorily addressed in the final DCR, the Project Company shall proceed with the performance of services required to achieve 30% Design Completion for any modified Project components. The KRRC may, at its discretion and where there is early agreement between the KRRC and the Project Company on the criteria, allow portions of the 30% design to move forward prior to completion of the DCR through this issuance of a separate Notice to Proceed. The Project Company shall submit the Deliverable Material required by the 30% Design Completion Documents (30% DCD) to the KRRC on the date identified in the Preliminary Services Schedule.

2.7.2 Minimum Requirements.

The 30% DCD shall include but is not limited to the following (where applicable):

- (a) Proof of Concept review to confirm the validity of the Definite Plan preliminary design and cost estimate for Project Implementation, to the extent possible at that stage of Preliminary Services, and will outline any potential significant departures identified. These departures may include significant differences in predicted quantities and/or unit costs based on updated information acquisition and design development. The Proof of Concept review will be provided in a letter or brief report format and considered in development of the Initial Cost Model (Task 4).
- (b) Construction Access Feasibility Assessment to plan temporary road, bridge and culvert improvements required for construction access. A primary focus will be on selecting the preferred approach for improving or bypassing bridges that are currently unfit to handle heavy construction equipment. The Project Company will examine various options, with the aim to minimize construction access implementation costs as well as any potential restrictions on implementation schedule and travel times. The Project Company will present the results in a brief report outlining the options examined, the planned approach, and listing the design drawings to be developed
- (c) Seed Collection & Propagation Plan and implementation for the 2019 collection season.
- (d) Invasive and exotic vegetation removal plan and implementation for 2019.
- (e) Design Report

- (i) Design criteria update;
 - (ii) Supporting technical analyses and baseline data to support the proposed design;
 - (iii) Project-specific analyses of Applicable Law and Governmental Approvals; and
 - (iv) Design considerations reasonably necessary in connection with the Project Company's obligations under Section 15.3 (Coordination with the KRRC in Satisfaction of the KHSR Liability Protection Requirements) of this Project Agreement.
- (f) Design Drawings
- (i) Index of Drawings, general legend, abbreviations;
 - (ii) Cover Sheet, Location Map and Vicinity Map; and
 - (iii) Design drawings.
- (g) Project Cost Model Update
- (h) Project Implementation Schedule
- (i) Quality management will be achieved through quality control reviews and Independent Technical Reviews (ITR) consisting of an independent internal engineering team. The ITR team will be engaged at key project milestones to provide input and review of criteria, design concepts, detailed design and construction approach. ITRs are budgeted and will be scheduled into the project.

2.7.3 Criteria.

The 30% DCD shall incorporate the Project Company's final DCR and shall include, in addition to drawings and specifications set forth in this Section, such additional information as needed to describe the Project. The 30% DCD shall indicate the basis for design choices, as well as an explanation of how the design incorporates the KRRC's DCR objectives. The 30% DCD shall indicate any alternative designs, approaches, technologies, equipment or processes that the Project Company recommends be considered by the KRRC.

The 30% DCD will take any proposed design modification concepts and advance them to preliminary engineering drawings.

2.7.4 Design Refinement.

2.7.4.1 Design Refinement. Design refinement applies here to any proposed modifications to key Project components, as described above. The Project Company shall be responsible for developing and refining the Project design in close coordination with the KRRC. The Project Company shall conduct all evaluations, calculations, cost estimating, scheduling, workshops, and other services as needed to advance the Project design for modified components to the 30% DCD. At a minimum, refinement or modification (from Definite Plan) of design for construction access, downstream flood control, and rim stability improvements should be addressed.

2.7.4.2 Workshops. The Project Company shall conduct a workshop addressing proposed modifications to the Project design with the KRRC to review the alternatives and develop a recommended approach. The workshop shall include a weighted decision process to compare alternatives on the basis of established evaluation criteria.

The following information shall be prepared by Project Company for the workshop and shall be submitted a minimum of one week prior to the workshop:

- (a) Description of alternatives associated with any proposed design modification
- (b) Design criteria
- (c) General layout drawings
- (d) Temporary construction easements, as necessary
- (e) Cost, schedule, and constructability considerations of various alternatives
- (f) Project Company's preliminary evaluation and comparison of alternatives

2.7.5 30 Percent Design Report.

The Project Company shall prepare and submit to the KRRC a 30% Design Report which will include the Project Company's evaluation findings and specific recommended modifications to the Project design. The Design Report will explain how the proposed preliminary design will meet the KRRC's requirements as set forth in Appendix 4 (Project Technical Requirements) for the Project and comply with all Applicable Law and Governmental Approvals. The Design Report will include information on alternatives considered and evaluated and information on the rationale or method by which the recommended design was selected. Information considered in the evaluation of alternatives and selection of a recommended design shall include but not be limited to: estimated capital costs; compliance with regulatory requirements; public safety; and compatibility with California Environmental Quality Act (CEQA), National Environmental Policy Act (NEPA) and KRRC environmental objectives and requirements set forth in Appendix 4 (Project Technical Requirements).

The Design Report will include a description of regulatory conditions that apply to the proposed design, including but not limited to:

- (a) Applicable Law;
- (b) Approvals and limitations or constraints;
- (c) Governmental Approvals and associated agency review durations, constraints or fees; and
- (d) Utility requirements, and the Project Company's plan for coordinating with all public agencies and utilities with jurisdiction over any of the Project Implementation Work.

A draft 30% Design Report shall be reviewed by the KRRC and the KRRC's comments shall be addressed by the Project Company.

The Project Company shall prepare a final 30% Design Report incorporating KRRC comments on the draft Design Report. The report will include updated analyses, as well as table of contents, executive summary, facilities descriptions, and recommended Project chapters.

2.7.6 30 Percent Design Drawings.

The 30% DCD will incorporate the recommended elements from design refinement into the 30% drawings. The 30% drawing set will generally include drawings described below, as applicable to proposed design modifications.

- (a) **General Drawings:** Cover sheet, abbreviations and symbols, key plan, list of drawings, Project key plan, drawing symbology, numbering and tagging conventions, symbols, and abbreviations, design criteria (90% complete), and equipment schedule.
- (b) **Civil Drawings:** Project Site layout, grading and paving plan, Project Site new access road plan and sections. Identification of any required temporary construction easements.
- (c) **Structural Drawings:** Structural improvements plan, general notes, standard concrete details and standard reinforcing details.
- (d) **Mechanical Drawings:** Mechanical improvements plan, symbols and legends.
- (e) **Electrical Drawings:** Electrical symbols and legends, one-line diagram, Project Site electrical plan, lighting and power plan, and load schedules.
- (f) **Restoration Drawings:** Project site ground preparation, planting, landscaping, irrigation and any associated details.

2.7.7 Updated Project Cost Model and Estimate.

The Project Company shall update its Initial Cost Model developed under Preliminary Services Task #4 based on any modified design elements from the 30% DCD. The updated Project 30% DCD cost model should focus only on those components that have been modified and documented in the 30% DCD, so the KRRC can fully understand any changes in Project costs associated with modifications included in the 30% DCD.

2.7.8 Updated Project Implementation Schedule.

The Project Company shall update its Initial Project Implementation Schedule based on the Project Implementation Work presented in the 30% DCD. The updated Project Implementation Schedule shall indicate key milestone dates for work completion from the final 30% DCD through Project Final Completion. The schedule shall provide for adequate periods for KRRC design and GMP Project Submittal reviews and for the Project Company to make revisions and obtain written notice to proceed from the KRRC before proceeding with the next work phase. The updated Project Implementation Schedule shall be accompanied by a memo or report that explains significant changes from the Initial Schedule submittal for key activities and Project milestones.

2.7.9 30 Percent Design Submittal Workshop.

A one-day workshop will be conducted after the KRRC reviews the 30% Design Documents. A log of review comments will be maintained to ensure all design comments are addressed and there is an approach to incorporate into the 60 percent design, as appropriate.

2.7.10 Deliverables and KRRC Review.

The KRRC shall review the 30% DCD and provide the Project Company with written review comments. The Project Company shall allow for a minimum two-week review duration for this deliverable by the KRRC, which may be modified by the KRRC at their discretion. The Project Company shall make such revisions as required in order to address the KRRC's comments. The KRRC shall notify the Project Company in writing after the KRRC has determined that revisions made by the Project Company are acceptable.

The Project Company shall anticipate a review of the final 30% DCD by FERC and DSOD. The Project Company shall anticipate a 2-week review duration from FERC/BOC/DSOD for this submittal. Comments shall be incorporated into the 60% DCD.

Deliverables:

- Draft and final 30% DCD (including design report, drawings, cost model/estimate, and implementation schedule)
- Workshop Meeting agenda, notes, action items and review comments log

2.7.11 Transmission/Distribution Design Assumptions.

The following assumptions apply to the transmission and distribution system demolition design:

- (a) Quantities of transmission/distribution removals including line length and pole counts are taken from AECOM drawings provided with the RFP.
- (b) Design of transmission/distribution relocations includes final line design, pole, foundation, and material specifications. Because PacifiCorp T&D Engineering Design Standard were not included in the RFP, Project Company's transmission line design will follow generally accepted engineering and industry standard as required by the RFP. The Project Company shall make every effort to obtain the PacifiCorp T&D Engineering Design Standards prior to development of the Design Criteria Report, and shall notify the KRRC immediately concerning any change in scope of budget.
- (c) J.C. Boyle 230kV Bypass: Assumed two (2) new DE self-supporting TSP's required; single circuit, vertical framing considered. Our assumption includes 0.5 miles of new 230kV line.
- (d) Copco No. 1 230kV Bypass: Assumed five (5) new DE self-supporting TSP's required; single circuit, both vertical and horizontal framing considered. Based on provided drawings, one span will cross the Klamath River, therefore FAA requirements will be considered. Our assumption includes one mile of new 230kV line.
- (e) Design of transmission/distribution relocations will be based on information from existing historical drawings. The demolition drawings and design will not include modification of PacifiCorp-bordered drawings/document and/or drawings owned by other entities.
- (f) Design of transmission/distribution relocations includes modification of existing switchyard/ substation arrangement, one line diagrams, control house arrangement and panel layout drawings for demolition purpose only. The detail

drawings including relaying, control schematic and wiring diagrams of existing station were not included with the RFP package and are not part of the estimate.

- (g) Design for reconfiguration of the remaining substation, switchyard, control and protection systems are not included in this phase. Additional detail drawings required to determine the extent of modifications are not included in the RFP. Estimate for this task will be added at the subsequence phase.
- (h) Modification of PacifiCorp-bordered drawings/ document and/or drawings owned by other entities.
- (i) Design and modification of transmission lines and substations at remote outside the boundary of this project.
- (j) Modification of any transmission line underbuilds not identified in the RFP drawings.

2.8. PRELIMINARY SERVICES TASK #7 - 60 PERCENT DESIGN COMPLETION DOCUMENTS (DCD)

General Design Approach:

The project will be sub-divided into design packages considering project scope, discipline and design teams. The following design packages are anticipated.

- (a) Gate Procurement Package
- (b) Intake/Outlet Works/Diversion Tunnel Modifications
- (c) Roads, Bridges & Culverts (post-drawdown transportation improvements will move directly into detailed design, while construction access improvements will be assessed by the Project Company at a feasibility level to confirm approach and solution)
- (d) Downstream Flood Improvements
- (e) Recreation
- (f) Restoration
- (g) Dam Site Packages (JC Boyle, Copco No. 1 & 2, Iron Gate): 4 packages anticipated to address pre-drawdown modifications, drawdown sequencing, dam removal, facilities decommissioning, disposal areas and erosion protection and sediment control.

No scope or budget is included for reservoir rim engineered solutions at the 60% level. Should design for this be required, additional scope and budget will be negotiated and allocated via amendment.

No detailed design scope or budget is provided for construction access improvements, as generally defined in Table 2.7-1. Should it be determined, based on the feasibility study being completed under Task #6, that additional improvements are required, additional negotiated design budgets will be allocated via amendment.

2.8.1 Period of Performance.

The KRRC intends to provide a Notice to Proceed for this Preliminary Services Task #7 to allow portions of the 60% design to move forward following contract execution. For any components covered in the 30% DCD, the KRRC shall issue written confirmation that it is acceptable for the Project Company to continue with the associated 60% following the Project Company's 30% submittal. Early Work Package Notices to Proceed may also be issued by the KRRC as it may deem appropriate. The Project Company shall submit the Deliverable Material required by the 60% DCD to the KRRC on the date identified in the Preliminary Services Schedule.

2.8.2 Minimum Requirements.

The 60% DCD shall consist of CAD generated drawings and specifications covering general civil and site work improvements (including design criteria), geotechnical, soils and drainage, structural, mechanical, and landscaping. The 60% DCD shall include layouts and schematics drawn to scale, design criteria and notes showing the proposed design of all Project Implementation Work. The 60% DCD shall include all major elements of the Project design

proposed for the Project Implementation Work and shall comply with any proposed modifications included in the final 30% DCD.

The 60% DCD shall include but is not limited to the following (where applicable):

- (a) Design Report
 - (i) Design criteria update;
 - (ii) Project-specific analyses of Applicable Law and Governmental Approvals;
 - (iii) Design considerations reasonably necessary in connection with the Project Company's obligations under Section 15.3 (Coordination with the KRRC in Satisfaction of the KHSR Liability Protection Requirements) of this Project Agreement;
 - (iv) Supporting technical analyses and baseline data to support the proposed design;
 - (v) Engineering calculations for all disciplines; and
 - (vi) Project Implementation Work phasing recommendations.
- (b) Design Drawings
 - (i) Index of Drawings, general legend, abbreviations;
 - (ii) Cover Sheet, Location Map and Vicinity Map; and
 - (iii) Design drawings.
- (c) Specifications:
 - (i) A Project specifications document including general requirements, site work and materials, describing the size, character and quality of the entire Project in its essentials as to kinds and locations of materials; equipment selections; and types of structural, mechanical and electrical systems;
- (d) Project Cost Model
- (e) Project Implementation Schedule
- (f) Quality management will be achieved through quality control reviews and Independent Technical Reviews (ITR) consisting of an independent internal engineering team. The ITR team will be engaged at key project milestones to provide input and review of criteria, design concepts, detailed design and construction approach. ITRs are budgeted and will be scheduled into the project.

2.8.3 Criteria.

The 60% DCD shall incorporate the final 30% DCD and shall include, in addition to drawings and specifications set forth in this Section such additional information as needed to describe the Project. The 60% DCD shall indicate the basis for design choices, as well as an explanation

of how the design incorporates the KRRC's design criteria objectives. The 60% DCD shall indicate any new alternative designs, approaches, technologies, equipment or processes that the Project Company recommends be considered by the KRRC, if not included in the final 30% DCD.

2.8.4 Design Refinement.

2.8.4.1 Design Refinement. The Project Company shall be responsible for developing and refining the Project design in close coordination with the KRRC. The Project Company shall conduct all evaluations, calculations, cost estimating, scheduling, workshops, and other services as needed to advance the Project design to the 60% DCD. The Project Company shall develop their approach to seed collection, propagation and invasive exotic vegetation control, and shall begin implementation of those activities as soon as possible during the Preliminary Services Period. The Project Company shall perform its own collection and propagation work during the Preliminary Services Period to augment the KRRC collection/propagation described in Reliance Document 12 (KRRC Native Seed Collection Summary), as needed to achieve the complete restoration of the Project Site.

2.8.4.2 Workshops. The Project Company shall conduct workshops addressing the following topics with the KRRC to review the design and alternatives and develop a recommended approach. Each workshop shall include a weighted decision process developed by the Project Company to compare alternatives on the basis of established evaluation criteria.

- (a) Permitting design considerations and anticipated agency reviews
- (b) Update on design, schedule and procurement associated with tunnel and gate design components – potential for Early Work Packages
- (c) Proposed modifications to Project components (post 30% DCD)
- (d) Any Governmental Approval issues or updates associated with any proposed modifications
- (e) Coordination and connection to existing site utilities
- (f) Electrical supply and distribution (including emergency power)
- (g) Interface with Related Projects
- (h) Update on Mobilization and Site Access Plan; Discussion of site security including design guidelines, physical security facilities, electronic security features, and cyber security

The following information shall be prepared by Project Company for each workshop and shall be submitted a minimum of one week prior to each workshop:

- (a) Summary of Project activities associated with Workshop topic
- (b) General layout drawings, as appropriate
- (c) Cost estimates for alternatives, as appropriate
- (d) Changes to Project Implementation Schedule, as appropriate

2.8.5 60 Percent Design Report.

The Project Company shall prepare and submit to the KRRC a 60% Design Report which will include the Project Company's evaluation findings and specific recommended design for the Project. The Design Report will explain how the proposed design will meet the KRRC's requirements set forth in Appendix 4 (Project Technical Requirements) for the Project and comply with all Applicable Law and Governmental Approvals. The Design Report will include information on alternatives considered and evaluated and information on the rationale or method by which the recommended design was selected. Information considered in the evaluation of alternatives and selection of a recommended design shall include but not be limited to: estimated capital costs; schedule; compliance with regulatory requirements; public safety; and compatibility with CEQA, NEPA, and KRRC environmental objectives and requirements.

The Design Report will include information on major equipment and vendors proposed and alternatives evaluated. Comparisons on equipment and vendors will include technical and performance characteristics, reliability, warranties, and operational experience. The Design Report will include supporting documentation such as calculations, schematics, and drawings to support the comparisons and recommendations.

In addition to design criteria, supporting documentation and technical analyses, the Design Report will also include the following:

- (a) Update of Mobilization and Site Access Plan, incorporating 60% DCD;
- (b) Plan to coordinate with all Related Projects;
- (c) A description of regulatory conditions that apply to the proposed design, including Applicable Law and Governmental Approvals, and associated agency review durations, constraints or fees; and
- (d) Utility requirements, and the Project Company's plan for coordinating with all public agencies and utilities with jurisdiction over any of the Project Implementation Work.

A draft 60% Design Report shall be reviewed by the KRRC and the KRRC's comments shall be addressed by the Project Company.

The Project Company shall prepare a final 60% Design Report incorporating KRRC comments on the draft Design Report. The report will include updated analyses, as well as table of contents, executive summary, facilities descriptions, and recommended Project chapters.

2.8.6 60 Percent Design Drawings.

The 60% DCD will incorporate the recommended elements from design refinement into the 60% design drawings. The 60% drawing set will generally include drawings described below.

- (a) **General Drawings:** Cover sheet, abbreviations and symbols, key plan, list of drawings, Project key plan, drawing symbology, numbering and tagging conventions, symbols, and abbreviations, design criteria (90% complete), equipment schedule, valve and gate schedules, and boundary survey.
- (b) **Civil Drawings:** Project Site grading and paving plan, Project Site new access road plan and sections.

- (c) **Structural Drawings:** Structural improvements plan, general notes, standard concrete details and standard reinforcing details.
- (d) **Mechanical Drawings:** Mechanical improvements plan, symbols and legends.
- (e) **Electrical Drawings:** Electrical symbols and legends, one-line diagram, Project Site electrical plan, lighting and power plan, and load schedules.
- (f) **Restoration Drawings:** Project site ground preparation, planting, landscaping, irrigation and any associated details.
- (g) **Security Drawings:** Project Site plan, equipment schedules.

2.8.7 60 Percent Design Specifications.

The Project Company shall prepare technical Specifications in the Construction Specification Institute (CSI) Spec-Text format, and the list of required shop drawings, in final electronic form for printing, copying, and binding. Specifications shall reflect only the scope of work for the current Project. Standard specifications shall be modified to exclude items not applicable to the current Project.

The Project Company shall prepare a complete and coordinated set of construction specifications for all engineering disciplines with an adequate level of detail to allow for construction. The construction specifications shall provide information customarily necessary in documents for projects of similar size, complexity, and quality. The construction specifications shall include all information required by the trades to complete construction of the Project, and shall comply with all design criteria documented in the 60% DCD and the Project Agreement.

Specifications shall be prepared using the most current version of the Microsoft Word for Windows word processor. If the Project Company standard specifications are in a format other than Microsoft Word, they must first be converted to Microsoft Word format, thoroughly checked to ensure that a complete conversion was accomplished (including all tables, charts, headers, footers, etc.), then edited for this Project as appropriate within Microsoft Word. The text shall be 11-point Arial font. An electronic file name for each specification section shall include a descriptive name preceding a 5-digit specification section number followed by the Microsoft Word file extension (e.g., PROJECT 11500.doc).

Two-sided documents are required in an effort to conserve paper. The following layout is to be used for all Specification sections:

- (a) Header:
 - (i) 1st Page: Section Number: Centered at the top, all caps, first page only.
 - (ii) Section Title: Centered at the top, all caps, first page only.
 - (iii) 2nd Page: None
- (b) Footer Information: (Reverse footer for even numbered pages)
- (c) Articles: ALL CAPS
- (d) Paragraphs: Full justification

- (e) Font: Arial 11
- (f) Margins: Top, Bottom, Left and Right = 1.0"; Gutter and Header = .5", Footer = .35"
- (g) Paragraph Spacing: 12 pts before, 0 pts after
- (h) Line Spacing: Single

The Specifications shall use certain conventions for the style of language and the intended meaning of certain terms, words, and phrases when used in particular situations. These conventions are as follows:

- (a) Abbreviated Language: Language used in the Specifications is abbreviated. Words and meanings shall be interpreted as appropriate. Words implied, but not stated, shall be inferred as the sense requires. Singular words shall be interpreted as plural and plural words shall be interpreted as singular where applicable as the context of the Specifications indicates.
- (b) Imperative mood and streamlined language shall generally be used in the Specifications. Requirements expressed in the imperative mood are to be performed by the Design/Builder. Occasionally, the indicative or subjunctive mood may be used in the section text for clarity to describe responsibilities that must be fulfilled indirectly by the Design/Builder when so noted.
- (c) The words "shall", "shall be", or "shall comply with", depending on the context, are implied where a colon (:) is used within a sentence or phrase.

2.8.8 Updated Project Cost Model and Estimate.

The Project Company shall update its Initial Cost Model (or 30% DCD Cost Model) to reflect the 60% DCD. The updated Project 60% DCD cost model shall include estimated costs for all Project Company services, equipment and materials and other fees that may be incurred by the Project including appropriate contingencies due to uncertainties regarding cost estimates, site conditions and other factors. The updated cost model shall be broken down into logical cost categories such as remaining design services, engineering services during the Project Implementation Work, self-performed work, procured Subcontractor work, major equipment purchases, major material purchases and other categories with appropriate supporting documentation that will assist the KRRC in its evaluation of the Project cost model.

2.8.9 Subcontracting Plan.

The Project Company shall prepare a draft Subcontracting Plan which identifies the type of work or trades that will be required to complete the Project by the Scheduled Milestone Substantial Completion Date, describes the methods the Project Company will utilize to engage local subconsultants and subcontractors, describes the methods the Project Company will utilize to engage with subconsultants and subcontractors classified as SLTBE Firms, and provides a line item breakdown of the estimated costs of each subcontracting package.

2.8.10 Updated Project Implementation Schedule.

The Project Company shall update its Project Implementation Schedule presented in the 30% DCD. The updated Project Implementation Schedule shall indicate key milestone dates for work completion from the final 60% DCD through Project Final Completion. The updated

Project Implementation Schedule shall provide for adequate periods for KRRC design reviews through 100% completion and for the Project Company to make revisions and obtain written notification to proceed from the KRRC before proceeding with the next work phase.

The updated Project Implementation Schedule shall be accompanied by a memo or report that explains significant changes from the 30% DCD for key activities and Project milestones. Upon the KRRC's written approval, the updated Project Implementation Schedule shall be the schedule intended to be included as the "Initial Project Implementation Schedule" to be set forth as Attachment 5A to Appendix 5 (General Project Implementation Work Requirements) of this Project Agreement. In addition, each Scheduled Milestone Substantial Completion Date specified in the Project Implementation Schedule shall be the date intended to be included in Section 1.1 (Definitions) of this Project Agreement.

2.8.11 60 Percent Design Submittal Workshop.

A 60% design workshop will be conducted after the KRRC reviews the 60% DCD. This workshop will be used to finalize the design comments. A log of review comments will be maintained to assure all design comments are addressed and incorporated, if appropriate.

2.8.12 Deliverables and KRRC Review.

The KRRC shall review the 60% DCD and provide the Project Company with written review comments. The Project Company shall allow for a minimum three-week review duration for this deliverable by the KRRC, which may be modified by the KRRC at their discretion. The Project Company shall make such revisions as required in order to address the KRRC's comments. The KRRC shall indicate to the Project Company in writing after the KRRC has determined that revisions made by the Project Company are acceptable.

The Project Company shall anticipate a review of the final 60% DCD by FERC and DSOD. The Project Company shall anticipate a 4-week review duration from FERC/BOC/DSOD for this submittal. Comments shall be incorporated into the GMP Project Submittal.

Deliverables:

- Draft and final 60% DCD (including design report, drawings, specifications, cost model/estimate, and implementation schedule)
- Draft and final Subcontracting Plan
- Workshop Meeting agenda, notes, action items and review comments log

2.8.13 Inclusion as the Project Design Requirements.

Upon the KRRC's written notification that all of the KRRC's comments, if any, have been satisfactorily addressed by the Project Company, the completed 60% DCD shall be included as the Project Design Requirements in Appendix 4 (Project Technical Requirements).

2.9. PRELIMINARY SERVICES TASK #8 - GMP PROJECT SUBMITTAL AND SUPPORTING COST ESTIMATES

2.9.1 GMP Project Submittal.

After the Project Company has received the KRRC's written notification to proceed on Task #8, the Project Company shall provide the KRRC, on the date identified in the Preliminary Services Schedule, a GMP Project Submittal, which shall be prepared in accordance with the Contract Standards and meet the requirements set forth in Section 5.8 (GMP Project Submittal) of this Project Agreement.

The GMP Project Submittal shall incorporate all of the work performed as part of Preliminary Services Task #8, set forth the proposed Base Guaranteed Maximum Price for the Project Implementation Work (including all services required for implementation of the Project through Project Final Completion), and provide information on all engineering, procurement, materials, field labor and equipment and other services necessary to perform the Project Implementation Work as required under the Project Agreement. As part of its GMP Project Submittal, the Project Company shall submit a final Subcontracting Plan and a final Project Implementation Schedule that meets the requirements set forth in Section 5.3 (Project Implementation Schedule) of Appendix 5 (General Project Implementation Work Requirements).

Quality management will be achieved through quality control reviews and Independent Technical Reviews (ITR) consisting of an independent internal engineering team. The ITR team will be engaged at key project milestones to provide input and review of criteria, design concepts, detailed design and construction approach. ITRs are budgeted and will be scheduled into the project.

2.9.2 Basis of the Proposed Base Guaranteed Maximum Price.

The Project Company will prepare and include in the GMP Project Submittal documentation supporting the proposed Base Guaranteed Maximum Price, including Subcontractor and equipment vendor bids and quotations, detailed cost estimating data, allowances (where appropriate), breakdown of general conditions, and definition of the Project Company's contingency included in the Base Guaranteed Maximum Price. Such documentation will include the following information:

- (a) Engineering services, including:
 - (1) Engineering design from 90% to 100%
 - (2) Engineering design – value engineering services
 - (3) Engineering construction, demolition and restoration support
 - (4) Engineering procurement of major equipment and structures
 - (5) Documentation
- (b) Project Implementation Work and costs for:
 - (1) Services during engineering design from 60% to 100%
 - (2) Project Implementation Work support for value engineering

- (3) General conditions
- (4) Site work, transportation improvements (road, bridge, and culverts), downstream flood control improvements, recreation improvements, hatchery improvements, water system improvements and traffic control
- (5) Construction of drawdown gates and other ancillary improvements
- (6) Demolition debris removal and disposal
- (7) Performance and payment bonds
- (8) Contingency
- (c) Labor, expenses, rental, overhead and mark-up costs, including:
 - (1) Billing rates for all proposed classifications of engineering and construction, demolition and restoration services labor and related expense rates such as mileage charges, per diem for meals and lodging, office charges and personnel vehicle rentals;
 - (2) Unburdened rental rates on construction, demolition and restoration equipment, trailers, storage containers or space and major tools;
 - (3) Direct overhead on labor (benefits), indirect overhead on labor (general and administration or G&A), and profit rate on fully cost burdened labor rates;
 - (4) Proposed overhead mark-up rates and profit rates on expenses, materials, equipment rentals, Subcontractors, equipment supplied by vendors and consumables (supplies);
 - (5) The same cost and pricing information as requested in paragraphs 3 (a), (b) and (c) above for major Subcontractors; and
 - (6) Demonstration that there are no significant tiered pricing mark-ups so that major Subcontractors' overhead and profit mark-ups are not duplicated to similar Project Company mark-ups.
- (d) Project Company shall also provide the following information:
 - (1) For engineering field services during Project Implementation Work, labor costs and expenses for a Project Implementation Work manager or resident engineer for overseeing Project Implementation Work and related services;
 - (2) For engineering support during Project Implementation Work for review of Project Implementation Work Requests for Information ("RFIs"), submittals and proposed design or Project Implementation Work changes and costs, labor costs and expenses;
 - (3) All Base Guaranteed Maximum Price pricing assumptions and clarifications on terms and conditions used;

- (4) All self-performed Project Implementation Work services;
- (5) A breakdown of the Project Company Contingency, how it was determined and expected adequacy to cover costs not able to be determined accurately at the time of preparation of the GMP Project Submittal;
- (6) A list of work activities, expenses and fees not included in the GMP which the KRRC may be expected to pay for;
- (7) Key assumptions in the 60% DCD Work Schedule upon which the Base Guaranteed Maximum Price is based including dates for each Milestone Substantial Completion and Project Final Completion; and
- (8) Any other key assumptions, qualifications or conditions upon which the Base Guaranteed Maximum Price is based not covered in the preceding items in this Section.

2.9.3 Preparation of the GMP Project Submittal.

The Project Company will start the development of the GMP Project Submittal at the commencement of the Project during the kickoff partnering workshop to establish dialogue from early concept development through the 60 percent design. During the design phase, the Project Company will maintain ongoing communication with the KRRC to assess and analyze concept and design changes as they relate to the overall Project cost and schedule.

The Project Company shall utilize an “open book” approach to develop the GMP Project Submittal, providing the KRRC with full access to all the details that make up the final GMP Project Submittal.

Meetings will be held throughout the design and development of the GMP Project Submittal with the KRRC to assure the Preliminary Services work is completed in a transparent manner.

The Project will not have 100% complete plans and specifications at the time the final Base Guaranteed Maximum Price is agreed upon. Therefore, in order to get a more complete estimate of the scope, the Project Company will prepare “design gap analysis narratives” for all Project Implementation Work items to provide the Project Company’s estimators and the KRRC a clearer picture of what is included in the final GMP Project Submittal package.

During development of the GMP Project Submittal, the Project Company will perform value analysis and constructability reviews with design and Project Implementation Work team members as the plans are being prepared. The Project Company will also conduct “bid-ability” reviews with the Project Company’s estimators.

All of these efforts are designed to prepare the documents and estimates as accurately as possible and to keep the KRRC fully informed and involved with the design and cost throughout the development of the GMP Project Submittal.

The KRRC shall review the GMP Project Submittal and provide the Project Company with written review comments. The Project Company shall allow for a minimum three-week review duration for this deliverable by the KRRC, which may be modified by the KRRC at their discretion. The Project Company shall make such revisions as required in order to address the KRRC’s comments. The KRRC shall indicate to the Project Company in writing after the KRRC has determined that revisions made by the Project Company are acceptable.

Deliverables:

- Draft and final GMP Project Submittal

2.10. PRELIMINARY SERVICES TASK #9 – 90 PERCENT DESIGN COMPLETION DOCUMENTS (DCD)

General Design Approach:

The project will be sub-divided into design packages considering project scope, discipline and design teams. The following design packages are anticipated.

- (a) Gate Procurement Package
- (b) Intake/Outlet Works/Diversion Tunnel Modifications
- (c) Roads, Bridges & Culverts (post-drawdown transportation improvements will move directly into detailed design, while construction access improvements will be assessed by the Project Company at a feasibility level to confirm approach and solution)
- (d) Downstream Flood Improvements
- (e) Recreation
- (f) Restoration
- (g) Dam Site Packages (JC Boyle, Copco No. 1 & 2, Iron Gate): 4 packages anticipated to address pre-drawdown modifications, drawdown sequencing, dam removal, facilities decommissioning, disposal areas and erosion protection and sediment control.

No scope or budget is included for reservoir rim engineered solutions at the 90% level. Should design for this be required, additional scope and budget will be negotiated and allocated via amendment.

No detailed design scope or budget is provided for construction access improvements, as generally defined in Table 2.7-1. Should it be determined, based on the feasibility study being completed under Task #6, that additional improvements are required, additional negotiated design budgets will be allocated via amendment.

2.10.1 Period of Performance.

After the Project Company receives the KRRC's written notice to proceed on Task #9, the Project Company shall proceed with the performance of services required to achieve 90% Design Completion. The Project Company shall submit the Deliverable Material required by the 90% DCD to the KRRC on the date identified in the Preliminary Services Schedule.

2.10.2 Minimum Requirements.

The 90% DCD shall consist of CAD generated drawings and specifications covering general civil and site work improvements (including design criteria), geotechnical, soils and drainage, structural, mechanical, and landscaping. The 90% DCD shall include layouts and schematics drawn to scale, design criteria and notes showing the proposed design of all Project Implementation Work. The 90% DCD shall include all major elements of the Project design proposed for the Project Implementation Work and shall comply with any proposed modifications included in the final GMP Submittal Package.

The 90% DCD shall include but is not limited to the following (where applicable):

- (a) Design Report
 - (i) Design criteria update;
 - (ii) Project-specific analyses of Applicable Law and Governmental Approvals;
 - (iii) Design considerations reasonably necessary in connection with the Project Company's obligations under Section 15.3 (Coordination with the KRRC in Satisfaction of the KHSR Liability Protection Requirements) of this Project Agreement;
 - (iv) Supporting technical analyses and baseline data to support the proposed design;
 - (v) Engineering calculations for all disciplines; and
 - (vi) Project Implementation Work phasing recommendations.
- (b) Design Drawings
 - (i) Index of Drawings, general legend, abbreviations;
 - (ii) Cover Sheet, Location Map and Vicinity Map; and
 - (iii) Design drawings.
- (c) Specifications:
 - (i) A Project specifications document including general requirements, site work and materials, describing the size, character and quality of the entire Project in its essentials as to kinds and locations of materials; equipment selections; and types of structural, mechanical and electrical systems.
- (d) Project Cost Model
- (e) Project Implementation Schedule
- (f) Quality management will be achieved through quality control reviews and Independent Technical Reviews (ITR) consisting of an independent internal engineering team. The ITR team will be engaged at key project milestones to provide input and review of criteria, design concepts, detailed design and construction approach. ITRs are budgeted and will be scheduled into the project.

2.10.3 Criteria.

The 90% DCD shall incorporate the final 60% DCD and shall include, in addition to drawings and specifications set forth in this Section such additional information as needed to describe the Project. The 90% DCD shall indicate the basis for design choices, as well as an explanation of how the design incorporates the KRRC's BDR objectives. The 90% DCD shall indicate any new alternative designs, approaches, technologies, equipment or processes that the Project

Company recommends be considered by the KRRC, if not included in the final GMP Submittal Package.

2.10.4 Design Refinement.

2.10.4.1 Design Refinement. The Project Company shall be responsible for developing and refining the Project design in close coordination with the KRRC. The Project Company shall conduct all evaluations, calculations, cost estimating, scheduling, workshops, and other services as needed to advance the Project design to the 90% DCD.

2.10.4.2 Workshops. The Project Company shall conduct workshops addressing the following topics with the KRRC to review the design and alternatives and develop a recommended approach. Each workshop shall include a weighted decision process to compare alternatives on the basis of established evaluation criteria.

- (a) Permitting design considerations and anticipated agency reviews
- (b) Update on design, schedule and procurement associated with tunnel and gate design components - potential for Early Work Packages
- (c) Proposed modifications to Project components (post GMP Submittal Package)
- (d) Any permitting issues or updates associated with any proposed modifications
- (e) Coordination and connection to existing site utilities
- (f) Electrical supply and distribution (including emergency power)
- (g) Interface with Related Projects
- (h) Update on Mobilization and Site Access Plan; Discussion of site security including design guidelines, physical security facilities, electronic security features, and cyber security

The following information shall be prepared by Project Company for each workshop and shall be submitted a minimum of one week prior to each workshop:

- (a) Summary of Project activities associated with Workshop topic
- (b) General layout drawings, as appropriate
- (c) Cost estimates for alternatives, as appropriate
- (d) Proposed changes to the Project Implementation Schedule, as appropriate

2.10.5 90 Percent Design Report.

The Project Company shall prepare and submit to the KRRC a 90% Design Report which will include the Project Company's evaluation findings and specific recommended design for the Project. The Design Report will explain how the proposed design will meet the KRRC's requirements for the Project and comply with all legal and regulatory requirements. The Design Report will include information on alternatives considered and evaluated and information on the rationale or method by which the recommended design was selected. Information considered in the evaluation of alternatives and selection of a recommended design

shall include but not be limited to: estimated capital costs; schedule; compliance with regulatory requirements; public safety; and compatibility with CEQA and KRRC environmental objectives and requirements.

The Design Report will include information on major equipment and vendors proposed and alternatives evaluated. Comparisons on equipment and vendors will include technical and performance characteristics, reliability, warranties, and operational experience. The Design Report will include supporting documentation such as calculations, schematics, and drawings to support the comparisons and recommendations.

In addition to design criteria, supporting documentation and technical analyses, the Design Report will also include the following:

- (a) Update of Mobilization and Site Access Plan, incorporating 90% DCD;
- (b) Plan to coordinate with all Related Projects;
- (c) A description of regulatory conditions that apply to the proposed design, including Applicable Law and Governmental Approvals, and associated agency review durations, constraints or fees including any modifications to previously issued Governmental Approvals; and
- (d) Utility requirements, and the Project Company's plan for coordinating with all public agencies and utilities with jurisdiction over any of the Project Implementation Work.

A draft 90% Design Report shall be reviewed by the KRRC and the KRRC's comments shall be addressed by the Project Company.

The Project Company shall prepare a final 90% Design Report incorporating KRRC comments on the draft Design Report. The report will include updated analyses, as well as table of contents, executive summary, facilities descriptions, and recommended Project chapters.

2.10.6 90 Percent Design Drawings.

The 90% DCD will incorporate the recommended elements from design refinement into the 90% design drawings. The 90% drawing set will generally include drawings described below.

- (a) **General Drawings:** Cover sheet, abbreviations and symbols, key plan, list of drawings, Project key plan, drawing symbology, numbering and tagging conventions, symbols, and abbreviations, design criteria (90% complete), equipment schedule, valve and gate schedules, and boundary survey.
- (b) **Civil Drawings:** Project Site grading and paving plan, Project Site new access road plan and sections.
- (c) **Structural Drawings:** Structural improvements plan, general notes, standard concrete details and standard reinforcing details.
- (d) **Mechanical Drawings:** Mechanical improvements plan, symbols and legends.
- (e) **Electrical Drawings:** Electrical symbols and legends, one-line diagram, Project Site electrical plan, lighting and power plan, and load schedules.

- (f) **Restoration Drawings:** Project site ground preparation, planting, landscaping, irrigation and any associated details.
- (g) **Security Drawings:** Project Site plan, equipment schedules.

2.10.7 90 Percent Design Specifications.

The Project Company shall prepare technical Specifications in the Construction Specification Institute (CSI) Spec-Text format, and the list of required shop drawings, in final electronic form for printing, copying, and binding. Specifications shall reflect only the scope of work for the current Project. Standard specifications shall be modified to exclude items not applicable to the current Project.

The Project Company shall prepare a complete and coordinated set of construction specifications for all engineering disciplines with an adequate level of detail to allow for construction. The construction specifications shall provide information customarily necessary in documents for projects of similar size, complexity, and quality. The construction specifications shall include all information required by the trades to complete construction of the Project, and shall comply with all design criteria documented in the 90% DCD and the Project Agreement.

Specifications shall be prepared using the most current version of the Microsoft Word for Windows word processor. If the Project Company standard specifications are in a format other than Microsoft Word, they must first be converted to Microsoft Word format, thoroughly checked to ensure that a complete conversion was accomplished (including all tables, charts, headers, footers, etc.), then edited for this Project as appropriate within Microsoft Word. The text shall be 11-point Arial font. An electronic file name for each specification section shall include a descriptive name preceding a 5-digit specification section number followed by the Microsoft Word file extension (e.g., PROJECT 11500.doc).

Two-sided documents are required in an effort to conserve paper. The following layout is to be used for all Specification sections:

- (a) Header:
 - (i) 1st Page: Section Number: Centered at the top, all caps, first page only.
 - (ii) Section Title: Centered at the top, all caps, first page only.
 - (iii) 2nd Page: None
- (b) Footer Information: (Reverse footer for even numbered pages)
- (c) Articles: ALL CAPS
- (d) Paragraphs: Full justification
- (e) Font: Arial 11
- (f) Margins: Top, Bottom, Left and Right = 1.0"; Gutter and Header = .5", Footer = .35"
- (g) Paragraph Spacing: 12 pts before, 0 pts after

(h) Line Spacing: Single

The Specifications shall use certain conventions for the style of language and the intended meaning of certain terms, words, and phrases when used in particular situations. These conventions are as follows:

- (i) Abbreviated Language: Language used in the Specifications is abbreviated. Words and meanings shall be interpreted as appropriate. Words implied, but not stated, shall be inferred as the sense requires. Singular words shall be interpreted as plural and plural words shall be interpreted as singular where applicable as the context of the Specifications indicates.
- (j) Imperative mood and streamlined language shall generally be used in the Specifications. Requirements expressed in the imperative mood are to be performed by the Design/Builder. Occasionally, the indicative or subjunctive mood may be used in the section text for clarity to describe responsibilities that must be fulfilled indirectly by the Design/Builder when so noted.
- (k) The words “shall”, “shall be”, or “shall comply with”, depending on the context, are implied where a colon (:) is used within a sentence or phrase.

2.10.8 Updated Project Cost Model and Estimate.

The Project Company shall update its GMP Submittal Package Cost Model to reflect the 90% DCD. The updated Project 90% DCD cost model shall include estimated costs for all Project Company services, equipment and materials and other fees that may be incurred by the Project including appropriate contingencies due to uncertainties regarding cost estimates, site conditions and other factors. The updated cost model shall be broken down into logical cost categories such as remaining design services, engineering services during the Project Implementation Work, self-performed work, procured Subcontractor work, major equipment purchases, major material purchases and other categories with appropriate supporting documentation that will assist the KRRC in its evaluation of the Project cost model.

2.10.9 Subcontracting Plan.

The Project Company shall prepare a draft Subcontracting Plan which identifies the type of work or trades that will be required to complete the Project by each Scheduled Milestone Substantial Completion Date, describes the methods the Project Company will utilize to engage local subconsultants and subcontractors, describes the methods the Project Company will utilize to engage with subconsultants and subcontractors classified as SLTBE Firms, and provides a line item breakdown of the estimated costs of each subcontracting package.

2.10.10 Updated Project Implementation Schedule.

The Project Company shall update its Project Implementation Schedule presented in the final GMP Submittal Package. The updated Project Implementation Schedule shall indicate key milestone dates for work completion from the final 90% DCD through Project Final Completion. The updated Project Implementation Schedule shall provide for adequate periods for KRRC design reviews through 100% completion and for the Project Company to make revisions and obtain written notification to proceed from the KRRC before proceeding with the next work phase.

The updated Project Implementation Schedule shall be accompanied by a memo or report that explains significant changes from the GMP Submittal Package for key activities and Project

milestones. Upon the KRRC's written approval, the updated Project Implementation Schedule shall be the schedule intended to be included as the "Initial Project Implementation Schedule" to be set forth as Attachment 5A to Appendix 5 (General Project Implementation Work Requirements) of this Project Agreement. In addition, each Scheduled Milestone Substantial Completion Date specified in the Project Implementation Schedule shall be the dates intended to be included in Section 1.1 (Definitions) of this Project Agreement.

2.10.11 90 Percent Design Submittal Workshop.

A 90% design workshop will be conducted after the KRRC reviews the 90% DCD. This workshop will be used to finalize the design comments. A log of review comments will be maintained to assure all design comments are addressed and incorporated, if appropriate.

2.10.12 Deliverables and KRRC Review.

The KRRC shall review the 90% DCD and provide the Project Company with written review comments. The Project Company shall allow for a minimum two-week review duration for this deliverable by the KRRC, which may be modified by the KRRC at their discretion. The Project Company shall make such revisions as required in order to address the KRRC's comments. The KRRC shall indicate to the Project Company in writing after the KRRC has determined that revisions made by the Project Company are acceptable.

Deliverables:

- Draft and final 90% DCD (including design report, drawings, specifications, cost model/estimate, and implementation schedule)
- Draft and final Subcontracting Plan
- Workshop Meeting agenda, notes, action items and review comments log

2.10.13 Inclusion as the Project Design Requirements.

Upon the KRRC's written notification that all of the KRRC's comments, if any, have been satisfactorily addressed by the Project Company, the completed 90% DCD shall be included as the Project Design Requirements in Appendix 4 (Project Design Requirements).

2.11. POTENTIAL ADDITIONAL PRELIMINARY SERVICES

As provided in subsection 5.2(B) (Additional Preliminary Services) of this Project Agreement, the KRRC may request that the Project Company perform potential Additional Preliminary Services. In particular, such Additional Preliminary Services may include the following:

- Design or design review of City of Yreka water system improvements
- Additional permitting or related services that may be required between the GMP Contract Amendment Date and the Project Implementation Contract Amendment Date
- Design or design review of Fall Creek and Iron Gate hatchery improvements
- Implementation of aquatic resource measures and reporting
- Implementation of terrestrial resource measures and reporting
- Completion of water quality monitoring and reporting
- Cultural resources support
- Supporting review and analysis relating to KHSA Indemnity issues, only to the extent requested by the KRRC

2.12. PRELIMINARY SERVICES FEE

2.12.1 Compensation for Base Preliminary Services.

The KRRC shall pay the Project Company a Preliminary Services Fee on a time and materials basis, with an upset limit of \$[REDACTED]. The Preliminary Services Fee shall serve as the Project Company's entire compensation for all Base Preliminary Services performed as required under this Project 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.

The Project Company shall earn its Preliminary Services Fee progressively based upon the Project Company's percentage completion of the Base Preliminary Services as reasonably determined by the KRRC, based on the following upset limits for each task:

<u>Preliminary Services Task</u>	<u>Upset Limit</u>
Task #1: Project Management	\$[REDACTED]
Task #2: Project Site and Project Conditions Verification	\$[REDACTED]
Task #3: Permitting Support and Compliance Program	\$[REDACTED]
Task #4: Initial Cost Model and Implementation Schedule	\$[REDACTED]
Task #5: Design Criteria Report	\$[REDACTED]
Task #6: 30% Design Completion Documents	\$[REDACTED]
Task #7: 60% Design Completion Documents	\$[REDACTED]
Task #8: GMP Project Submittal and Supporting Cost Estimates	\$[REDACTED]
Task #9: 90% Design Completion Documents	\$[REDACTED]

2.12.2 Payment Requests.

The Project Company shall request monthly progress payments of the portion of the Preliminary Services Fee payable with respect to each Preliminary Services Task. Monthly payment requests shall be submitted within 30 days after the end of the month. All billings and requests for progress payments shall require a written invoice from the Project Company in a form acceptable to the KRRC. The Project Company shall submit all billings with any necessary invoices, time records, Preliminary Services Deliverable Material, and other appropriate evidence of performance, after which the KRRC shall make payment at the earliest practicable time, but not later than 30 days following receipt of a proper payment request.

If requested by the KRRC to facilitate the payment process and track progress of the Preliminary Services Tasks, the Project Company shall provide the KRRC with an itemization of its compensation according to a Work Breakdown Structure ("WBS") in a form the KRRC

supplies or approves (at the KRRC's option), that defines all Preliminary Services Tasks (Project Company's and Subcontractors'), along with a Preliminary Services Schedule providing the timeline for each Preliminary Services Task, a Project budget defining the planned man-hours and costs for each Preliminary Services Task, and a schedule of deliverables providing the timeline for all Preliminary Services Deliverable Material to be provided to the KRRC. The WBS shall further define which tasks are to be performed by Subcontractors. The WBS shall not relieve the Project Company of its performance, schedule or other obligations under this Project Agreement.

2.12.3 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 Project Company in accordance with subsection 9.1(B) (Compensation for Additional Preliminary Services) of this Project Agreement.

ATTACHMENT 2A

INITIAL PRELIMINARY SERVICES SCHEDULE

ATTACHMENT 2B

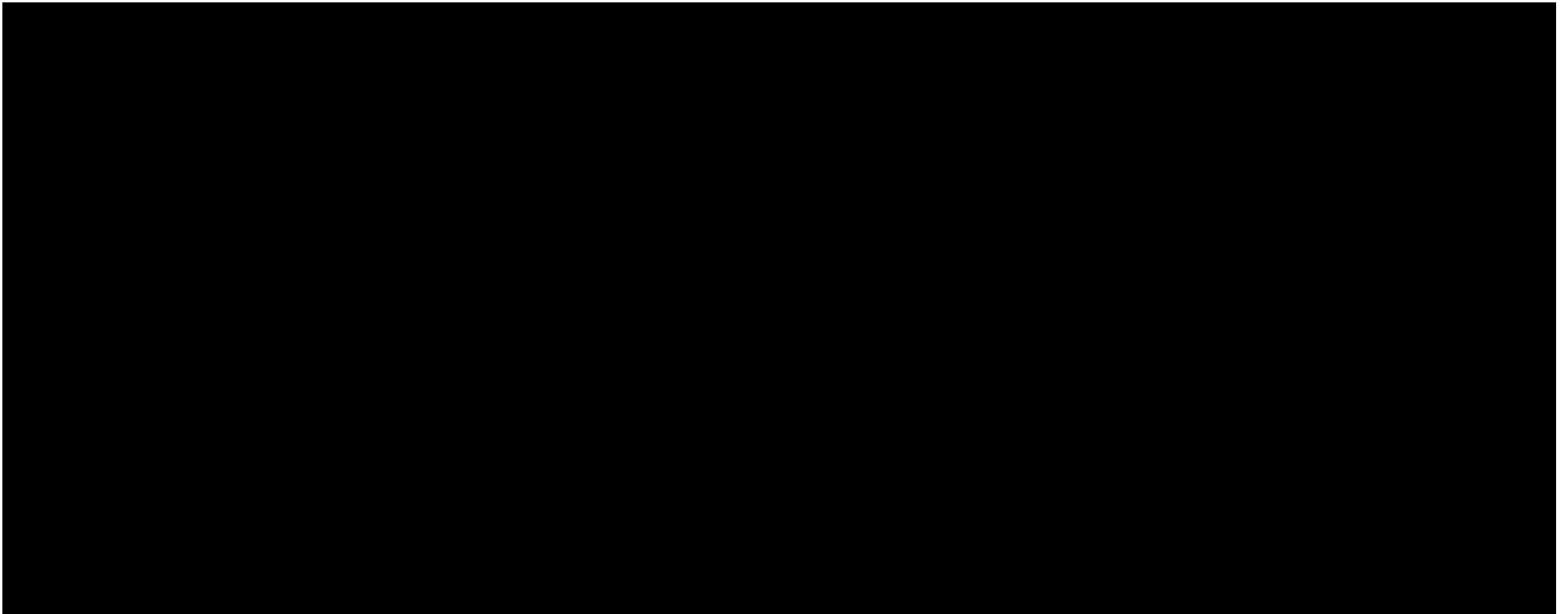
PRELIMINARY SERVICES PROJECT COMPANY SUBMITTALS

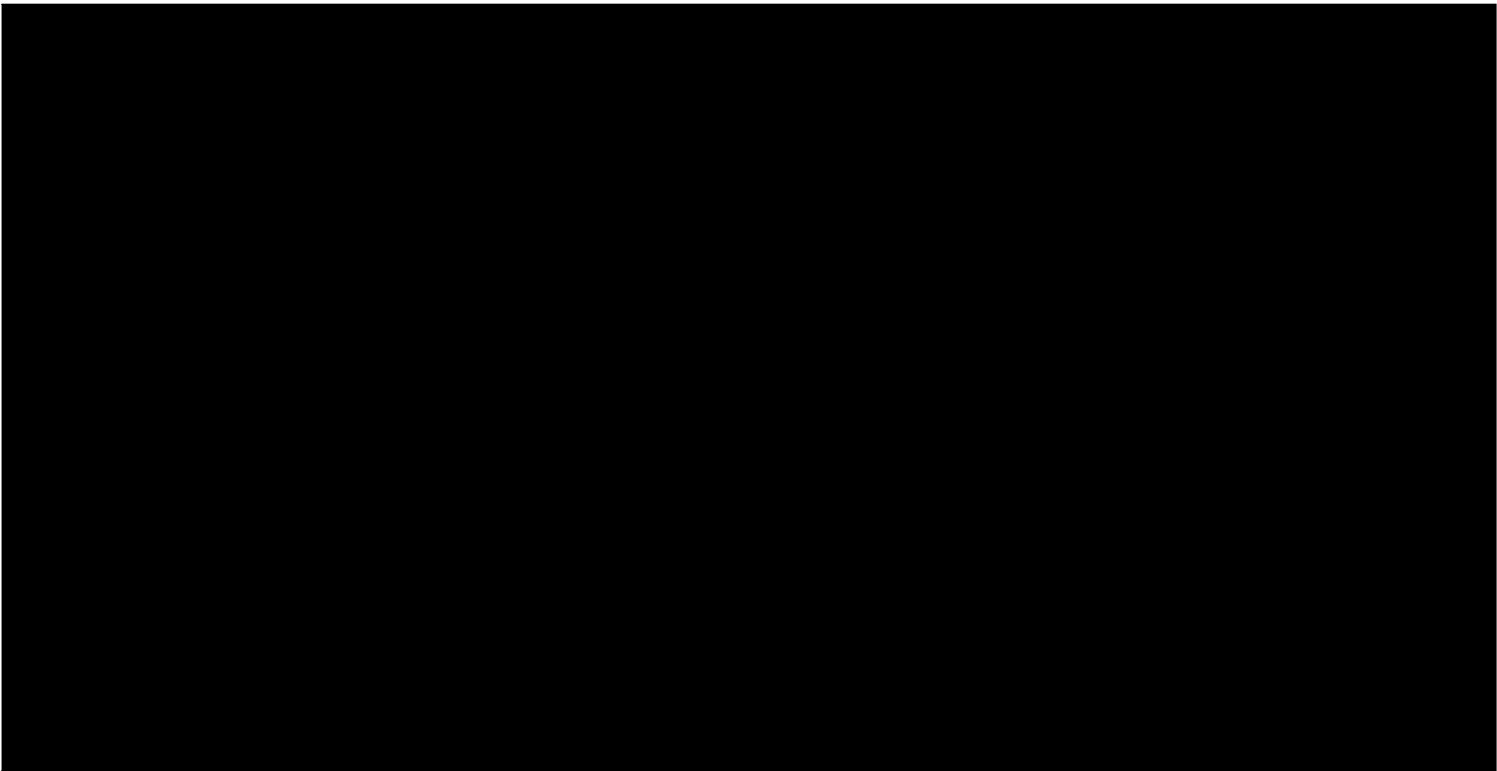
Task No.	Task Name	Required Submittals	BOC Review	Applicable Governmental Review Entity
1	Project Management			
		Monthly Progress Reports		
		Meeting Agendas and Notes		
		Technical Workshop Agendas and Notes		
		Mobilization and Site Access Plan		
		Site Trailers and Utilities Plan		
		Security Plan		
		Photographic Documentation Plan		
		Related Projects Coordination Protocol		
		Maintenance of Facilities Operations Plan		
		Emergency Operations and Response Plan		
		Health and Safety Plan	Yes	FERC
		Project Execution Plan		
		Project 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		
		Project Implementation 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	Project Site and Project Conditions Verification			
		Existing Conditions Work Plan(s)		
		Existing Conditions Assessment Report		
		Geotechnical Investigation and Laboratory Testing Plan	Yes	FERC/DSOD
		Geotechnical Drilling Site Access Plan		
		Geotechnical Data Report	Yes	FERC/DSOD
		Rim Stability and Mitigation Memo		
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-managed Governmental Approvals		
4	Initial Cost Model and Schedule			
		Initial Cost Model and Estimate	Yes	FERC
		Initial Implementation Schedule	Yes	FERC

5	Design Criteria Report			
		Design Criteria Report	Yes	FERC/DSOD
		Review Meeting Agenda and Notes		
6	30% Design Completion Documents			
		Proof of Concept Assessment		
		Construction Access Feasibility Assessment		
		Seed Collection and Propagation Plan		
		Invasive and Exotic Vegetation Removal Plan		
		30% Design Drawings and Design Report		
		Cost Estimate		
		Project Implementation Schedule		
		30% Design Workshop Agenda and Meeting Notes		
7	60% Design Completion Documents			
		60% Design Drawings, Design Report and Specifications	Yes	FERC/DSOD
		Cost Estimate	Yes	FERC
		Project Implementation Schedule	Yes	FERC/DSOD
		Subcontracting Plan		
		60% Design Workshop Agenda and Meeting Notes		
8	GMP Project Submittal and Supporting Cost Estimates			
		GMP Project Submittal	Yes	FERC
		GMP Submittal Workshop Agenda and Meeting Notes		
9	90% Design Completion Documents			
		90% Design Drawings, Design Report and Specifications	Yes	FERC/DSOD
		Cost Estimate	Yes	FERC
		Project Implementation Schedule	Yes	FERC/DSOD
		90% Design Workshop Agenda and Meeting Notes		

ATTACHMENT 2C

COMPENSATION FOR PRELIMINARY SERVICES





the 'information' and 'communication' fields. The 'information' field is defined as:

...the study of the processes of information production, distribution, access, use and evaluation, and the study of the social, cultural, economic and political contexts in which these processes take place. (p. 10)

The 'communication' field is defined as:

...the study of the processes of communication production, distribution, access, use and evaluation, and the study of the social, cultural, economic and political contexts in which these processes take place. (p. 10)

The 'information science' field is defined as:

...the study of the processes of information production, distribution, access, use and evaluation, and the study of the social, cultural, economic and political contexts in which these processes take place. (p. 10)

The 'information studies' field is defined as:

...the study of the processes of information production, distribution, access, use and evaluation, and the study of the social, cultural, economic and political contexts in which these processes take place. (p. 10)

The 'information science' field is defined as:

...the study of the processes of information production, distribution, access, use and evaluation, and the study of the social, cultural, economic and political contexts in which these processes take place. (p. 10)

The 'information science' field is defined as:

...the study of the processes of information production, distribution, access, use and evaluation, and the study of the social, cultural, economic and political contexts in which these processes take place. (p. 10)

The 'information science' field is defined as:

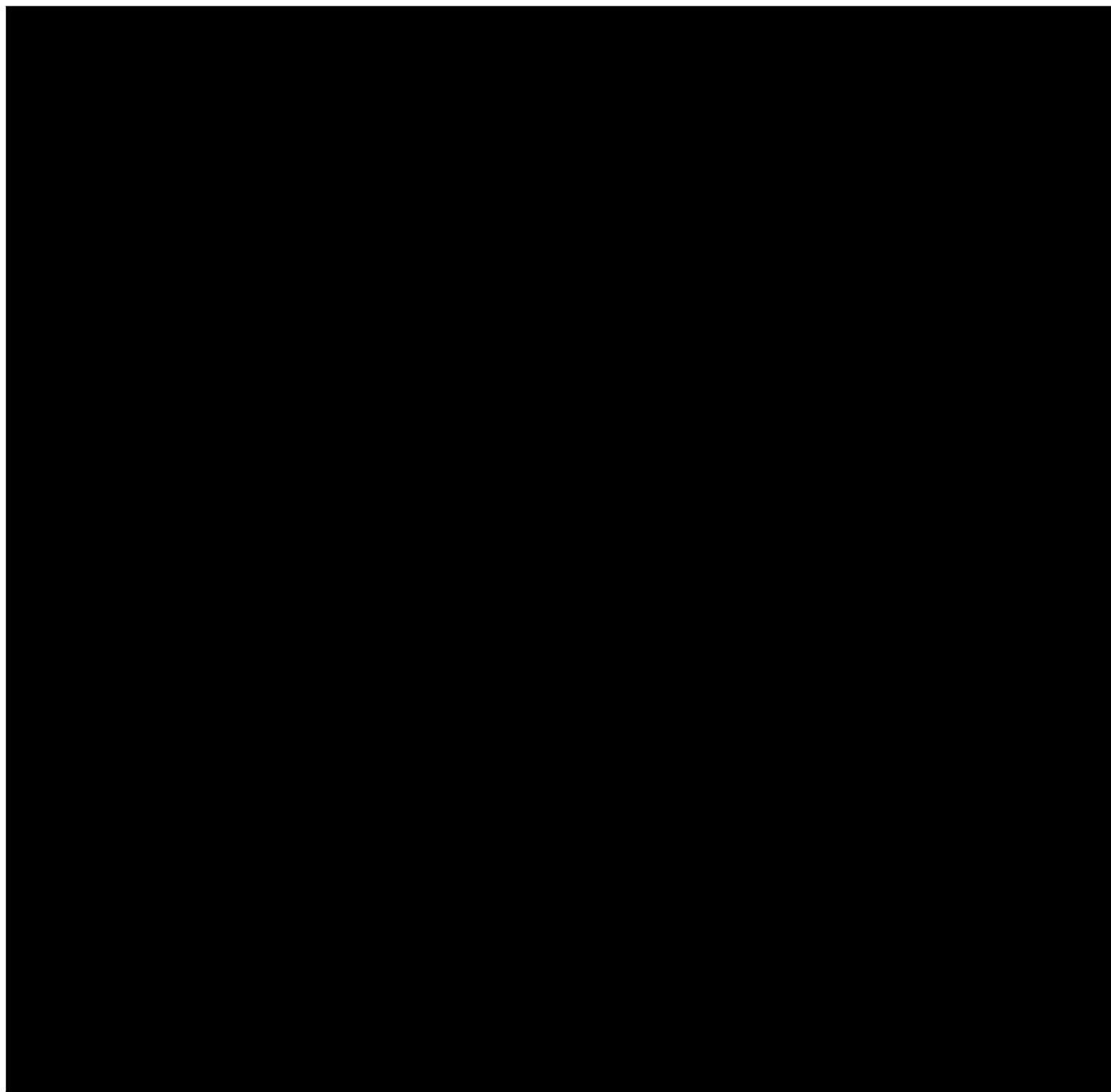
...the study of the processes of information production, distribution, access, use and evaluation, and the study of the social, cultural, economic and political contexts in which these processes take place. (p. 10)

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...the study of the processes of information production, distribution, access, use and evaluation, and the study of the social, cultural, economic and political contexts in which these processes take place. (p. 10)



ATTACHMENT 2D

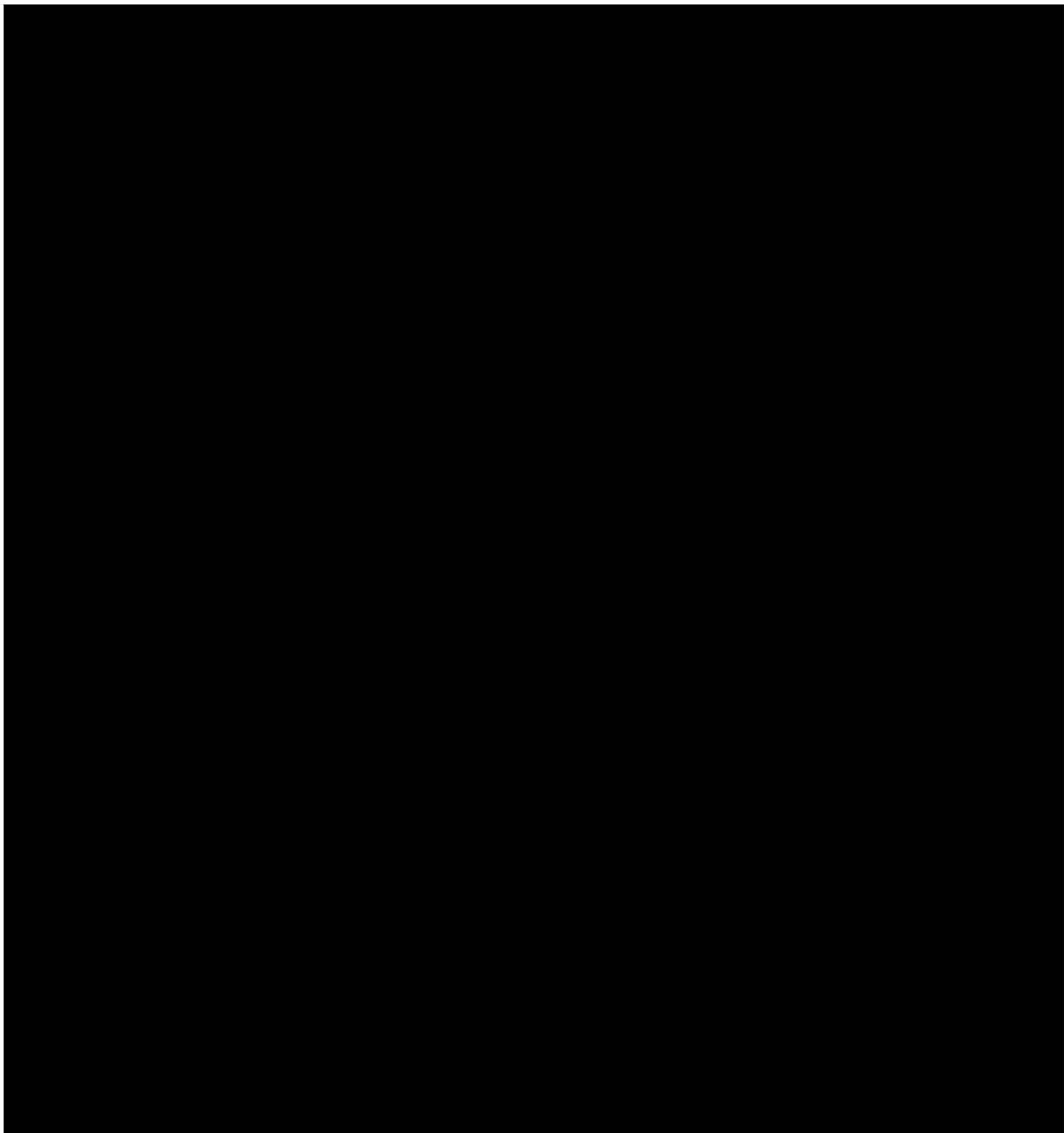
SCHEDULE OF FEES AND CHARGES

The first part of the paper discusses the importance of the research and the objectives of the study. It then presents a literature review of the existing research on the topic. The methodology section describes the research design and the data collection process. The results section presents the findings of the study, and the conclusion section summarizes the main findings and provides recommendations for future research.

The study was conducted in a laboratory setting. The participants were recruited from a local university and were assigned to two groups: the experimental group and the control group. The experimental group received the intervention, while the control group did not. The data was collected over a period of six weeks.

The results of the study show that the intervention had a significant positive effect on the outcome variable. The experimental group showed a significant improvement in the outcome variable compared to the control group. The findings suggest that the intervention is effective in improving the outcome variable.

The conclusion of the study is that the intervention is effective in improving the outcome variable. The findings suggest that the intervention is a promising approach for improving the outcome variable. Further research is needed to confirm the findings and to explore the long-term effects of the intervention.



APPENDIX 3
GOVERNMENTAL APPROVALS

APPENDIX 3

GOVERNMENTAL APPROVALS

3.1. 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 Contract Services. The Project Company shall obtain and maintain all Governmental Approvals required for the Project that are not identified as the responsibility of either party or are absent from the tables provided in this Section. If any additional Governmental Approvals are identified, the KRRC and the Project Company shall jointly determine which entity will be the application manager. In all cases, the Project Company will be responsible for compliance with any compliance requirements.

To the best knowledge of the parties, Table 3-1 and Table 3-2 of this Appendix represents the complete list of Governmental Approvals as of the Contract Date.

3.2. PROJECT COMPANY-MANAGED GOVERNMENTAL APPROVALS

The purpose of Table 3-1 is to indicate the Governmental Approvals for which the Project Company will be the application manager and to provide additional details on the responsibility of the Project Company and the KRRC with respect to supplying information and fee payment of such Governmental Approvals.

3.3. KRRC-MANAGED GOVERNMENTAL APPROVALS

The purpose of Table 3-2 is to indicate the Governmental Approvals for which the KRRC will be the application manager and to provide additional details on the responsibility of the Project Company and the KRRC with respect to supplying information and fee payment required to obtain such Governmental Approvals. After the KRRC-Managed Governmental Approvals are issued, the Governmental Approvals will become Compliance Documents, and the Project Company will be responsible for complying with all permit terms and conditions, unless otherwise stated herein.

[Note: Governmental Approvals listed in Tables 3-1 and 3-2 to be finalized on the GMP Contract Amendment Date based on the GMP Project Submittal. The last column of Tables 3-1 and 3-2, labeled “Expected Date of Issuance”, are to be finally determined on the Project Implementation Contract Amendment Date.]

Table 3-1
Project Company-Managed Governmental Approvals

Name of Governmental Approval	Issuing Agency	Permittee /Approval Holder	Application Manager	Information Supply Responsibility for Application	Fee Payment Responsibility	Expected Date of Issuance
Section 402 National Pollutant Discharge Elimination System (General Construction Permit)	Regional Water Quality Control Board (RWQCB) / ODEQ	Project Company	Project Company	Project Company: All materials and information required for permit application and Stormwater Pollution Prevention Plan (SWPPP) KRRC: None	Project Company	
Encroachment Permit	Oregon Department of Transportation (ODOT)	Project Company	Project Company	Project Company: Design drawings, limits of work, work activities and materials description. All materials and information required for permit application, notification, reporting, and subsequent information requests. KRRC: None	Project Company	
Over-Dimensional Permit	ODOT	Project Company	Project Company	Project Company: All materials and information required for permit application, reporting, and subsequent information requests. KRRC: None	Project Company	
Forestry Notification and Permit to Use Fire or Power-Driven Machinery (PDM)	Oregon Department of Forestry	Project Company	Project Company	Project Company: Clearing limits and acreage of forest to be cut. All materials and information required for permit application and subsequent information requests. KRRC: None	Project Company	
Asbestos/Lead/PCB/Other	ODEQ /Oregon Health	Project	Project	Project Company: All materials and information required for notification, reporting, and	Project	

Table 3-1
Project Company-Managed Governmental Approvals

Name of Governmental Approval	Issuing Agency	Permittee /Approval Holder	Application Manager	Information Supply Responsibility for Application	Fee Payment Responsibility	Expected Date of Issuance
Hazardous Wastes Removal and Abatement Notifications and related reporting and sampling	Authority / U.S. Environmental Protection Agency (EPA) / Occupational Safety and Health Administration (OSHA)	Company	Company	subsequent information requests. KRRC: Phase 1 and Phase 2 Environmental Site Assessments provided as Reliance Documents to Agreement	Company	
Underground Storage Tanks/Leaking Underground Storage Tanks decommissioning/ cleanup notification and related sampling and reporting	ODEQ	Project Company	Project Company	Project Company: All materials and information required for notification, reporting, and subsequent information requests. KRRC: None	Project Company	
Explosives Storage and Explosives Magazine Relocation notifications	Oregon Office of the State Fire Marshal	Project Company	Project Company	Project Company: All materials and information required for notification, reporting, and subsequent information requests. KRRC: None	Project Company	
Treated Wood Generation Notice	California Department of Toxic Substances Control	Project Company	Project Company	Project Company: All materials and information required for notification, reporting, and subsequent information requests. KRRC: None	Project Company	

Table 3-1
Project Company-Managed Governmental Approvals

Name of Governmental Approval	Issuing Agency	Permittee /Approval Holder	Application Manager	Information Supply Responsibility for Application	Fee Payment Responsibility	Expected Date of Issuance
Geotechnical Hole / Monitoring Well / Water Supply Well Report Forms	Oregon Department of Water Resources	Project Company	Project Company	Project Company: All materials and information required for permit, reporting, and subsequent information requests. KRRC: None	Project Company	
In-Water Blasting Permit	ODFW	Project Company	Project Company	Project Company: All materials and information required for permit, notification, reporting, and subsequent information requests. KRRC: None	Project Company	
Explosives Storage and Explosives Magazine Relocation notifications	California Office of the State Fire Marshal	Project Company	Project Company	Project Company: All materials and information required for notification, reporting, and subsequent information requests. KRRC: None	Project Company	
Business License	Klamath County	Project Company	Project Company	Project Company: All information required for license application. KRRC: None	Project Company	
Business License	Siskiyou County	Project Company	Project Company	Project Company: All information required for license application. KRRC: None	Project Company	
Asbestos/Lead/PCB/Other Hazardous Wastes Removal and	Siskiyou County	Project Company	Project Company	Project Company: All materials and information required for declaration, reporting, and subsequent information requests.	Project Company	

Table 3-1
Project Company-Managed Governmental Approvals

Name of Governmental Approval	Issuing Agency	Permittee / Approval Holder	Application Manager	Information Supply Responsibility for Application	Fee Payment Responsibility	Expected Date of Issuance
Abatement declaration and related reporting and sampling				KRRC: None		
Environmental Health Division Water Wells / Monitoring Wells / Exploratory Borings Permits	Siskiyou County	Project Company	Project Company	Project Company: All materials and information required for permit, reporting, and subsequent information requests. KRRC: None	Project Company	
Encroachment Permit	Siskiyou County	Project Company	Project Company	Project Company: All materials and information required for permit, reporting, and subsequent information requests. KRRC: None	Project Company	
Building Permit (Flood Control Improvements)	Siskiyou County	Project Company	Project Company	Project Company: All materials and information required for flood control improvements building permit, reporting, and subsequent information requests. KRRC: None	Project Company	
Transportation Permit	Siskiyou County	Project Company	Project Company	Project Company: All materials and information required for permit, reporting, and subsequent information requests. KRRC: None	Project Company	
Sign Permit	Siskiyou County	Project Company	Project Company	Project Company: All materials and information required for permit, reporting, and subsequent information requests.	Project Company	

Table 3-1
Project Company-Managed Governmental Approvals

Name of Governmental Approval	Issuing Agency	Permittee /Approval Holder	Application Manager	Information Supply Responsibility for Application	Fee Payment Responsibility	Expected Date of Issuance
				KRRC: None		
Underground Storage Tanks/Leaking Underground Storage Tanks closure/cleanup notification and related sampling and reporting	Siskiyou County	Project Company	Project Company	Project Company: All materials and information required for notification, reporting, and subsequent information requests. KRRC: None	Project Company	

Table 3-2
KRRC-Managed Governmental Approvals

Name of Governmental Approval	Issuing Agency	Permittee /Approval Holder	Application Manager	Information Supply Responsibility for Application	Fee Payment Responsibility	Expected Date of Issuance
NEPA Record of Decision or FERC Order	FERC	FERC	FERC	Project Company: Data and analyses from Preliminary Services work to support FERC, as needed. KRRC: Data and analyses to support FERC as needed.	NA	
Approval Establishing Effectiveness of LKP License Transfer	FERC	KRRC	KRRC	Project Company: Data and analyses from Preliminary Services work to support FERC, as needed. KRRC: Data and analyses to support FERC as needed.	KRRC	
Approval Establishing Effectiveness of LKP License Surrender	FERC	KRRC	KRRC	Project Company: Data and analyses from Preliminary Services work to support FERC, as needed. KRRC: Data and analyses to support FERC as needed.	KRRC	
CWA Section 404 Individual Permit	United States Army Corps of Engineers (USACE)	KRRC	KRRC	Project Company: Draft application review; Data and analyses from Preliminary Services work to support application, as needed. KRRC: All materials and information required for application.	KRRC	
WSR Determination Memo	NPS (primary), BLM, USFWS, or	KRRC	KRRC	Project Company: None KRRC: All materials and information required.	KRRC	

Table 3-2 KRRC-Managed Governmental Approvals						
Name of Governmental Approval	Issuing Agency	Permittee /Approval Holder	Application Manager	Information Supply Responsibility for Application	Fee Payment Responsibility	Expected Date of Issuance
	USFS					
ESA Section 7 Biological Opinions	United States Fish and Wildlife Service / National Marine Fisheries Service	KRRC	KRRC	Project Company: None KRRC: Draft and final Biological Assessments.	KRRC	
NHPA Section 106 Consultation and associated plans	SHPOs, THPOs, ACHP, Tribes	KRRC	KRRC	Project Company: None KRRC: All materials and information required for notification, reporting, and subsequent information requests.	KRRC	
CEQA Notice of Determination	California State Water Resources Control Board (SWRCB)	SWRCB	SWRCB	Project Company: Data and analyses to support SWRCB as needed. KRRC: Data and analyses to support SWRCB as needed.	KRRC	
Section 401 Water Quality Certification	SWRCB / ODEQ	KRRC	KRRC	Project Company: Data and analyses to support SWRCB as needed. KRRC: Data and analyses to support SWRCB as needed.	KRRC	
Lake and Streambed	CDFW	KRRC	KRRC	Project Company: Draft application review; Data and analyses from Preliminary Services work to	KRRC	

Table 3-2 KRRC-Managed Governmental Approvals						
Name of Governmental Approval	Issuing Agency	Permittee /Approval Holder	Application Manager	Information Supply Responsibility for Application	Fee Payment Responsibility	Expected Date of Issuance
Alteration Agreement				support application, as needed. KRRC: Materials and information required for application.		
Incidental Take Permit	CDFW	KRRC	KRRC	Project Company: Draft application review; Data and analyses from Preliminary Services work to support application, as needed. KRRC: Materials and information required for application.	KRRC	
Removal/Fill and In Water Work Period Variance	ODSL	KRRC	KRRC	Project Company: Draft application review; Data and analyses from Preliminary Services work to support application, as needed. KRRC: Materials and information required for application.	KRRC	
Fish Passage Approval	ODFW	KRRC	KRRC	Project Company: Draft application review; Data and analyses from Preliminary Services work to support application, as needed. KRRC: Materials and information required for application.	KRRC	
State Lands Surface and Submerged Lands Lease	State Lands Commission	KRRC	KRRC	Project Company: Draft application review. KRRC: Materials and information required for application.	KRRC	
Dam Removal Permit	California Division of Safety of	KRRC	KRRC	Project Company: Draft application review; Data and analyses from Preliminary Services work to support application, as needed. All Project	KRRC	

Table 3-2
KRRC-Managed Governmental Approvals

Name of Governmental Approval	Issuing Agency	Permittee /Approval Holder	Application Manager	Information Supply Responsibility for Application	Fee Payment Responsibility	Expected Date of Issuance
	Dams (DSOD)			Company design submittals will require review by DSOD. KRRC: Materials and information required for application.		
Dam Safety/ Decommissioning	OWRD	KRRC	KRRC	Project Company: Draft application review; Data and analyses from Preliminary Services work to support application, as needed. KRRC: Materials and information required for application.	KRRC	
California Coastal Zone Consistency Review	CCC	KRRC	KRRC	Project Company: Draft application review; Data and analyses from Preliminary Services work to support application, as needed. KRRC: Materials and information required for application.	KRRC	
Land Use Permits	Klamath County / Siskiyou County	KRRC	KRRC	Project Company: None KRRC: Materials and information required to execute a Memorandum of Agreement with each County	KRRC	
Community Development Department – Building Division and Septic On-Site Division Permits (e.g., structural, electrical,	Klamath County	KRRC	KRRC	Project Company: Data and analyses from Preliminary Services work pertaining to any septic system demolition. KRRC: Materials and information required to execute a Memorandum of Agreement with each County	KRRC	

Table 3-2
KRRC-Managed Governmental Approvals

Name of Governmental Approval	Issuing Agency	Permittee /Approval Holder	Application Manager	Information Supply Responsibility for Application	Fee Payment Responsibility	Expected Date of Issuance
mechanical, plumbing permits)						
Site Development Permit	Klamath County	KRRC	KRRC	Project Company: None KRRC: Materials and information required to execute a Memorandum of Agreement with each County	KRRC	
Development and Demolition Permit	Siskiyou County	KRRC	KRRC	Project Company: None KRRC: Materials and information required to execute a Memorandum of Agreement with each County	KRRC	
Building Permit (Hatchery Work)	Siskiyou County	KRRC	KRRC	Project Company: Draft application review KRRC: Materials and information required for hatchery related application.	KRRC	
CLOMR/LOMR	Siskiyou County / Klamath County	KRRC	KRRC	Project Company: Data and analyses from Preliminary Services work to support application, as needed. Materials and information required for LOMR application. KRRC: Materials and information required for CLOMR application.	KRRC	

APPENDIX 4

PROJECT TECHNICAL REQUIREMENTS

APPENDIX 4

PROJECT TECHNICAL REQUIREMENTS

4.1. PURPOSE

These Project Technical Requirements set forth the minimum design, construction, demolition and restoration technical requirements for the Project. This Appendix augments and, to the extent of any inconsistencies, supersedes Appendix 1 (Project and Project Site Description) in defining the Project and the Project Implementation Work the Project Company is required to perform hereunder.

[Note: This Appendix contains the technical requirements for the Preliminary Services. This Appendix will contain the technical requirements for the Project Implementation Work as developed to the 60% level, and will be developed, augmented, and completed based on the Preliminary Services performed by the Project Company and incorporated in the Project Agreement on the GMP Contract Amendment Date.]

4.2. WORK RESTRICTIONS

4.2.1 Required Design Criteria – Cessation of Power Generation.

- (a) Copco No. 1 – November 1 of year prior to the drawdown year;
- (b) J.C. Boyle and Iron Gate – January 1 of the drawdown year; and
- (c) Copco No. 2 – May 1 of the drawdown year.

4.2.2 Required Design Criteria – Drawdown Timing.

- (a) All drawdown and release of sediment shall comply with requirements and dates listed in Governmental Approvals;
- (b) Initial drawdown of Copco Lake from operating elevation to spillway elevation shall begin on November 1 the year prior to the drawdown year; and
- (c) Reservoir drawdown and sediment release shall start on January 1 of the drawdown year and be complete by March 15 of the drawdown year.

4.2.3 Required Design Criteria – In-Water Work.

- (a) California and Oregon in-water work shall take place within the dates listed in Governmental Approvals; and
- (b) In-water work is anticipated to be restricted to:
 - (i) California: June 15 to October 15; and
 - (ii) Oregon: July 1 to December 31

4.2.4 Required Design Criteria – On-Site Work Hours.

- (a) All construction Work shall take place during the hours listed and in compliance with Governmental Approvals; and

- (b) On-site work hours are expected to be restricted to:
 - (i) General: Shift work from 6:00 AM to 4:00 PM and 6:00 PM to 4:00 AM, with maintenance activities in between; Monday through Sunday; and
 - (ii) Blasting: 8:00 AM to 6:00 PM; Monday through Saturday.

4.2.5 Required Design Criteria - Existing Utility Interruptions.

- (a) The Project Company shall locate existing utilities and facilities or engage the services of a utilities locating service to locate existing utilities at each site prior to commencement of design and work. Existing utilities and facilities shall not be disturbed or damaged while locating them; and
- (b) Do not interrupt utilities serving other facilities unless permitted under the following conditions and then only after arranging to provide temporary utility services as required to maintain continuous operation of the Project.
 - (i) Notify KRRC and Utility Owner no less than seven (7) working days in advance of proposed utility interruptions;
 - (ii) Do not proceed with utility interruptions without KRRC's and Utility Owner's written permission; and
 - (iii) The Project Company shall make formal written request, to the KRRC and the Utility Owner which shall include a detailed, step-by-step work plan identifying all work activities to be performed during the utility interruption and the sequence and timing of each work activity. Also provide contingency plan should temporary services become unusable during Work activities.

4.3. DIVERSION TUNNEL IMPROVEMENTS AND GATES

4.3.1 Required Design Criteria.

This Section covers design of the following diversion tunnel improvements and gates:

- (a) Copco No. 1 Dam: new gate structure, erosion protection at gate structure, tunnel lining required for drawdown, modification of existing intake structure, removal of existing concrete plug, removal of intake structure after completion of new gate structure, removal of new gate structure following drawdown, and new upstream and downstream tunnel plugs following dam removal;
- (b) Iron Gate Dam: check the condition and stability of existing liner during drawdown, new tunnel lining required for drawdown, removal of downstream tunnel portal, removal of existing diversion tunnel air vent pipe, new gate structure, erosion protection at gate structure, removal of intake structure trash rack, removal of existing concrete bulkhead and blind flange, removal of existing upper sluice gate and lower concrete bulkhead from bottom of gate tower, removal of intake structure, removal of gate tower above finished grade, removal of new gate structure, new gate shaft plug, and new upstream and downstream tunnel plugs;
- (c) Design of opening of diversion culverts at J.C. Boyle;

- (d) New tunnel plugs for J.C. Boyle tunnel and Copco No. 2 tunnels;
- (e) Design of system to keep large debris that could prevent the reservoir drawdown from being completed on schedule from entering diversion tunnels during reservoir drawdown; and
- (f) Design operation of control system to implement reservoir lowering as specified in Article 4.6.

4.3.2 Applicable Standards.

The design and construction of the diversion tunnel improvements and gates shall comply with all Applicable Law, and shall be done in conformance with the latest version of applicable standards, manuals and guidelines. At a minimum, the Project Company shall comply with listed standards below, and shall propose additional standards where appropriate for KRRC review. Should proposed standards conflict with those listed below, the Project Company shall provide justification for revising the Project Agreement standards prior to proceeding with design.

- (a) ACI 318 Building Code Requirements for Reinforced Concrete, American Concrete Institute;
- (b) ACI 506 Guide to Shotcrete, American Concrete Institute;
- (c) ACI 506.4 Guide for the Evaluation of Shotcrete, American Concrete Institute;
- (d) EM 1110-2-2901 Tunnels and Shafts in Rocks, U.S. Army Corps of Engineers;
- (e) EM 1110-2-1602 Hydraulic Design of Reservoir Outlet Works, U.S. Army Corps of Engineers;
- (f) EM 1110-2-2400 Structural Design and Evaluation of Outlet Works, U.S. Army Corps of Engineers;
- (g) International Tunneling and Underground Space Association (ITA) - ITA Guidelines for the Design of Tunnels (1988);
- (h) California Code of Regulations, Title 8, Chapter 4, Division of Industrial Safety – Subchapter 20, Tunnel Safety Orders;
- (i) Occupational Safety and Health Standards for Construction Industry (USA) 29 Code of Federal Regulations Part 1926 Subpart S – Underground Construction;
- (j) PTI DC35.1-14, Recommendations for Prestressed Rock and Soil Anchors, Post Tensioning Institute;
- (k) PTI M55.1-12(13), Specification for Grouting of Post-Tensioned Structures, Post Tensioning Institute;
- (l) Occupational Safety and Health Standards for Construction Industry (USA) 29 Code of Federal Regulations Part 1926 Subpart U – Commercial Diving Operations; and

- (m) United States Department of the Interior, Bureau of Reclamation, Design Standards No.6, Chapter 12: Trashracks and Trashrack Cleaning Devices Phase 4.

4.3.3 Design Criteria.

4.3.3.1 Required Criteria

The Project Company shall meet the following Required Criteria for design and construction of the diversion tunnel improvements and gates, and any other criteria that are required by Governmental Approvals:

- (a) Diversion tunnels shall be designed for the internal pressure resulting from a reservoir elevation equivalent to a 1% flood event, flow velocities anticipated during reservoir drawdown, and external ground water pressures that could develop during reservoir lowering; and
- (b) Tunnel plug design shall include consideration of provision of bat entry into tunnels and drainage to prevent tunnels filling with water behind plugs.

4.3.3.2 Proposed Criteria

In addition to the Required Criteria above, the Project Company shall develop the following criteria, at a minimum, for design and construction of diversion tunnel improvements and gates. Additional criteria shall be proposed and developed, as appropriate, to complete the design in accordance with the requirements set forth in the Project Agreement and Appendices.

- (a) Design earthquake for temporary construction;
- (b) Loads and load combinations used for structural design;
- (c) Seepage;
- (d) Geotechnical design loads (dynamic and static);
- (e) Erosion protection;
- (f) Filter and drain criteria (if applicable); and
- (g) Size of debris for design of system to keep large debris from entering into diversion facilities.

4.3.4 Minimum Construction Submittal Requirements.

The Project Company shall take into account the constructability of the proposed design with consideration given to feasible methods of construction, constraints to construction (materials, labor, specialty construction, weather, etc.), design details, time required to complete each element of work, and possible alternatives which would reduce costs but maintain the level of quality and safety expected by the KRRC. The Project Company shall include, at a minimum, the following construction submittals in their technical specifications for diversion tunnel improvements and gates. The Project Company is responsible for defining and providing any additional construction submittals that apply to the Project.

- (a) Work plans for the execution and implementation of the required modifications as outlined in the Scope of Work: Submit a detailed work plan of the proposed

tunnel modifications and support provisions. The plan shall include details of proposed methods and procedures for temporary ventilation, lighting, and electrical system details; procedures for handling, control, and disposal of groundwater (if any); erosion control; types of equipment to be used and equipment descriptions and specifications; and other pertinent data requested by the KRRC. Include any proposed modifications to the support details on the Drawings;

- (b) Materials (fine and coarse aggregate, concrete mix design, shotcrete mix design, admixture, bond preventer, steel mill certifications, etc.);
- (c) Complete details, credentials, qualifications, and certifications of the proposed off-site source of concrete provider, if applicable;
- (d) Complete details, credentials, qualifications, and certifications of the on-site concrete batching plant, if applicable;
- (e) Concrete and shotcrete placement drawings showing locations of construction joints and control joints; lift sequence; locations of all embedded items and block-outs; and estimated volume of concrete to be placed, if applicable;
- (f) Detailed procedures for the production, transportation, placement, protection, curing, and temperature monitoring of concrete during cold weather in accordance with ACI 306R. In the submittal, include procedures to be implemented upon abrupt changes in weather conditions or equipment failures;
- (g) Shift reports and records of all concrete and shotcrete placement applications, including material quantities, mixes, locations, procedures, and test results;
- (h) Structural design calculations and Drawings for any support system modifications proposed. Indicate approximate areas where the proposed support system will be used;
- (i) Construction staging and sequence;
- (j) Work experience resumes of proposed superintendent(s) and shift supervisors;
- (k) Certificates of compliance for all materials permanently incorporated into the work;
- (l) Sump details;
- (m) Water disposal plan;
- (n) Equipment certifications from Cal/OSHA and the Mining and Tunneling Unit of Cal/OSHA indicating certification by the Mine Safety and Health Administration (MSHA) of the U.S. Department of Labor;
- (o) Working Drawings pertaining to groundwater control (if necessary) during the placement of shotcrete and cast-in-place reinforced concrete;
- (p) Quality control plan;

- (q) Catalog data, methods of construction statements, and manufacturers' installation recommendations that describe in detail the equipment and materials to be used for groundwater and surface water control systems, including pumps for information only. The information submitted on equipment shall describe performance characteristics and installation, operation, and maintenance procedures;
- (r) Submit the plans and data listed below prior to commencing the required modifications within the tunnel. All drawings and calculations submitted to satisfy requirements listed below shall be prepared and stamped by a Civil or Structural Engineer registered in the State of California;
- (s) Structural design calculations and drawings for any formwork system and all modifications indicated in the Scope of Work;
- (t) Contractor's method statement for constructing the linings and plugs, including transporting, placing and consolidating concrete, sequence of placement, and method of curing in tunnels;
- (u) Contractor's method statement for forming the concrete or shotcrete linings and the concrete plugs (or any other concrete work), including spacing and details of transverse construction joints, provisions to prevent uplift and lateral movement of forms, and coordination with reinforcement placement, and placement of embedded parts;
- (v) Daily Logs and Shift Reports: Submit for each activity taking place, regardless of whether progress is achieved. Provide a continuous accounting of all activities during the shift, including:
 - (i) Number and classification of crewmembers, equipment, and materials used; and
 - (ii) Time of, duration, and cause of any non-production, idle, or down time event, along with a summary of all operations affected and degree affected by such event;
- (w) If grout is used, the Contractor shall submit a grout mix design, including mix proportions of cement, water, and any admixtures. The submittal shall include compressive strength tests conducted at 7, 14, and 28 days on grout cubes in accordance with ASTM C 109;
- (x) The resume of the Contractor's site foreman shall be submitted to the KRCC for review. Only the individual designated as meeting the qualifications requirements shall be used for the project. The Contractor shall not substitute this individual without written approval of the KRRC;
- (y) If monitoring instrumentation is determined necessary, submit a description of the Contractor's means, methods, and procedures for QA and description of specific methods for installing and protecting all instruments;
- (z) If monitoring instrumentation is determined necessary, submit a schedule of instrument installation related to significant activities or milestones in the overall project; and

- (aa) A list, description and schedule of demolished materials to be wasted or disposed of off-site and on-site. For materials to be disposed of off-site, submit name and location of actual disposal facilities.

4.4. ROADS, BRIDGES AND CULVERTS

This Section covers permanent road, bridge and culvert improvements, as well any temporary or permanent construction access-related improvements to any roads, bridges or culverts. Specific locations for permanent improvements are listed in Section 1.2 (Project) of this Appendix, while construction access improvements will be identified by the Project Company to meet its construction plan and associated vehicles, equipment and traffic, while maintaining public safety and current levels of service. Geotechnical data reports, technical analyses, structure type selection, and design procedures shall be completed in accordance with Caltrans standards and practices and according to the Caltrans project development process.

4.4.1 Applicable Standards.

The design, modification, demolition and construction of road, bridge, culvert and associated retaining wall improvements shall comply with all Applicable Law, and shall be done in conformance with the latest version of applicable standards, manuals and guidelines. At a minimum, the Project Company shall comply with listed standards below, and shall propose additional standards where appropriate for KRRC review. Should proposed standards conflict with those listed below, the Project Company shall provide justification for revising the Project Agreement standards prior to proceeding with design.

- (a) AASHTO LRFD Bridge Design Specifications (Customary U.S. Units);
- (b) Caltrans California Amendments (to the AASHTO LRFD Bridge Design Specifications);
- (c) Caltrans Standard Plans – 2018;
- (d) Caltrans Standard Specifications – 2018;
- (e) Caltrans Office of Special Funded Projects (OSFP) Information and Procedures Guide;
- (f) Caltrans Bridge Design Aids;
- (g) Caltrans Bridge Design Details;
- (h) Caltrans Bridge Memo To Designers;
- (i) Caltrans Bridge Standard Detail Sheets (XS Sheets);
- (j) Caltrans Seismic Design Criteria;
- (k) Caltrans Bridge Design Specifications (LFD Version);
- (l) Caltrans CADD User's Manual, or approved local agency CADD standard;
- (m) Caltrans Plans Preparation Manual, or approved local agency manual;

- (n) Caltrans ARS ONLINE: Deterministic PGA Map and ARS Online Report, Fault Database, 2007 Fault Errata Report;
- (o) Caltrans Geotechnical Manual;
- (p) Caltrans Foundation Manual;
- (q) Caltrans Seismic Hazard Map and Report;
- (r) Caltrans Construction Manual;
- (s) Caltrans Design Information Bulletins;
- (t) Caltrans Project Development Procedure Manual;
- (u) Caltrans Trenching and Shoring Manual;
- (v) Central Oregon and Pacific Railroad design requirements;
- (w) AASHTO – A Policy on Geometric Design of Highways and Streets (Green Book) (Customary U.S. Units);
- (x) AASHTO – Guidelines for Geometric Design of Very Low- Volume Local Roads (ADT<400);
- (y) Caltrans Highway Design Manual;
- (z) ODOT Highway Design Manual;
- (aa) ODOT Standard Drawings;
- (bb) ODOT Standard Details;
- (cc) FHWA – Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways;
- (dd) California Manual on Uniform Traffic Control Devices;
- (ee) Oregon MUTCD; and
- (ff) Klamath County Department of Public Works Land Development Code Appendix A.

4.4.2 Design Criteria.

The Project Company shall meet the following Required Criteria for design and construction of the permanent (to remain post-construction) and public roads, bridges and culverts, and any other criteria that are required by Governmental Approvals:

4.4.2.1 Required Criteria

- (a) Roadway geometrics:
 - (i) Lane width – 11 feet minimum;

- (ii) Number of lanes during construction – Maintain one lane minimum with traffic control; temporary full lane closure as needed with prior approval;
- (iii) Number of lanes post-construction – 2 lanes + shoulders on both sides (width to match existing at a minimum);
- (iv) Vertical clearances – None, if required follow Caltrans HDM;
- (v) Shoulders – 5 feet minimum, or match existing condition; and
- (vi) Horizontal clearances – As per Caltrans HDM;
- (b) Taper lengths, deceleration lengths, land shifts, by tapers – as per Caltrans HDM;
- (c) ADA ramps – As shown on Caltrans Standard Plan sheets A88A and A88B shall be constructed on all curb returns to meet ADA requirements;
- (d) Truck turns – STAA design vehicle; and
- (e) Other design criteria:
 - (i) Cross slope – Maximum 2% for tangent section and for curve follow super-elevation standard per Caltrans HDM;
 - (ii) Minimum Profile Grade – 0.2%;
 - (iii) Maximum Profile Grade – 8.0%;
 - (iv) Minimum gutter grade – 0.3%;
 - (v) Curb return radius – As per truck turns and intersection needs;
 - (vi) Cut/Fill Slope - 1:2 or flatter; and
 - (vii) Curb and Gutter – 1.5 feet wide gutter, 0.5 wide feet curb.

4.4.2.2 Proposed Criteria

In addition to the Required Criteria above, the Project Company shall develop the following criteria, at a minimum, for design and construction of road, bridge and culvert improvements. Additional criteria shall be proposed and developed, as appropriate, to complete the design in accordance with the requirements set forth in the Project Agreement and Appendices.

- (a) Horizontal and vertical alignment;
- (b) Road surface type;
- (c) Road pavement section;
- (d) Crest vertical length, sag vertical curve length, minimum vertical curve length;
- (e) Erosion control;
- (f) Curbs and dikes;

- (g) Temporary and permanent traffic control devices;
- (h) Temporary and permanent signing and pavement delineation;
- (i) Side slopes;
- (j) Speed limit – as per local agency standard;
- (k) Bridge deck width – use Caltrans HDM;
- (l) Drainage design storm;
- (m) Bridge design storm and freeboard – use Caltrans HDM;
- (n) Bridge load – use Caltrans HDM;
- (o) Design earthquake for permanent construction;
- (p) Design earthquake for temporary construction; and
- (q) All items listed in applicable checklists shown in the Caltrans Bridge Details Manual shall be proposed design criteria.

4.4.3 Minimum Construction Submittal Requirements.

The Project Company shall take into account the constructability of the proposed design with consideration given to feasible methods of construction, constraints to construction (materials, labor, specialty construction, weather, etc.) design details, time required to complete each element of work, and possible alternatives which would reduce costs but maintain the level of quality and safety expected by the KRRC. The Project Company shall include, at a minimum, the following construction submittals in their technical specifications for roads, bridges and culverts. The Project Company is responsible for defining and providing any additional construction submittals that apply to the Project.

- (a) Photo and Video documentation of pre-construction and post-construction conditions of all access routes and road, bridge, and culvert improvements as per contract requirements;
- (b) Cofferdam or creek diversion system details necessary for bridge construction;
- (c) Slope staking for grid grades;
- (d) Shop Drawings;
- (e) Erection and dismantling procedures and plans for falsework and formwork details;
- (f) Screed elevations and build-up dimensions for bridge deck construction;
- (g) Detailed drawings for roadway contours;
- (h) Bridge demolition procedures;
- (i) Rebar cage erection and bracing procedures;

- (j) Lane Closure and Full Road Closure Plans and Schedules;
- (k) Traffic Control Plan and Detour Plans;
- (l) Product Data;
- (m) Samples;
- (n) Test samples;
- (o) Test data, test results, and evaluation reports;
- (p) Construction material approval request per contract requirements;
- (q) Proposals for substitution;
- (r) Materials Certificates of Compliance shall be submitted for:
 - (i) Hot Mix Asphalt (Type A) Job Mix Formulas;
 - (ii) Concrete Mix Design;
 - (iii) Aggregate Base;
 - (iv) Traffic Stripe, Pavement Marking and Retroreflective Markers; and
 - (v) Storm Drain Boxes and Pipes;
- (s) Engineering data and calculations as may be necessary and other engineering services required to facilitate construction; and
- (t) A list, description and schedule of demolished materials to be wasted or disposed of off-site and on-site. For materials to be disposed of off-site, submit name and location of actual disposal facilities.

4.5. FLOOD CONTROL IMPROVEMENTS

This Section covers downstream flood improvements to up to 36 habitable structures and three river crossings (two pedestrian bridges and one railroad crossing) required to protect against the 100-years flood elevation after removal of the dams. While improvements will vary from habitable structure to habitable structure, it is anticipated that improvements could include increasing the height of existing retaining walls, construction of new retaining walls, construction of levees, or raising of existing structures. Final disposition of the two pedestrian bridges are still to be worked out with existing landowners, but improvements could involve raising the bridge, replacing the bridge or demolishing the bridge. The railroad bridge will require analysis by the Project Company to identify required improvements, but at this time it is anticipated that improvements may be required to protect against scour at the bridge abutments.

4.5.1 Applicable Standards.

The design, modification, demolition and construction of downstream flood control improvements shall comply with all Applicable Law, and shall be done in conformance with the latest version of applicable standards, manuals and guidelines. At a minimum, the Project

Company shall comply with listed standards below, and shall propose additional standards where appropriate for KRRC review. Should proposed standards conflict with those listed below, the Project Company shall provide justification for revising the Project Agreement standards prior to proceeding with design.

- (a) USACE EM 1110-2-2502, Retaining and Flood Walls;
- (b) USACE EM 1110-2-1913, Design and Construction of Levees;
- (c) USDA Forest Service Timber Bridges: Design, Construction, Inspection, and Maintenance;
- (d) AASHTO LRFD Bridge Design Specifications; and
- (e) Evaluating Scour at Bridges, 5th Edition, Hydraulic Engineering Circular (HEC-18), U.S. Department of Transportation, Federal Highway Administration.

4.5.2 Design Criteria.

4.5.2.1 Required Criteria

The Project Company shall meet the following Required Criteria for design and construction of the flood control improvements, and any other criteria that are required by Governmental Approvals:

- (a) Protect against the post dam removal 100-year flood elevation.

4.5.2.2 Proposed Criteria

In addition to the Required Criteria above, the Project Company shall develop the following criteria, at a minimum, for design and construction of downstream flood control improvements. Additional criteria shall be proposed and developed, as appropriate, to complete the design in accordance with the requirements set forth in the Project Agreement and Appendices.

- (a) Freeboard;
- (b) Scour Protection; and
- (c) Static and dynamic load for bridge structures.

4.5.3 Minimum Construction Submittal Requirements.

The Project Company shall include, at a minimum, the following construction submittals in their technical specifications for flood control improvements. The Project Company is responsible for defining and providing any construction submittals that apply to the Project.

- (a) A list, description and schedule of demolished materials to be wasted or disposed of off-site and on-site. For materials to be disposed of off-site, submit name and location of actual disposal facilities.

4.6. RESERVOIR DRAWDOWN

This Section covers the drawdown design of the reservoirs impounded by J.C. Boyle, Copco No. 1, and Iron Gate dams. The design shall include developing rating curves for diversions, hydraulic reservoir drawdown analyses, stability analyses of all embankments, concrete dams,

and reservoir rims during drawdown, methods of managing drawdown under low, medium and high flow conditions, instrumentation and monitoring of embankment and reservoir rim slopes during drawdown, and remediation measures in case of slope stability issues.

4.6.1 Applicable Standards.

The design and implementation of drawdown shall comply with all Applicable Law, and shall be done in conformance with the latest version of applicable standards, manuals and guidelines. At a minimum, the Project Company shall comply with listed standards below, and shall propose additional standards where appropriate for KRRC review. Should proposed standards conflict with those listed below, the Project Company shall provide justification for revising the Project Agreement standards prior to proceeding with design.

- (a) United States Department of the Interior, Bureau of Reclamation, Design Standards No.13, Embankment Dams (CH. 1 to 21);
- (b) ICOLD (2013) – Bulletin 164, Internal erosion of existing dams, levees and dikes, and their foundations;
- (c) USBR (2008) Risk analysis for dam safety: a unified method for estimating probabilities of failure of embankment dams and piping. Guidance document version: Delta, Issue 2;
- (d) United States Department of the Interior, Bureau of Reclamation, Design Standards No.6, Chapter 12: Trashracks and Trashrack Cleaning Devices Phase 4; and
- (e) EM 1110-2-1902, U.S. Army Corps of Engineers, Engineering and Design Slope Stability.

4.6.2 Design Criteria.

4.6.2.1 Required Criteria

The Project Company shall meet the following Required Criteria, at minimum, for implementation of drawdown:

- (a) Minimum rapid drawdown factor of safety of 1.3 for J.C. Boyle and Iron Gate Dam embankments; and
- (b) Drawdown capacity:
 - (i) Maximum first time drawdown rate of 5 feet/day;
 - (ii) Unrestricted drawdown rate down to first time drawdown reservoir elevation following reservoir refilling due to storm events, except as required in (iii) and (iv);
 - (iii) Maximum release from Iron Gate diversion of 15,000 cfs; and
 - (iv) Maximum release from Copco No. 1 diversion to that allowable to maintain power generation at Copco No. 2.

4.6.2.2 Proposed Criteria

In addition to the Required Criteria above, the Project Company shall develop the following criteria, at a minimum, for implementation of drawdown. Additional criteria shall be proposed and developed, as appropriate, to complete the design in accordance with the requirements set forth in the Project Agreement and Appendices.

- (a) Trigger and action levels for instrumentation monitoring;
- (b) Define activities required to protect aquatic resources within reservoirs per Governmental Approvals; and
- (c) Types, character, quantities, and locations of remediation materials to be stockpiled in advance of drawdown.

4.6.3 Minimum Construction Submittal Requirements.

The Project Company shall take into account the constructability of the proposed design with consideration given to feasible methods of drawdown, constraints to drawdown procedure (materials, labor, specialty construction, weather, etc.) design details, time required to complete each element of work, and possible alternatives which would reduce costs but maintain the level of quality and safety expected by the KRRC. The Project Company shall include, at a minimum, the following construction submittals in their technical specifications for drawdown. The Project Company is responsible for defining and providing any additional construction submittals that apply to the Project.

- (a) Instrumentation installation reports;
- (b) Instrumentation monitoring reports;
- (c) Visual inspection reports of embankments and slopes during drawdown;
- (d) Real-time monitoring and records of drawdown flows and reservoir elevations from start of drawdown through the end of spring; and
- (e) Construction records and remediation measures implemented during drawdown.

4.7. EMBANKMENT DAM REMOVAL

The design shall include slope stability of excavation dam sections, sequencing/staging of excavations, design of cofferdam breaches and, potential failure mode analysis. This Section covers demolition by excavation for the following structures.

- (a) J.C. Boyle Dam: combination embankment and concrete gravity dam, of which the embankment portion is covered by this Section;
- (b) Copco 2 Dam: concrete diversion dam with embankment Section, of which the embankment part is covered by this Section; and
- (c) Iron Gate Dam: embankment dam.

4.7.1 Applicable Standards.

The design and implementation of any embankment removal shall comply with all Applicable Law, and shall be done in conformance with the latest version of applicable standards, manuals and guidelines. At a minimum, the Project Company shall comply with listed

standards below, and shall propose additional standards where appropriate for KRRC review. Should proposed standards conflict with those listed below, the Project Company shall provide justification for revising the Project Agreement standards prior to proceeding with design.

- (a) United States Department of the Interior, Bureau of Reclamation, Design Standards No.13, Embankment Dams (CH. 1 to 21);
- (b) EM 1110-2-1912. "Stability of Excavated and Natural Slopes in Soils and Clay Shales," U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS;
- (c) Public Law 91-190 National Environmental Policy Act of 1969;
- (d) Public Law 104-303, Section 215 National Dam Safety Program Act;
- (e) ER 1110-2-1156 Dam Safety - Organization, Responsibilities, and Activities;
- (f) Occupational Safety and Health Standards for Construction Industry (USA) 29 Code of Federal Regulations Part 1926 Subpart P – Excavations; and
- (g) Occupational Safety and Health Standards for Construction Industry (USA) 29 Code of Federal Regulations Part 1926 Subpart T – Demolition.

4.7.2 Design Criteria.

4.7.2.1 Required Criteria

The Project Company shall meet the following Required Criteria, at minimum, for embankment dam removal:

- (a) Design of the excavations of J.C. Boyle and Iron Gate dams shall provide for a dam section throughout excavation that can safely retain water, meet stability criteria, and have a crest elevation that is 2 feet greater than needed to allow for passage of a 1% probable flood for that time of year;
- (b) Temporary excavation slopes shall be designed by a qualified California/Oregon registered Professional Engineer in accordance with standard geotechnical practice;
- (c) Slope analysis of temporary slopes shall consider the short-term (during and immediately after construction), the potential for temporary raising and lowering of a reservoir during floods, taking into consideration variations and changes in groundwater levels and the effects of deterioration and loss of soil resistance due to construction conditions, if applicable;
- (d) J.C. Boyle and Iron Gate cofferdam breaches shall be designed to maximize the amount of cofferdam removal by the Klamath River;
- (e) Final channel, floodplain and canyon wall geometry throughout the removal extents shall provide a geomorphologically appropriate transition between cross sections, that is passable to fish species of concern, immediately upstream and downstream of the previous dam location; Channel bed materials shall comply with Governmental Approvals and criteria identified in Section 4.12 (Engineered Habitat Features);

- (f) Concrete cutoff walls shall be removed in accordance with Section 4.8 (Concrete Dam and Structures Removal); and
- (g) Excavated rock and earth materials shall be disposed in on-site disposal areas.

4.7.2.2 Proposed Criteria

In addition to the Required Criteria above, the Project Company shall develop the following criteria, at a minimum, for embankment dam removal. Additional criteria shall be proposed and developed, as appropriate, to complete the design in accordance with the requirements set forth in the Project Agreement and Appendices.

- (a) Minimum factors of safety for excavation design (slope stability);
- (b) Design earthquake for temporary construction;
- (c) Minimum acceptable seepage gradient; and
- (d) Cofferdam breaching rate.

4.7.3 Minimum Construction Submittal Requirements.

The Project Company shall take into account the constructability of the proposed design with consideration given to feasible methods of construction, constraints to construction (materials, labor, specialty construction, weather, etc.) design details, time required to complete each element of work, and possible alternatives which would reduce costs but maintain the level of quality and safety expected by the KRRC. The Project Company shall include, at a minimum, the following construction submittals in their technical specifications for embankment dam removal. The Project Company is responsible for defining and providing any additional construction submittals that apply to the Project.

- (a) Control of Water;
- (b) Testing, Inspection, Instrumentation and Monitoring Results (if applicable);
- (c) Dam excavation/demolition sequence, including how dam excavation/demolition interrelates to other project activities;
- (d) Construction methods to be used for excavation/demolition;
- (e) Equipment, and Materials Storage;
- (f) Methods of accessing the dam for excavation/demolition;
- (g) Methods for removing hazardous materials present in dam area and protection of workers and environment;
- (h) Methods to be used to evaluate the need for stabilization of abutments following dam removal and methods for stabilizing abutments (if applicable); and
- (i) A list, description and schedule of demolished materials to be wasted or disposed of off-site and on-site. For materials to be disposed of off-site, submit name and location of actual disposal facilities.

4.8. CONCRETE DAM AND STRUCTURES REMOVAL

Several methods exist for concrete removal such as pneumatic and hydraulic breakers, pressure bursting, dismantling ball and crane method and drilling and blasting. Dam and other concrete structure demolition would likely be performed in horizontal lifts using one or more of these methods. For J.C. Boyle, the design shall also cover the hydrology analysis for power canal bench to determine required drainage features. In addition, rock fall hazards shall be assessed following the power canal removal and forebay fill requirement, and excavations made for penstocks shall be addressed. The design shall include developing the approach and general sequence of removal of concrete dams and concrete structures and structural stability analysis to support proposed approaches. This Section covers the following concrete dams and their appurtenant structures demolition using blasting methods (if required).

- (a) J.C. Boyle Dam: combination embankment and concrete gravity dam, of which the concrete gravity portion and the mass concrete at the intakes, cutoff walls, power canal, forebay, and powerhouse are covered by this Section. Hydrology design for power canal bench to determine drainage features;
- (b) Copco No. 1 Dam: concrete dam, including the mass concrete at intakes and powerhouse;
- (c) Copco 2 No. Dam: concrete diversion dam with embankment section, of which the concrete diversion dam portion and the mass concrete at the intake and powerhouse are covered by this Section; and
- (d) Iron Gate Dam: embankment dam, of which the mass concrete at the intakes, cutoff walls, spillway, and powerhouse are covered by this Section.

4.8.1 Applicable Standards.

The design and implementation of any demolition by blasting shall comply with all Applicable Law, and shall be done in conformance with the latest version of applicable standards, manuals and guidelines. At a minimum, the Project Company shall comply with listed standards below, and shall propose additional standards where appropriate for KRRC review. Should proposed standards conflict with those listed below, the Project Company shall provide justification for revising the Project Agreement standards prior to proceeding with design.

- (a) EM 1110-2-3800: Systematic Drilling and Blasting for Surface Excavations, U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS;
- (b) Occupational Safety and Health Standards for Construction Industry (USA) 29 Code of Federal Regulations Part 1926 Subpart T – Demolition;
- (c) Occupational Safety and Health Standards for Construction Industry (USA) 29 Code of Federal Regulations Part 1926 Subpart U – Blasting and the Use of Explosives;
- (d) The Federal Occupational Safety and Health Act of 1970 and the Construction Safety Act of 1969, as amended;
- (e) Safe Explosives Act, Title XI, Subtitle C of Public Law 107-296, Interim Final Rule;

- (f) OSHA of 1970, 29 U.S.C., Section 651 et seq., including safety and health regulations for construction;
- (g) CFR 27, U.S. Department of Justice, Alcohol, Tobacco, Firearms and Explosives Division (ATF). 27 CFR Part 555, Implementation of the Safe Explosives Act, Title XI, Subtitle C of Public Law 107-296; Interim Final Rule;
- (h) Organized Crime Control Act of 1970, Title XI, Public Law 91-452, approved October 15, 1970, as amended;
- (i) CFR 49, Parts 100-177 (DOT RSPA); 301-399 (DOT FHA);
- (j) California Code of Regulations (CCR):
 - (i) Title 8, Chapter 4, Subchapter 20, Tunnel Safety Orders; and
 - (ii) Title 8, General Industry Safety Orders, Subchapter 7, Group 18. Explosives and Pyrotechnics;
- (k) Non-regulating Industry Support Organizations;
 - (i) Vibration Subcommittee of the International Society of Explosive Engineers (ISEE), blast monitoring equipment operation standards (1999); and
 - (ii) IME (Institute of Makers of Explosives) Safety Library Publications (SLPs).

4.8.2 Design Criteria.

4.8.2.1 Required Criteria

The Project Company shall meet the following Required Criteria, at minimum, for the design and implementation of concrete dam and structures removal:

- (a) Temporary structural sections shall be designed by a qualified California/Oregon registered Structural Engineer in accordance with standard practice;
- (b) Structural and stability analysis of temporary structural sections shall consider the potential for temporary raising and lowering of a reservoir during floods;
- (c) Channel, floodplain and canyon wall geometry throughout the removal extents shall provide a geomorphologically appropriate transition between cross sections immediately upstream and downstream of the previous dam location; Channel bed materials shall comply with Governmental Approvals and criteria identified in Section 4.12;
- (d) All reinforcement shall be separated from concrete and removed from the site;
- (e) Concrete rubble shall be disposed in on-site disposal areas;
- (f) Copco No. 1 and Copco No. 2 shall be removed to a minimum of 20 feet below the level of the restored Klamath River bed or to bedrock, whichever is at higher elevation;

- (g) The cutoff walls that protrude above the foundation surface under the J.C. Boyle and Iron Gate embankments shall be removed down to the foundation surface; and
- (h) Final grade of penstock excavation and regrading following removal of penstocks and concrete supports shall blend into the surrounding topography.

4.8.2.2 Proposed Criteria

In addition to the Required Criteria above, the Project Company shall develop the following criteria, at a minimum, for design and implementation of concrete dam and structures removal. Additional criteria shall be proposed and developed, as appropriate, to complete the design in accordance with the requirements set forth in the Project Agreement and Appendices.

- (a) Factors of safety for temporary structural sections that will be present during demolition;
- (b) Design earthquake for temporary construction;
- (c) Noise limits;
- (d) Vibration limits;
- (e) Storm event for drainage of J.C. Boyle power canal bench; and
- (f) Elevation below river channel at which portions of powerhouse or other concrete structures can remain.

4.8.3 Minimum Construction Submittal Requirements.

The Project Company shall take into account the constructability of the proposed design with consideration given to feasible methods of construction, constraints to construction (materials, labor, specialty construction, weather, etc.) design details, time required to complete each element of work, and possible alternatives which would reduce costs but maintain the level of quality and safety expected by the KRRC. The Project Company shall include, at a minimum, the following construction submittals in their technical specifications for concrete dam and structures removal. The Project Company is responsible for defining and providing any additional construction submittals that apply to the Project.

- (a) A summary of proposed methods for transportation, handling, weekly storage, day-storage, security and use of explosives;
- (b) General concept for excavation and blasting including controlled blasting techniques and methods for control of noise, air-overpressure, ground vibration, flyrock (if applied), and dust: Mitigation measures for controlling dust during blasting of concrete or rock, if required;
- (c) Methods of accessing the dam for excavation/demolition;
- (d) Excavation sequence for all structures, blasting design measures;
- (e) Blasting plan including but not limited to:

- (i) A scaled drawing showing the location, orientation, number, diameter, and depth of blast holes relative to the specified stations, slopes, lines, and grades;
- (ii) Manufacturer's data on material and equipment including type of explosive, cartridge size, detonator, blasting monitors (both air and seismic), plus other equipment required to perform the blast;
- (iii) Total weight of explosive in the blast and maximum weight per hole and charge per-delay, powder factor, and type and length of stemming;
- (iv) The delay sequencing and the type and manufacturer of the delays used;
- (v) Blasting schedule for all structures;
- (vi) List of all locations to be monitored;
- (vii) Methods to prevent over-blasting and loosening of rock or any structure not indicated to be removed or disturbed;
- (viii) Location of seismographs and instruments that will measure ground vibration and blast noise in A-weighted decibel scale; and
- (ix) Provisions for scaling after each blast, including when scaling will begin, and who will perform the scaling;
- (f) Methods of controlling, collecting and disposing of concrete dust and fragments during demolition to protect air and water quality (if applicable);
- (g) Blast reports to be submitted along with seismograph and noise (air overpressure) monitoring records;
- (h) Testing, Inspection, Instrumentation and Monitoring Results (if applicable);
- (i) Blasting permits, approvals, and agreements required for the use of explosives or to carry out blasting operations;
- (j) Proof of calibration of the monitoring equipment prior to commencement of any monitoring operations;
- (k) Blasting Safety Plan for Use of Explosives;
- (l) Fire prevention plan;
- (m) Control of Water;
- (n) Equipment and Materials Storage;
- (o) Methods for removing hazardous materials present in dam area and protection of workers and environment;
- (p) Methods to be used to evaluate the need for stabilization of abutments following dam removal and methods for stabilizing abutments (if applicable); and

- (q) A list, description and schedule of demolished materials to be wasted or disposed of off-site and on-site. For materials to be disposed of off-site, submit name and location of actual disposal facilities.

4.9. COFFERDAMS

This Section covers the design of all cofferdams except for the cofferdams that are formed from the existing J.C. Boyle and Iron Gate dam embankments that will be breached to complete removal of those dams. Cofferdams covered under this Section include those that may be required to construct new wheel gate structures, remove powerhouses, fill tailraces, provide access, remove Copco No. 2 dam, and remove any other structures associated with the Project. Design of cofferdams could include borrow site design, stability and seepage analyses, erosion protection, filter and drain requirements, construction materials, and construction sequencing.

4.9.1 Applicable Standards.

The design and construction of the cofferdams shall comply with all Applicable Law, and shall be done in conformance with the latest version of applicable standards, manuals and guidelines. At a minimum, the Project Company shall comply with listed standards below, and shall propose additional standards where appropriate for KRRC review. Should proposed standards conflict with those listed below, the Project Company shall provide justification for revising the Project Agreement standards prior to proceeding with design.

- (a) United States Department of the Interior, Bureau of Reclamation, Design Standards No.13, Embankment Dams (CH. 1 to 21);
- (b) ER 1110-2-8152 (Regulation No. 1110-2-8152) Planning and Design of Temporary Cofferdams and Braced Excavations, U.S. Army Corps of Engineers, Washington, DC 20314-1000;
- (c) Public Law 91-190 National Environmental Policy Act of 1969;
- (d) Public Law 104-303, Section 215 National Dam Safety Program Act;
- (e) ER 1110-2-1156 Dam Safety - Organization, Responsibilities, and Activities;
- (f) Occupational Safety and Health Standards for Construction Industry (USA) 29 Code of Federal Regulations Part 1926 Subpart S – Underground Construction, Caissons, Cofferdams, and Compressed Air.

4.9.2 Design Criteria.

4.9.2.1 Required Criteria

The Project Company shall meet the following Required Criteria, at minimum, for the design and construction of cofferdams:

- (a) Facilitate work required behind cofferdams during normal flow periods as well as during flood periods;
- (b) Include provisions for continuous dewatering and maintenance required to maintain the areas enclosed by the cofferdams and the excavations in a dewatered state; and

- (c) Dewatering systems shall reduce the groundwater pore pressures sufficiently to ensure the stability of the side slopes or shoring and base of the excavations, as applicable.

4.9.2.2 Proposed Criteria

In addition to the Required Criteria above, the Project Company shall develop the following criteria, at a minimum, for design and construction of cofferdams. Additional criteria shall be proposed and developed, as appropriate, to complete the design in accordance with the requirements set forth in the Project Agreement and Appendices.

- (a) Minimum factors of safety for stability;
- (b) Design earthquake for temporary construction;
- (c) Minimum acceptable seepage gradient;
- (d) Design flood levels;
- (e) Minimum freeboard requirements;
- (f) Erosion protection; and
- (g) Filter and drain criteria (if applicable).

4.9.3 Minimum Construction Submittal Requirements.

The Project Company shall take into account the constructability of the proposed design with consideration given to feasible methods of construction, constraints to construction (materials, labor, specialty construction, weather, etc.) design details, time required to complete each element of work, and possible alternatives which would reduce costs but maintain the level of quality and safety expected by the KRRC. The Project Company shall include, at a minimum, the following construction submittals in their technical specifications for cofferdam construction. The Project Company is responsible for defining and providing any additional construction submittals that apply to the Project.

- (a) Materials;
- (b) Construction staging and sequence;
- (c) Foundation preparation;
- (d) Maintaining cofferdam crest;
- (e) Dewatering and pumping plan;
- (f) Sump details;
- (g) Soil testing;
- (h) Instrumentations;
- (i) Water disposal plan;
- (j) Turbidity and silt control plan;

- (k) Controlled flooding;
- (l) Cofferdam removal;
- (m) Quality control plan;
- (n) Operation, maintenance and surveillance (OMS) for cofferdam safety; and
- (o) A list, description and schedule of demolished materials to be wasted or disposed of off-site and on-site. For materials to be disposed of off-site, submit name and location of actual disposal facilities.

4.10. ELECTRICAL

This Section covers the following design and demolition work of electrical systems, which shall be closely coordinated with and reviewed by PacifiCorp. PacifiCorp will continue to own any electrical facilities proposed to remain on the PacifiCorp Properties during and after the completion of the Project Implementation Work:

- (a) J.C. Boyle Dam: demolition of substation, powerhouse and distribution lines to village areas. Design of new transmission lines and poles to tie the 230kV transmission lines that currently head south into J.C. Boyle substation.
- (b) Copco No. 1 Dam: demolition of substation, powerhouse, and transmission lines. Demolition of distribution lines to local village houses only. Distribution lines and structures that run to Copco No. 2 and Fall Creek are to remain. Design of new transmission lines and poles for 69kV lines over disposal area.
- (c) Copco No. 2 Dam: demolition of powerhouse and transmission lines to Iron Gate and Copco No. 1. Partial demolition of substation. Under-build and structures are to remain; and
- (d) Iron Gate Dam: demolition of substation, powerhouse and designated transmission/distribution lines. Design of a new feed for distribution from Hornbrook to hatchery. New meter to be installed at hatchery.

As part of the design, the following analyses and tasks shall be completed:

- (a) Conduct Line Survey of 69KV and 230KV lines for applicable data for PLS-CADD modelling;
- (b) Soil Analysis and resistivity measurements;
- (c) Grounding Study;
- (d) Structural Design (pole/towers and foundations) of transmission poles;
- (e) Coordination with utility for specifications and standards for line sizing, wire sizing, equipment installation, etc.;
- (f) Sequencing plan/drawings for construction and outage – temporary power and construction staging;
- (g) Detailed demolition plans of existing lines;

- (h) Plan drawings of new connections and poles;
- (i) Plan and profile; and
- (j) Grounding, shielding and physical arrangements.

4.10.1 Applicable Standards.

The design and implementation of any demolition and design work shall comply with all Applicable Law, and shall be done in conformance with the latest version of applicable standards, manuals and guidelines. At a minimum, the Project Company shall comply with listed standards below, and shall propose additional standards where appropriate for KRRC review. Should proposed standards conflict with those listed below, the Project Company shall provide justification for revising the Project Agreement standards prior to proceeding with design.

- (a) National Electric Safety Code;
- (b) California General Order 95; and
- (c) Institute of Electrical and Electronics Engineers (IEEE).

4.10.2 Design Criteria.

4.10.2.1 Required Criteria

None.

4.10.2.1 Proposed Criteria

As required by applicable standards.

4.10.3 Minimum Construction Submittal Requirements

The Project Company shall take into account the constructability of the proposed design with consideration given to feasible methods of construction, constraints to construction (materials, labor, specialty construction, weather, etc.) design details, time required to complete each element of work, and possible alternatives which would reduce costs but maintain the level of quality and safety expected by the KRRC. The Project Company shall include, at a minimum, the following construction submittals in their technical specifications for electrical modification or demolition. The Project Company is responsible for defining and providing any additional construction submittals that apply to the Project.

- (a) Construction staging plan;
- (b) Outage coordination;
- (c) Sequencing plan;
- (d) Temporary power plan;
- (e) Testing and commission procedures shall be furnished by the Project Company and approved by Utility, prior to starting testing work. All testing documents shall be documented on a utility approved test form; and

- (f) A list, description and schedule of demolished materials to be wasted or disposed of off-site and on-site. For materials to be disposed of off-site, submit name and location of actual disposal facilities.

4.11. DISPOSAL SITES

The requirements outlined herein shall be applicable to the design of all disposal sites required for the Project. The design shall include grading, slope stability, settlement (if required), seepage including filter and drain (if needed), surface drainage, erosion control/protection, materials criteria/limitations/zoning, and material placement and compaction.

4.11.1 Applicable Standards.

The design and construction of the disposal sites shall comply with all Applicable Law, and shall be done in conformance with the latest version of applicable standards, manuals and guidelines. At a minimum, the Project Company shall comply with listed standards below, and shall propose additional standards where appropriate for KRRC review. Should proposed standards conflict with those listed below, the Project Company shall provide justification for revising the Project Agreement standards prior to proceeding with design.

- (a) United States Department of the Interior, Bureau of Reclamation, Design Standards No.13, Embankment Dams (CH. 1 to 21) ; and
- (b) EM 1110-2-1912. "Stability of Excavated and Natural Slopes in Soils and Clay Shales," U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS.

4.11.2 Design Criteria.

4.11.2.1 Required Criteria

The Project Company shall meet the following Required Criteria, at minimum, for design and construction of disposal sites:

- (a) The disposal sites shall be covered with fill and shall be designed to meet the ecological design criteria and blend into the landscape as naturally as possible. Design of the disposal site slopes shall consider landscape requirements and potential future use of the area by the public;
- (b) J.C. Boyle:
 - (i) Concrete rubble shall be disposed in scour hole below power canal spillway;
 - (ii) Excavated embankment materials shall be disposed in disposal site, in forebay to blend with surrounding topography and provide drainage, and on power canal bench such that a pedestrian/maintenance trail is maintained along outer edge of bench;
 - (iii) Concrete rubble in scour hole shall be covered with a 3-foot minimum thickness layer of cobbles and boulders salvaged from below the scour hole with soil washed into the voids after placement; and
 - (iv) Concrete rubble from J.C. Boyle powerhouse and penstock cradles shall be disposed in the powerhouse tailrace and covered with adjacent fill

materials to blend with surrounding topography and create a floodplain bench;

- (c) Copco No. 1 and Copco No. 2:
 - (i) Concrete rubble from Copco No. 1 dam and powerhouse and Copco No. 2 dam shall be disposed in disposal site;
 - (ii) Excavated Copco No. 2 embankment materials shall be used to cover disposal site after concrete rubble placement is complete; and
 - (iii) Concrete rubble from Copco No. 2 powerhouse shall be disposed in the Copco No. 2 tailrace and covered with native materials to blend with surrounding topography;
- (d) Iron Gate:
 - (i) Concrete rubble at Iron Gate dam and powerhouse shall be disposed in the disposal site and covered with a minimum 3 feet of excavated embankment materials;
 - (ii) Excavated embankment materials shall be disposed in the spillway and in the disposal site. The spillway shall be filled to the maximum extent possible while still meeting the requirements for stability; and
 - (iii) Portions of the spillway concrete structure that would remain exposed following filling with disposed materials shall be demolished so that a minimum of 3 feet of cover will be present following filling.

4.11.2.2 Proposed Criteria

In addition to the Required Criteria above, the Project Company shall develop the following criteria, at a minimum, for design and construction of disposal sites. Additional criteria shall be proposed and developed, as appropriate, to complete the design in accordance with the requirements set forth in the Project Agreement and Appendices.

- (a) Minimum required factors of safety for long-term and earthquake slope stability loading conditions;
- (b) Design earthquake for permanent construction;
- (c) Maximum exit gradient for seepage;
- (d) Design storm for surface drainage and erosion control/protection design;
- (e) Design river storm event (level, velocity, and shear stress) for erosion control/protection design for disposal areas adjacent to the Klamath River; and
- (f) Filter and drain requirements (if applicable).

4.11.3 Minimum Construction Submittal Requirements.

The Project Company shall take into account the constructability of the proposed design with consideration given to feasible methods of construction, constraints to construction (materials, labor, specialty construction, weather, etc.) design details, time required to complete each

element of work, and possible alternatives which would reduce costs but maintain the level of quality and safety expected by the KRRC. The Project Company shall include, at a minimum, the following construction submittals in their technical specifications for disposal site construction. The Project Company is responsible for defining and providing any additional construction submittals that apply to the Project.

- (a) Construction staging and sequence;
- (b) Foundation preparation;
- (c) Material placement and compaction effort;
- (d) Drainage;
- (e) Erosion control measures; and
- (f) Materials placement and compaction.

4.12. ENGINEERED HABITAT FEATURES

This Section covers design of engineered habitat features for the following areas:

- (a) J.C. Boyle dam footprint, reservoir area, and tributary streams within the currently inundated areas;
- (b) Copco No. 1 dam footprint, reservoir area and tributary streams within the currently inundated areas;
- (c) Copco No. 2 dam footprint and reservoir area within the currently inundated areas; and
- (d) Iron Gate dam footprint, reservoir area and tributary streams within the currently inundated areas.

The design shall generally comply with Section 5 of Appendix H in the KRRC Definite Plan (2018). Key design features include excavation in select areas 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 and/or channel fringe complexity features in select locations.

4.12.1 Applicable Standards.

The design and restoration of reservoir areas shall comply with all Applicable Law, and shall be done in conformance with the latest version of applicable standards, manuals and guidelines. At a minimum, the Project Company shall comply with listed standards below, and shall propose additional standards where appropriate for KRRC review. Should proposed standards conflict with those listed below, the Project Company shall provide justification for revising the Project Agreement standards prior to proceeding with design.

- (a) Restoration goals and objectives listed in Table 2.1 of Appendix H in the KRRC Definite Plan (2018);
- (b) Large Woody Material - Risk Based Design Guidelines, Bureau of Reclamation, Pacific Northwest Region, 2014;

- (c) Oregon Revised Statutes (ORS) Chapter 509 (General Protective Regulations – Fish Passage Statutes); and
- (d) Current version of the Uniform Building Code (UBC) Appendix Chapter 33 Excavation and Grading.

4.12.2 Design Criteria.

4.12.2.1 Required Criteria

The Project Company shall meet the following Required Criteria, at minimum, for engineered habitat features:

- (a) Design shall generally comply with Section 5 of Appendix H in the KRRC Definite Plan (2018);
- (b) Volitional fish passage shall be restored in the mainstem Klamath River and tributaries in accordance with requirements in Governmental Approvals;
- (c) All human-created structures, remnant features (i.e. rock cofferdams, falsework, crib structures, etc.), and non-natural debris shall be removed to the extent feasible from the Klamath River and tributaries and remaining channel shall provide volitional fish passage in accordance with requirements in Governmental Approvals; and
- (d) Thalweg through dam removal extents shall provide a geomorphologically appropriate transition from upstream to downstream; Channel bed materials shall generally match that found in appropriate reference reaches.

4.12.2.2 Proposed Criteria

In addition to the Required Criteria above, the Project Company shall develop the following criteria, at a minimum, for design and implementation of engineered habitat features. Additional criteria shall be proposed and developed, as appropriate, to complete the design in accordance with the requirements set forth in the Project Agreement and Appendices.

- (a) Large wood type and size;
- (b) Location of large wood material to be used for restoration;
- (c) Factor of safety for large wood stability (i.e. floating, sliding, etc.);
- (d) Design storm event for large wood stability; and
- (e) Design storm event for floodplain and wetland connectivity.

4.12.3 Minimum Construction Submittal Requirements.

The Project Company shall take into account the constructability of the proposed design with consideration given to feasible methods of construction, constraints to construction (materials, labor, specialty construction, weather, etc.) design details, time required to complete each element of work, and possible alternatives which would reduce costs but maintain the level of quality and safety expected by the KRRC. The Project Company shall include, at a minimum, the following construction submittals in their technical specifications for engineered habitat

features. The Project Company is responsible for defining and providing any additional construction submittals that apply to the Project.

- (a) Construction staging areas, access roads, and site management plan (including fueling areas for equipment) within reservoir areas;
- (b) Restoration work sequence and milestone schedule;
- (c) List of equipment and facilities necessary to execute the work;
- (d) Erosion control and air quality measures including dust control;
- (e) Work area isolation and in-water measures;
- (f) Monitoring and compliance plan to ensure compliance with Governmental Approval conditions and other regulatory requirements including photo points and reporting forms; and
- (g) Grading plan for each reservoir area and dam footprint area.

4.13. PLANT MATERIALS

The design requirements described below shall be applicable to all plant materials required for the Project, including, but not limited to plant seed, pole cuttings, and salvaged vegetation. Pioneer seeding shall be completed to limit erosion of accumulated sediments to the extent feasible.

4.13.1 Applicable Standards.

Plant materials design and selection (including seed mixes) shall comply with all Applicable Law, and shall be done in conformance with the latest version of applicable standards, manuals and guidelines. At a minimum, the Project Company shall comply with listed standards below, and shall propose additional standards where appropriate for KRRC review. Should proposed standards conflict with those listed below, the Project Company shall provide justification for revising the Project Agreement standards prior to proceeding with design.

- (a) U.S. Department of Agriculture, July 2009, Technical Note No. 11, Understanding Seeding Rates, Recommended Planting Rates, and Pure Live Seed (PLS);
- (b) Federal Plant Protection Act (Pub. L. 106-224 published in 2000);
- (c) Federal Seed Act (7 USC 1551-1611);
- (d) California and Oregon Department of Agriculture seed and noxious weed control laws;
- (e) California Crop Improvement Association and Oregon Seed Certification Service standards;
- (f) Association of Official Seed Analysts (AOSA) Rules for Testing Seed;
- (g) International Seed Testing Association (ISTA) accreditation requirements; and

- (h) AOSA Pre-Variety Germplasm Certification Standards.

4.13.2 Design Criteria.

4.13.2.1 Required Criteria

The Project Company shall meet the following Required Criteria, at minimum, for plant materials:

- (a) Genetically appropriate plant materials shall be sourced from the Upper Klamath River and Lost River Watersheds with an elevational range between 1,800' and 4,300';
- (b) Seed of sterile species non-native to the Upper Klamath River and Lost River Watersheds (e.g. sterile wheat), or California or Oregon native species that will not be able to reproduce in the project area (e.g. lacy phacelia) can be sourced commercially if used in amounts up to 5% of the pioneer seed mix by seed count (to enhance the erosion control properties of the seed mix);
- (c) Propagated native seed shall not be more than four generations (G4) removed from the wild collected parent seed (G0) from the collection area;
- (d) The Project Site shall be divided into a minimum of five planting zones based on hydrology, soil type, and probability of flooding (e.g., Emergent Wetland, Bank Wetland, Bank Riparian, Floodplain Riparian, and Upland);
- (e) Proposed seed mix plant species shall be most appropriate for the planting zone they have been proposed for;
- (f) Aerially broadcast "pioneer" seed mixes shall be applied at the time of drawdown, and shall, as a minimum, consist of an upland seed mix (to be seeded in the Upland Planting Zone) and a riparian seed mix (to be seeded in Bank Wetland, Bank Riparian, and Floodplain Riparian Zones);
- (g) Aerially broadcast "pioneer seeding" shall be implemented as soon as practicable in late winter and early spring of the drawdown year while exposed sediments are still soft and moist to allow for expedited germination and sprouting of seed. (Dried sediments form a hard crust that prevents germinating seed to penetrate into the soil/sediment.) The need for soft, moist sediment to serve as a suitable germination substrate shall be carefully balanced with the need to protect seed from freezing;
- (h) Each pioneer seeding period mix shall be species-diverse;
- (i) Each over-seeding period mix shall be species diverse;
- (j) Native plant seed of species that will demonstrate that they germinate and grow well when seeded in late winter on freshly drained reservoir sediment in the test plot experiments (conducted by KRRC) shall be prioritized for collection, propagation, and pioneer seed mix design;
- (k) Plant materials collection shall be implemented in a manner that will not cause any damage to existing plant populations or parent plants;

- (l) Pole cuttings shall be taken from healthy, vigorous parent plants. Parent plants shall not be harmed; not more than 30% of any plant shall be removed for pole cuttings;
- (m) Existing wetland and riparian plants growing near the current water line within the Project Site shall be salvaged to the maximum extent feasible, and transplanted to new locations along the newly formed river banks;
- (n) Salvage of existing vegetation shall begin as early as possible while plants are dormant, during and immediately after drawdown (in late winter and early spring of the drawdown year). Plants shall be transplanted directly to new locations when equipment access to river bank areas is feasible or when roads are constructed for equipment that will be grading the riparian floodplains; and
- (o) Source areas disturbed during salvaging operations shall be re-graded and re-seeded with zone-appropriate seed mixes immediately upon completion of work with the same amount of PLS per acre as that is used for aerial pioneer seeding.

4.13.2.2 Proposed Criteria

In addition to the Required Criteria above, the Project Company shall develop the following criteria, at a minimum, for design, selection, and procurement of plant materials. Additional criteria shall be proposed and developed, as appropriate, to complete the design in accordance with the requirements set forth in the Project Agreement and Appendices.

- (a) A detailed schedule for collection and propagation of native plant materials, including but not limited to, native plant seed collection and storage, native plant seed propagation and storage, pole cutting collection and storage, existing wetland and riparian plant protection and preservation in place during drawdown for salvage, and relocation;
- (b) A method for collection and propagation of native plant material, including but not limited to, native plant seed collection and storage, native plant seed propagation and storage, pole cutting collection and storage, native riparian plant preservation in place during drawdown, salvage, and relocation;
- (c) Precautions during plant materials collection, propagation and storage that will prevent the reduction of plant materials viability and their contamination by noxious weeds, undesirable species, and diseases;
- (d) Plant species composition for the two aerially broadcast pioneer seed mixes. As a minimum, propose 12 native plant species with a minimum of five keystone, and seven associate species typical for each planting zone. Propose species from the following groups: nurse crop, grass-like (*Poaceae*, *Cyperaceae*, *Juncaceae*), legume (*Fabaceae*), one annual or biennial, and several perennial forb species. Pioneer seed mixes may contain up to 5% (by count) of seed of sterile plants (e.g., sterile wheat) and seed of California or Oregon native species from outside of the collection area that will not be able to reproduce in the project area (e.g. lacy phacelia); Utilize species previously collected or propagated for the project to the maximum extent feasible;
- (e) The minimum number of seeds per square foot to be aerially broadcasted during pioneer seeding in areas with up to 3:1 slopes (within a range of 35–60 seeds per sq. ft.), and in areas with slopes steeper than 3:1 (within a range of 60–85 seeds per sq. ft.);

- (f) Plant species composition for the over-seeding period seed mixes for each of the five planting zones (as described in the Required Criteria). As a minimum, propose 20 native plant species with a minimum of eight keystone species, and twelve associate species typical for each planting zone. Propose species for the following groups: nurse crop, grass-like (*Poaceae*, *Cyperaceae*, *Juncaceae*), legume (*Fabaceae*), annual or biennial, and perennial forb species. Over-seeding seed mixes shall not contain any non-native sterile plants or seed of California or Oregon native species that will not be able to reproduce in the project area. Utilize species previously collected or propagated for the project to the maximum extent feasible;
- (g) Plant species composition and amounts of pole cuttings and salvage transplants for each planting zone applicable;
- (h) Reference sites for each planting zone near each of the three major reservoirs; and
- (i) PLS amounts of native plant seed (by species) to be generated by Project Company for the restoration of the Project Site while utilizing to the maximum extent feasible previously collected and previously or currently propagated seed. Show what proportion (in %) of total seed amount will be used for pioneer seeding and what proportion for overseeding (by species).

4.13.3 Minimum Construction Submittal Requirements.

The Project Company shall take into account the constructability of the proposed design with consideration given to feasible methods of construction, constraints to construction (materials, labor, specialty construction, weather, etc.) design details, time required to complete each element of work, and possible alternatives which would reduce costs but maintain the level of quality and safety expected by the KRRC. The Project Company shall include, at a minimum, the following construction submittals in their technical specifications for plant materials. The Project Company is responsible for defining and providing any additional construction submittals that apply to the Project.

- (a) Restoration plant materials inventory (quarterly update) – including amount of collected seed available for propagation and for seeding, amounts of propagated seed in storage, amounts of commercially available sterile seed and seed from areas beyond the collection area, amounts of pole cuttings in storage, amounts (by species and size) of expected existing wetland and riparian plants to be salvaged and relocated to the newly formed river banks;
- (b) Collected seed field-collection forms;
- (c) Collected seed parent-plant vouchers (11"x17" sheets with pressed parent plant and correct botanical identification, collection site identification with GPS coordinates and date of collection);
- (d) Collected seed laboratory test results (quarterly update);
- (e) Propagated seed laboratory test results (quarterly update);
- (f) Qualifications for seed collectors, seed propagators, seed storage companies, and seed testing laboratories;

- (g) Weed-free certifications;
- (h) *Phytophthora*-free certifications; and
- (i) Copies of any seed packaging labels.

4.14. INVASIVE EXOTIC VEGETATION REMOVAL

The design requirements outlined herein shall be applicable to invasive exotic vegetation removal.

4.14.1 Applicable Standards.

Invasive exotic vegetation (IEV) removal shall comply with all Applicable Law, and shall be done in conformance with the latest version of applicable standards, manuals and guidelines. At a minimum, the Project Company shall comply with listed standards below, and shall propose additional standards where appropriate for KRRC review. Should proposed standards conflict with those listed below, the Project Company shall provide justification for revising the Project Agreement standards prior to proceeding with design.

- (a) EPA-applicable pesticide standards and regulations;
- (b) Federal Noxious Weed Act of 1974, as amended (7 U.S.C. 2801 et seq.);
- (c) The 2007 BLM Vegetation Treatments Using Herbicides on Bureau of Land Management Lands in 17 Western States and related Record of Decision (ROD);
- (d) Oregon's prohibition of all but four herbicides (2,4 D, picloram, Tordon, dicamba, and glyphosate Rodeo and Accord and approved combinations) within the PEIS by a U.S. District Court injunction (BLM 2010);
- (e) The 2010, BLM issued ROD for the Vegetation Treatments Using Herbicides on BLM Lands in Oregon PEIS that approved the use of an additional 10 herbicide (14 approved in total) west of the Cascades and 13 herbicides (17 approved in total) east of the Cascades (BLM 2010);
- (f) Appendix C Herbicide Evaluation in the Biological Assessment for the project. This document will be in negotiation with natural resources agencies, and proposed invasive exotic vegetation techniques shall be in full compliance with the most recent version of this document;
- (g) The California Dept. of Pesticide Regulations (DPR) , A Guide to Pesticide Regulation in California (2011) regulation requirements and the County Agricultural Commissioner's recommendations;
- (h) Oregon's state Pesticide Control Law (Oregon Revised Statute Chapter 634), regulations issued by the Oregon Department of Forestry (ODF) for pesticide application in forested lands and regulations and standards from the Oregon Department of Agriculture; and
- (i) To assess the importance of control and invasiveness of invasive exotic vegetation species at the project site, the Project Company shall take into consideration information from the CDFW Noxious Weed List, the Oregon State Department of Agriculture Noxious Status, CAL-IPC Invasiveness Classifications, Klamath County

Weed List, Noxious Weed List of Siskiyou County Department of Agriculture, the Noxious Weeds of the Klamath National Forest, and the USDA's Federal Noxious Weed List.

4.14.2 Design Criteria.

4.14.2.1 Required Criteria

The Project Company shall meet the following Required Criteria, at a minimum, for all IEV removal:

- (a) All methods of IEV control shall be closely evaluated to determine their benefits and risks to the surrounding ecosystems;
- (b) The primary IEV control shall consist of physical methods such as manual IEV removal, mowing or cutting, tilling and disking after pre-germination, grazing, shading, and solarization;
- (c) Biological control of IEV shall be only utilized upon written approval by the KRRC, natural resource agencies, and key stakeholders;
- (d) Chemical control of IEV with herbicides shall only be used as a last resort and upon exhausting all other physical, biological and integrative pest management methods. Herbicides will be only utilized upon written approval by the KRRC, natural resource agencies, and key stakeholders;
- (e) By December 31 prior to drawdown, the maximum percent cover of existing high priority IEV species (as defined in Appendix H of Reservoir Area Management Plan) within the terrestrial portion of the Project Site (excluding all water surfaces up to the Ordinary High Water Mark) shall be less than 3%, and the maximum percent cover of existing medium priority IEV species shall be less than 10%;
- (f) IEV control in the former reservoir areas shall begin immediately after seeding of drawdown areas and continue until the end of maintenance and monitoring periods;
- (g) No high priority IEV plants shall be present within the Project Site at the conclusion of the maintenance and monitoring period;
- (h) The maximum relative vegetation cover of medium and low priority IEV species within each planting zone of the Project Site at the end of the maintenance and monitoring period shall be less than the average relative vegetation cover of medium and low priority IEV species in two approved reference areas for each corresponding planting zone;
- (i) Annual IEV monitoring and control shall occur for five years after installation acceptance or until the relative IEV vegetation cover performance criteria have been met;
- (j) IEV control shall be ongoing throughout all phases of the Project;
- (k) IEV control shall be performed in accordance with the best standards of practice relating to IEV control, and under continuous supervision of a qualified, and experienced foreman; and

- (l) IEV plant species capable or reproducing from underground roots, rhizomes or stolons shall be removed with the entire root system by excavation to a min. depth of 18" or as necessary to prevent the plant from reproducing.

4.14.2.2 Proposed Criteria

In addition to the Required Criteria above, the Project Company shall develop the following criteria, at a minimum, for IEV removal. Additional criteria shall be proposed and developed, as appropriate, to complete the design in accordance with the requirements set forth in the Project Agreement and Appendices.

- (a) IEV disposal location in accordance with Applicable Law and Governmental Approvals;
- (b) Priority ratings (high, medium, low) for removal of IEV species identified within the Project Site;
- (c) Specific control methods that minimize impacts to the environment and maximize eradication efficacy for each IEV species;
- (d) A quantitative GIS-based determination of relative percent cover of IEV species within the Project Site that includes on the ground field verification and data correction for complex or ambiguous GIS areas and Daubenmire frame surveys along pre-determined transects for herbaceous species not recognizable on drone generated aerial photography;
- (e) Areas of invasive species surrounding the Project Site that have large seed banks that may threaten native plant establishment; and
- (f) BMPs describing how the risk of spreading IEV shall be minimized during construction.

4.14.3 Minimum Construction Submittal Requirements.

The Project Company shall take into account the constructability of the proposed design with consideration given to feasible methods of construction, constraints to construction (materials, labor, specialty construction, weather, etc.) design details, time required to complete each element of work, and possible alternatives which would reduce costs but maintain the level of quality and safety expected by the KRRC. The Project Company shall include, at a minimum, the following construction submittals in their technical specifications for IEV removal. The Project Company is responsible for defining and providing any additional construction submittals that apply to the Project.

- (a) A list of qualifications for the team that will be implementing IEV control work in accordance with the best standards of practice relating to IEV removal;
- (b) IEV Control Plans;
- (c) IEV Plant Lists;
- (d) Annual Project Area IEV Extent Monitoring Report;
- (e) Manufacturer's information on all tools and equipment that shall be used for IEV control;

- (f) Manufacturer's information on all materials to be used for IEV control; and
- (g) Integrative Pest Management based recommendations for effective control of each IEV species present in the Project Site.

4.15. HABITAT RESTORATION

4.15.1 Applicable Standards.

Terrestrial restoration of all former reservoir and other disturbed areas shall comply with all Applicable Law, and shall be done in conformance with the latest version of applicable standards, manuals and guidelines. At a minimum, the Project Company shall comply with listed standards below, and shall propose additional standards where appropriate for KRRC review. Should proposed standards conflict with those listed below, the Project Company shall provide justification for revising the Project Agreement standards prior to proceeding with design.

- (a) The International Standards for the Practice of Ecological Restoration; and
- (b) Resource agency Governmental Approval conditions and performance criteria.

4.15.2 Design Criteria.

4.15.2.1 Required Criteria

The Project Company shall prepare design for the habitat restoration in the Project Site that at a minimum meets the following Required Criteria:

- (a) Existing native trees, shrubs, herbaceous perennials and their habitats, sensitive protected plant communities (vegetation alliances and associations as defined by CDFW), and undisturbed native soil areas shall be protected to the maximum extent feasible;
- (b) Wherever possible, lightweight (low ground pressure) equipment shall be used in areas to be planted or hydroseeded or previously undisturbed areas;
- (c) The Project Site shall be divided into a minimum of five planting zones based on hydrology, soil type, and probability of flooding – Emergent Wetland, Bank Wetland, Bank Riparian, Floodplain Riparian, and Upland;
- (d) Proposed plant species shall be most appropriate for the planting zone they have been proposed for;
- (e) Aerially broadcast "pioneer" seed mixes shall be applied at the time of drawdown, and shall as a minimum consist of an upland seed mix (to be seeded in the Upland Planting Zone) and a riparian seed mix (to be seeded in Bank Wetland, Bank Riparian, and Floodplain Riparian Zones);
- (f) Seeding of the Project Site shall occur during at least two separate periods. The first seeding period will be the 'pioneer seeding period' and shall be implemented as upland and riparian aerial pioneer seeding during drawdown (late winter). The upland and riparian 'pioneer seed mixes' shall consist of species that can reliably germinate under freezing conditions on moist clayey substrate (reservoir sediment), quickly establish, develop into a dense ground cover with an extended root system, and provide effective erosion control. The second seeding

period will be the 'over-seeding period' and shall occur in fall after drawdown. The over-seeding period seed mixes shall contain a higher diversity of plants and as a minimum shall be planting zone specific for each of the five planting zones described above. Over-seeding mixes shall be broadcast over mowed or rolled mature native vegetation (pioneer seeding);

- (g) Each pioneer seeding period mix shall be as described in Section 4.13 (Plant Materials);
- (h) Each over-seeding period mix shall be as described in Section 4.13 (Plant Materials);
- (i) All disturbed areas where soil has been compacted to more than 80% relative compaction shall be cross-ripped or otherwise de-compacted before seeding. Soil structure shall be preserved to maximum extent practicable;
- (j) Pole cuttings shall be installed as a priority in areas that have a high potential for the establishment of the invasive non-native hybrid of reed canary grass (*Phalaris arundinacea*);
- (k) The upland planting zone shall have a minimum of two seeded trees and two seeded shrubs per acre;
- (l) Existing wetland and riparian plants at the reservoirs shall be salvaged and transplanted to newly formed emergent wetland, bank wetland, bank riparian and floodplain riparian planting zones;
- (m) Transplanting of salvaged plants shall occur as early in the drawdown year as possible;
- (n) The work shall be performed by an experienced contractor familiar with native plant seeding, pole cuttings installation and ecological restoration industry methods, and standards for seeding; and
- (o) The Project Company shall review all documents indicating location and types of sensitive species at the Project Site. The Project Company shall comply with all local, state, and federal restrictions that apply to sensitive species on-site.

4.15.2.2 Proposed Criteria

In addition to the Required Criteria above, the Project Company shall develop the following criteria, at a minimum, for design and implementation of habitat restoration. Additional criteria shall be proposed and developed, as appropriate, to complete the design in accordance with the requirements set forth in the Project Agreement and Appendices.

- (a) The species composition and amounts of PLS by species for the riparian and upland pioneer seed mixes that shall be applied during drawdown;
- (b) The species composition and amounts of PLS by species for the five overseeding seed mixes that shall be applied in the fall after drawdown;
- (c) The number of salvaged transplants per 100 sq. ft. to be installed in the emergent wetland zone (within the range of 2-4 transplants per 100 sq. ft.);

- (d) The number of salvaged transplants and pole cuttings per 100 sq. ft. to be installed in the bank wetland zone (within the range of 1-2 transplants and 4-6 pole cuttings per 100 sq. ft.);
- (e) The number of salvaged transplants and pole cuttings per 100 sq. ft. to be installed in the bank riparian zone (within the range of 1-2 transplants and 4-6 pole cuttings per 100 sq. ft.);
- (f) The number of pole cuttings and seeded woody plants (shrubs or trees) per 100 sq. ft. to be installed in the floodplain riparian zone (within the range of 1-2 pole cuttings and 1-2 seeded woody plants per 100 sq. ft.);
- (g) The number of seeded woody plants (shrubs or trees) per acre to be installed in the upland planting zone (within the range of 1-3 shrubs and 1-3 trees per acre);
- (h) Mycorrhizal inoculant;
- (i) Broadcast seeding methods and seed mixes for areas that may be in need of reseeding during drawdown due to re-inundation by large storm events;
- (j) Pre-drawdown maps with existing potential salvage material locations and quantities around the edge of the reservoirs;
- (k) Plans of priority areas for installation of salvaged wetland and riparian plant materials;
- (l) Densities for plant material installation for pole cuttings, transplants, woody trees and shrubs for each vegetation zone. These densities should take into account the minimum necessary density of pole cuttings to decrease the likelihood of invasion of reed canary grass (*Phalaris arundinacea*);
- (m) Reference site locations with relative vegetation coverage, plant diversity, number of surviving trees and shrubs and percent relative cover by medium and low priority IEV;
- (n) Criteria for selection of key restoration areas to be protected from herbivory by deer fence enclosures, as appropriate;
- (o) Methods for reducing soil compaction during/and after project implementation;
- (p) Methods for reducing/preventing herbivory;
- (q) Criteria to identify areas with underperforming vegetation cover and the re-seeding methods to achieve better results;
- (r) Criteria for selection of Project Site perimeter segments to be fenced with cattle exclusion fencing; and
- (s) Height, materials, installation methods, and appropriate wildlife-friendly accommodations for cattle exclusion fencing.

4.15.3 Minimum Construction Submittal Requirements.

The Project Company shall take into account the constructability of the proposed design with consideration given to feasible methods of construction, constraints to construction (materials, labor, specialty construction, weather, etc.) design details, time required to complete each element of work, and possible alternatives which would reduce costs but maintain the level of quality and safety expected by the KRRC. The Project Company shall include, at a minimum, the following construction submittals in their technical specifications for habitat restoration. The Project Company is responsible for defining and providing any additional construction submittals that apply to the Project.

- (a) Salvage and restoration areas access route plans that minimize impacts to existing native vegetation and soils;
- (b) Seed mix composition, and laboratory test results indicating purity and germination rates for all seed species to be used in the project;
- (c) Manufacturer's information on all materials to be used for restoration (e.g. cocoons, etc.);
- (d) Information on all equipment to be used in restoration; and
- (e) A list of qualifications for the restoration teams that will be performing restoration work.

4.16. IRRIGATION

This Section covers any and all temporary irrigation systems required to meet the Project and Governmental Approval goals around habitat restoration, as further defined below.

4.16.1 Applicable Standards.

The irrigation system and its components shall comply with all Applicable Law, and shall be done in conformance with the latest version of applicable standards, manuals and guidelines. At a minimum, the Project Company shall comply with listed standards below, and shall propose additional standards where appropriate for KRRC review. Should proposed standards conflict with those listed below, the Project Company shall provide justification for revising the Project Agreement standards prior to proceeding with design.

- (a) American Society for Testing and Materials (ASTM) Standards;
- (b) American Society of Mechanical Engineers (ASME) Standards;
- (c) Manufacturers Standardization Society of the Valve and Fittings Industry (MSS) Standards;
- (d) National Sanitation Foundation (NSF) Standards;
- (e) National Electric Code (NEC);
- (f) Underwriters Laboratories (UL) Standards; and
- (g) Uniform Plumbing Code (UPC).

4.16.2 Design Criteria.

4.16.2.1 Required Criteria

The Project Company shall meet the following Required Criteria, at a minimum, for the design and construction of irrigation systems:

- (a) The Bank Riparian planting zone shall be fully, overhead spray irrigated;
- (b) The Floodplain Riparian planting zone can be partially irrigated;
- (c) The Bank Riparian planting zone irrigation system shall be designed to last for seven years or until the end of the monitoring period, whichever is longer;
- (d) Upland areas shall be intermittently irrigated with a temporary irrigation system (e.g. Rain-for-Rent) if initial restoration efforts are unsuccessful because of lack of water at the time of seed germination, an unusually dry year, or extended drought period;
- (e) The irrigation system shall be carefully designed to prevent erosion and runoff by closely matching its precipitation rate to the infiltration rate of the existing soil/sediment;
- (f) The minimum evapotranspiration coefficient for riparian vegetation shall be 0.6 or higher, and the irrigation efficiency coefficient shall be 0.8;
- (g) Pipes shall be sized to maintain flow and pressure required for proper performance of each sprinkler head, while maintaining water velocities below five feet per second, reducing the risk of pipe damage and friction losses;
- (h) Thrust blocks shall be installed in all areas where irrigation main lines change direction;
- (i) Seeded woody plants (trees and shrubs) in upland planting zones shall be provided with year-round source of water immediately after planting and throughout the installation and establishment periods;
- (j) If gas powered irrigation pumps are used to draw irrigation water from the river, they shall be set in containment basins to prevent any spills or water contamination with fuels, oils, or lubricants;
- (k) A metal wire mesh cage with openings small enough to prevent small fish entry (and approved by the natural resource agencies) shall house the irrigation intake suction basket that shall be anchored in a suitable, low-velocity area of the river;
- (l) The irrigation system shall be designed with drainage valves at low points in the system to allow for easy winterization and air purging of remnant water from the system;
- (m) The surface mounted irrigation system shall be well anchored to the ground, and designed with easily removable components (e.g., sprinkler risers) to protect the system from high flow storm events and vandalism;

- (n) Irrigation applications shall occur between the hours of 5:00 am and 10:00 am to reduce water loss due to wind and higher evapotranspiration; and
- (o) Soil infiltration rate shall be collected and reported for each irrigated location to ensure proper irrigation, minimize erosion and runoff.

4.16.2.2 Proposed Criteria

In addition to the Required Criteria above, the Project Company shall develop the following criteria, at a minimum, for design and construction of irrigations systems. Additional criteria shall be proposed and developed, as appropriate, to complete the design in accordance with the requirements set forth in the Project Agreement and Appendices.

- (a) The Bank Riparian planting zone irrigation method, system type and materials, coverage and other details;
- (b) The Floodplain Riparian planting zone partial irrigation method, system type and materials, coverage, and other details;
- (c) A description of the proposed method for measuring average water infiltration into existing soil;
- (d) Method, system type and materials, coverage and other details of year-round source of water for seeded woody plants (trees and shrubs) in upland planting zones for the installation and establishment periods;
- (e) Description of each independent irrigation systems to be provided for the Bank Riparian Zone key areas (as shown in Appendix H, Sections 5.3 – 5.5, Figures 5-23, 5-26, and 5-29);
- (f) Irrigation frequencies per table below:

Month	Minimum Install'n Estab. Periods Applications per week	Minimum Maintenance Period Y1-Y3 Applications per week	Minimum Maintenance Period Y4- Y5 Applications per week
April			
May			
June			
July			
Aug			
Sept			
Oct			

- (g) The quantities of water to be applied to each irrigated site (based on average evapotranspiration and precipitation) in addition to average natural precipitation due to rainfall/snow per table below:

Month	Gallons per Acre per Month	Inches per Month
April		

Month	Gallons per Acre per Month	Inches per Month
May		
June		
July		
Aug		
Sept		
Oct		

- (h) Criteria for initiating irrigation during the winter months;
- (i) Irrigation system design approach report describing how permanent and temporary irrigation shall be implemented;
- (j) Plant evapotranspiration coefficients; and
- (k) Irrigation efficacy coefficient.

4.16.3 Minimum Construction Submittal Requirements.

The Project Company shall take into account the constructability of the proposed design with consideration given to feasible methods of construction, constraints to construction (materials, labor, specialty construction, weather, etc.) design details, time required to complete each element of work, and possible alternatives which would reduce costs but maintain the level of quality and safety expected by the KRRC. The Project Company shall include, at a minimum, the following construction submittals in their technical specifications for irrigation. The Project Company is responsible for defining and providing any additional construction submittals that apply to the Project.

- (a) Manufacturer's information on irrigation materials proposed for use. Provide for each item, name of manufacturer, brand name and model number;
- (b) Provide irrigation performance test reports in booklet form showing the field tests performed to adjust each component and the field tests performed to prove compliance with the specified performance criteria, upon completion and testing of the installed system; and
- (c) As-built irrigation drawings, which provide current factual information showing locations of mains, heads, valves, and controllers including deviations from amendments to the drawings and changes in the work.

4.17. PLANT ESTABLISHMENT AND MAINTENANCE

4.17.1 Applicable Standards.

Plant Establishment shall comply with all Applicable Law, and shall be done in conformance with the latest version of applicable standards, manuals and guidelines. At a minimum, the Project Company shall comply with listed standards below, and shall propose additional standards where appropriate for KRRC review. Should proposed standards conflict with those listed below, the Project Company shall provide justification for revising the Project Agreement standards prior to proceeding with design.

- (a) The International Standards for the Practice of Ecological Restoration; and
- (b) American National Standards Institute (ANSI) – ANSI Z60.1 (2004), Nursery Stock.

4.17.2 Design Criteria.

4.17.2.1 Required Criteria

The Project Company shall meet the following Required Criteria, at minimum, for the Plant Establishment Period:

- (a) Plant Establishment Period shall begin as soon as any vegetation is planted, and shall extend two years after the installation is accepted by the KRRC;
- (b) Seeded areas that do not show any signs of germination within 60 days after seeding, shall be re-seeded until required vegetation coverage is achieved;
- (c) Naturally recruited native woody species shall count at 50% for the purpose of calculating the number of surviving trees and shrubs per acre;
- (d) Herbivory shall be kept to a minimum by installation of deer fencing and any other practicable means;
- (e) The irrigation system shall be in proper working condition throughout the plant establishment and long-term monitoring and maintenance periods, and shall maintain vegetation in a healthy and thriving condition;
- (f) Diseased and/or dead pole cuttings or seed shall be replaced with the same species or recommended replacements more suitable for existing conditions;
- (g) All fences and gates shall be in proper working condition at all times. Gates shall be closed after each vehicle or have solar powered closers to prevent the entry of herbivorous wildlife; and
- (h) Invasive species shall be kept at an absolute minimum and as required by the IEV Control Section.

4.17.2.2 Proposed Criteria

In addition to the Required Criteria above, the Project Company shall develop the following criteria, at a minimum, for Plant Establishment. Additional criteria shall be proposed and developed, as appropriate, to complete the design in accordance with the requirements set forth in the Project Agreement and Appendices.

- (a) Design criteria for the plant establishment and long-term monitoring and maintenance periods addressing plant maintenance, watering, irrigation system maintenance, non-native invasive species removal, plant re-setting, plant replacement, infrastructure maintenance, adaptive management, removal of storm debris and sediment, repair of eroded areas, restoration site inspections, record keeping, and reporting;
- (b) Criteria for underperforming seeded areas;

- (c) Map delineating areas where vegetation is not expected to establish due to existing physical conditions (e.g., rocky substrate, bedrock, water seepage, etc.); and
- (d) A schedule with key inspection dates throughout the plant establishment and long-term monitoring and maintenance periods.

4.17.3 Minimum Construction Submittal Requirements.

The Project Company shall take into account the constructability of the proposed design with consideration given to feasible methods, constraints to work completion (materials, labor, specialty construction, weather, etc.) design details, time required to complete each element of work, and possible alternatives which would reduce costs but maintain the level of quality and safety expected by the KRRC. The Project Company shall consider at minimum the following elements but not limited to this list, for Plant Establishment Period. The project company is responsible for defining and providing any additional construction submittals that apply to the Project.

- (a) A list of qualifications for the establishment/maintenance team that will be performing establishment/maintenance work;
- (b) Monthly establishment reports during the first year of the Plant Establishment Period and quarterly reports during subsequent years. Submit monthly establishment reports within 5 working days following the end of each month or within 10 working days following the end of each quarter. Reports shall identify, at a minimum, project name, planting zones, date, and reporting period. Identify and discuss weed control performed, irrigation activity and maintenance, plant health, vandalism, herbivory, site feature conditions, general observations, total precipitation for the month, personnel hours spent on-site, and other pertinent information describing site conditions and activities performed and shall include as-maintained drawings;
- (c) Final plant establishment inspection punch list;
- (d) Final long-term maintenance period inspection punch list;
- (e) Final plant establishment report (within 30 days following the written acceptance of the Establishment Period). Document the current vegetation and site condition as well as conditions during the past year. Survey plant survival and document in tables indicating plants installed, plants dead, plants alive, volunteer plants, survival percentage, replacement plants, and pertinent observations. Provide survival summaries for each planting zone and the Project as a whole;
- (f) Final long-term maintenance report (within 30 days following the written acceptance of the Maintenance Period). Document the current vegetation and site condition as well as conditions during the past five years. Survey plant survival and document in tables indicating plants installed, plants dead, plants alive, volunteer plants, survival percentage, replacement plants, and pertinent observations. Provide survival summaries for each planting zone and the Project as a whole;
- (g) As-maintained drawings of the work completed. As-maintained drawings shall be based upon the as-built drawings. These drawings shall be updated to

include current conditions, impacts, and results of the planting survival, and infrastructure items. Establishment reports shall be based upon the information recorded on the as-maintained drawings as well as observations in the field. As-maintained drawings shall be attached to establishment reports; and

- (h) A plan indicating the sources and methods of procurement of replacement plant materials.

4.18. PLANT MONITORING

4.18.1 Applicable Standards.

The plant monitoring shall comply with all Applicable Law, and shall be done in conformance with the latest version of applicable standards, manuals and guidelines. At a minimum, the Project Company shall comply with listed standards below, and shall propose additional standards where appropriate for KRRC review. Should proposed standards conflict with those listed below, the Project Company shall provide justification for revising the Project Agreement standards prior to proceeding with design.

- (a) The International Standards for the Practice of Ecological Restoration.

4.18.2 Design Criteria.

4.18.2.1 Required Criteria

The Project Company shall meet the following Required Criteria, at minimum, for the Plant Monitoring:

- (a) The plant diversity for each project planting zone will be the following percentages of approved reference sites for each monitoring year: Year (Y) 1-60%, Y2-65%, Y3-70%, Y4-75%, Y5-80%, or equal to/better than agency set permit requirements, whichever more stringent;
- (b) The number of surviving trees and shrubs per acre will be the following percentages of the trees originally planted from seed for each monitoring year: Y1-90%, Y2-85%, Y3-80%, Y4-75%, Y5-70%, or equal to/better than agency set permit requirements, whichever more stringent;
- (c) Naturally recruited native woody species shall count at 50%; and
- (d) The relative vegetation cover for each project planting zone will be the following percentages of the average of the relative vegetation cover of approved reference sites for each monitoring year: Y1-70%, Y2-75%, Y3-80%, Y4-85%, Y5-90%, or equal to/better than agency set permit requirements, whichever more stringent.

4.18.2.2 Proposed Criteria

In addition to the Required Criteria above, the Project Company shall develop the following criteria, at a minimum, for Plant Monitoring. Additional criteria shall be proposed and developed, as appropriate, to complete the design in accordance with the requirements set forth in the Project Agreement and Appendices.

- (a) Detailed description of plant monitoring methods with specific information on monitoring procedures for each of the performance criteria;

- (b) Plant monitoring annual timing and schedule for the duration of the monitoring period; and
- (c) Plant monitoring reporting.

4.18.3 Minimum Construction Submittal Requirements.

The Project Company shall take into account the constructability of the proposed design with consideration given to feasible methods of construction, constraints to construction (materials, labor, specialty construction, weather, etc.) design details, time required to complete each element of work, and possible alternatives which would reduce costs but maintain the level of quality and safety expected by the KRRC. The Project Company shall include, at a minimum, the following construction submittals in their technical specifications for plant monitoring. The Project Company is responsible for defining and providing any additional construction submittals that apply to the Project.

- (a) Monthly and bi-monthly monitoring reports; and
- (b) Annual monitoring reports for review and comments prior to submission to resource agencies.

APPENDIX 5

GENERAL PROJECT IMPLEMENTATION WORK REQUIREMENTS

APPENDIX 5

GENERAL PROJECT IMPLEMENTATION WORK REQUIREMENTS

5.1. PURPOSE

The purpose of this Appendix is to set forth certain requirements for the performance of the Project Implementation Work. The Project Company shall perform the Project Implementation Work in accordance with the Contract Standards, including the requirements set forth in this Appendix.

5.2. MANAGEMENT AND COORDINATION

5.2.1 Coordination.

The Project Company shall hold meetings that are separate from and in addition to Project progress meetings described in Section 5.4.2 (Project Progress Meetings - Scheduling and Attendance) of this Appendix, and shall prepare correspondence and make any other arrangements as necessary to coordinate the Project Implementation Work. The Project Company shall coordinate its activities with other contractors performing work at or near the Project Site. The Project Company shall identify other construction or operations work that may be in progress in close proximity to or bordering on the Project. The Project Company shall coordinate all Project Implementation 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 Project Implementation Schedule and installation procedures of other contractors to identify potential conflicts, allocation of space on the Project Site, drawing/design interchange among contractors, establishment and modification of schedules and sequences of construction, demolition and restoration, and planning of future meetings.

5.2.2 Partnering Sessions.

The KRRC and the Project Company shall use good faith efforts to promote the formation of a successful formal partnering relationship in order to effectively perform the Project 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 Project Agreement and will not relieve any party of the legal requirements of this Project Agreement.

The KRRC and the Project Company 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 Project, achieve a cooperative partnership environment among Project participants, and mutually develop a strategy for forming a successful partnering relationship. The KRRC and the Project Company 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 Project Company's project managers. The parties shall use good faith efforts to schedule the initial Partnering Session before commencing the Project Implementation Work and to select the facilitator for the workshop as soon as reasonably possible following the Contract 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), and the Project Company's costs relating to the Partnering Sessions shall be deemed to constitute Project Implementation Work Costs. 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.

5.3. PROJECT IMPLEMENTATION SCHEDULE

5.3.1 Initial Project Implementation Schedule.

All activities comprising the Project Implementation 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 Project Company intends to utilize in taking the Project from the Project Design Requirements to Project Final Completion. The "Initial Project Implementation Schedule," prepared in accordance with these requirements and included as part of the Project Company's GMP Project Submittal, is set forth as Attachment 5A to this Appendix. The Initial Project Implementation Schedule, as updated periodically pursuant to this Section, is referred to herein as the "Project Implementation Schedule." The Project Company shall undertake and complete the Project Implementation Work in accordance with the Project Implementation Schedule.

5.3.2 Project Implementation Schedule Updates.

The Project Company shall, as required from time to time during the Project Implementation Period, but no less than once per calendar month, in consultation with the KRRC update the Initial Project Implementation Schedule so that it is at all times an accurate, reasonable and realistic representation of the Project Company's plans for the completion of the Project Implementation Work in accordance with the requirements of this Project Agreement. The updates shall include:

- (a) adjustments resulting from Uncontrollable Circumstances and Project Design Requirements Changes, if any, as permitted by this Project Agreement and as provided in Section 5.3.4 (Events Affecting the Project Implementation 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 Project Implementation Work;
- (c) start and completion dates of the major activities of Project Implementation Work; and
- (d) the date on which each Milestone Substantial Completion Date is expected to occur.

The Project Company shall deliver to the KRRC and the Program Manager on a monthly basis the updated Project Implementation Schedule. The monthly updated Project Implementation 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 Project

Implementation 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 Project Implementation 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 Project Implementation Schedule then in effect, together with proposed Project Implementation Schedule adjustments and mitigation measures.

5.3.3 KRRC Review.

The KRRC shall review the updated Project Implementation Schedule and advise the Project Company 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 Project Company shall meet with the KRRC to discuss Project progress and the updated Project Implementation Schedule. The Project Company 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 Project Implementation Schedule and replace any previously issued Project Implementation Schedule. Project Implementation Schedule updates are for the purpose of providing the Project Company with flexibility in its work activity durations and sequences, but in no event shall such updates result in a change in the Scheduled Milestone Substantial Completion Dates. The Scheduled Milestone Substantial Completion Dates shall be adjusted solely as provided in Section 7.5 (Effect of Unexcused Delay in Achievement of Substantial Completion) of this Project Agreement.

5.3.4 Events Affecting the Project Implementation Schedule.

No later than 15 days following the occurrence of an Uncontrollable Circumstance or a KRRC-directed Change Order, the Project Company shall submit a report containing an analysis of the effects of such events on the Project Implementation Schedule, including any new dates for work task and major subtasks, each Milestone Substantial Completion and each Scheduled Milestone Substantial Completion Date. The Project Company shall present mitigation measures that were considered to offset potential work delays; those proposed for KRRC review and acceptance; and a revised Project Implementation Schedule incorporating the Project Company's proposed changes.

5.4. PROJECT IMPLEMENTATION WORK MEETINGS AND REPORTS

5.4.1 Pre-Commencement Conference.

The Project Company shall hold a pre-commencement conference prior to commencement of the Project Implementation Work. The Project Company 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 Project Implementation Period.
- (b) Subcontractors, and their roles on the Project Implementation Work.
- (c) Coordination with other contractors and projects.

- (d) Project Implementation Schedule.
- (e) Project Company submittals and KRRC review.
- (f) Schedule of Project Company submittals.
- (g) Requests for Information and Clarification.
- (h) Required Insurance.
- (i) Project Company's site-specific Health and Safety Plan.
- (j) Security.
- (k) Housekeeping.
- (l) Record drawings.
- (m) Proposed Project Implementation Work Date.
- (n) Governmental Approvals.
- (o) Emergency telephone numbers.
- (p) Temporary Utilities/Utilities coordination.
- (q) Any other Project Implementation Work-related items.

The pre-commencement conference shall be scheduled by the Project Company at a time reasonably acceptable to the KRRC and shall be attended by the Project Implementation Manager, the Project Company's Project Manager, the Project Company's Project Superintendent, and the Project Company's principal Subcontractors' project managers or superintendents and representatives of major suppliers as the Project Company deems appropriate. Other attendees may include a representative from the Project Company's executive team, the quality assurance/quality control manager ("QA/QC Manager"), the Design Manager, local police and fire departments and other Governmental Bodies with jurisdiction over the Project Implementation Work, any other contractors whose work affects or is affected by construction, demolition or restoration work and others as deemed appropriate by these parties. The Project Company shall conduct the conference at the Project Site and make all arrangements for space, facilities and food services and shall notify all participants of the arrangements.

5.4.2 Project Progress Meetings – Scheduling and Attendance.

The Project Company shall schedule, hold, and facilitate regular weekly Project progress meetings from the time mobilization for Project Implementation Work commences through Project Final Completion, and at other times if requested by the KRRC or as the Project Company deems necessary. The Project progress meetings shall be attended by the Project Company Project Manager, the Project Company Superintendent, and the Project Company's principal Subcontractors' project managers or superintendents and representatives of major suppliers, as the Project Company deems appropriate. The Project Company, Project Manager and representatives from the Project Company'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, demolition or restoration work, and

others deemed appropriate by these parties. The KRRC shall attend the weekly progress meetings. Project progress meetings shall be held at the Project Site.

5.4.3 Project Progress Meetings – Agenda.

At such meetings, discussions shall be held concerning all aspects of the Project Implementation Work including, but not limited to, the Project Implementation Schedule, coordination of work with others, Project Design Requirements Changes, Governmental Approvals and Project Implementation Work submittals, and any test results. The Project Company 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 (Project Company 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) Change Orders, Contract Administration Memoranda and Project 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) Project Site visits by KRRC, KRRC’s representatives, representatives of Governmental Bodies and Project Company’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.

5.4.4 Monthly Progress Reports.

Monthly progress reports required to be submitted by the Project Company shall include:

- (a) a summary of Project Implementation Work activities during the reporting month.
- (b) a schedule of upcoming Project Implementation 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 Project Company's verification that the record documents have been updated as appropriate.
- (f) a summary of activities involved with obtaining Governmental Approvals.
- (g) a listing of any violations of 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) Project Implementation Schedule updates.
- (k) the Project Company's plan for accelerating the Project Implementation Schedule to meet the Scheduled Milestone Substantial Completion Dated should the Project Company's progress-to-date indicate that the Project Company's Project Implementation Work is behind schedule and at risk of not being completed by the then applicable Scheduled Milestone Substantial Completion Date (as adjusted for extensions of time permitted under this Project Agreement).
- (l) Expenditures for the most recently completed month and for the Project 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 Project Company 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 9 (Compensation) of this Project 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 Project Implementation Work performed during the month by task or subtasks in terms of labor hours, Project equipment costs, Capital Improvements equipment and materials expenditures, specialty Subcontractors including similar breakdowns for Subcontracts in excess of \$500,000 and other

Project 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 6.8 (Changes to the Project Design Requirements at Project Company Request) and 6.9 (Other Changes to the Project Design Requirements) of this Project 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 Project Implementation Work, and the Project Company'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 Project Company. The format of the monthly report shall be developed by the Project Company and approved by the KRRC prior to the commencement of any construction or demolition on the Project Site.

5.4.5 Project Records.

The Project Company, in connection with the Project Implementation Work generally, shall maintain and provide the following records:

- (a) Record Drawings and Specifications: The Project Company shall:
 - (1) throughout the Project Implementation Work, update the 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 Project.
 - (2) as requested from time to time during the Project Implementation Work, make available such record drawings and specifications to the KRRC for review to permit the KRRC to monitor the Project Company's compliance with the requirements of this Section.
 - (3) 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 each Milestone Final Completion. The record drawings shall not be deemed to have satisfied the condition to the applicable Milestone Final Completion unless reviewed and deemed final by the KRRC.
- (b) Design Records: The Project Company shall retain records of the design development.
- (c) Minutes of Meetings: The Project Company shall retain minutes of meetings between the KRRC and the Project Company relating to the Project Implementation 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 Project Company shall retain official reports and certified test records of all inspections and tests which were undertaken as part of the Project Implementation Work.

- (e) Utility Plans: The Project Company shall retain utility plans for the Project and the Project Site.
- (f) Landscape and Irrigation Plans: The Project Company shall retain landscape and irrigation plans for the Project and the Project Site.
- (g) Copies of all Governmental Approvals: The Project Company shall retain copies of all Governmental Approvals for the Project Implementation Work.
- (h) Signed Project Implementation Quality Management Plan: The Project Company shall retain a signed copy of the Project Implementation Quality Management Plan for the Project Implementation Work and all records of the QA program implemented as required by this Project Agreement.

The records referred to in this Section shall be retained for at least five years following the Milestone Substantial Completion Date for the Final Habitat Restoration Work.

5.5. PROJECT IMPLEMENTATION WORK GENERALLY

5.5.1 Deliverable Material.

The Project Company shall deliver to the KRRC all Deliverable Material required to be delivered under this Appendix, Appendix 6 (Project Implementation Work Quality Control Requirements), Appendix 7 (Project Implementation Work Review Procedures).

5.5.2 Signs.

The Project Company shall provide and maintain temporary identification and information signs during the Project Implementation 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 Project Company shall remove temporary signs from the Project Site when they are no longer necessary.

5.5.3 Laydown Areas and Field Office Space.

Laydown and staging areas for materials shall be located at the Project Site or at other locations arranged and paid for by the Project Company. At a minimum, field office facilities shall include the following:

- (a) Field office facilities for the Project Company;
- (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 Project Company.

5.5.4 Maintenance of the Project Site.

During performance of the Project Implementation Work, the Project Company shall be responsible for the overall maintenance of the Project Site. The Project Company shall keep the Project Site neat and orderly at all times, and shall clean up and remove all rubbish and construction, demolition and restoration debris from the Project Site as they accumulate in accordance with the Contract Standards.

5.5.5 Temporary Utilities.

The Project Company 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 Project Implementation Work. Prior to the Milestone Substantial Completion Date for the Final Habitat Restoration Work, the Project Company shall disconnect and arrange for the disconnection and removal of all temporary Utility connections and services. The Project Company shall coordinate with the KRRC on all temporary Utilities.

5.5.6 Relocation of Existing Utilities.

The Project Company 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 any relocation of Utilities.

5.5.7 Noise Control.

The Project Company shall comply with all noise regulations required pursuant to Applicable Law. Project Implementation Work will be allowed as defined in Section 4.2.4 (Required Design Criteria – On-Site Work Hours) of Appendix 4 (Project 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 14 (Uncontrollable Circumstances) of this Project Agreement.

5.5.8 Notice of Default.

The Project Company 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 Project Company of its obligations under this Project Agreement.

5.6. COORDINATION OF PROJECT IMPLEMENTATION WORK AND OPERATIONS

5.6.1 Facilities Shutdowns during Project Implementation Work.

The Project Company shall plan and coordinate in advance with the KRRC in order to obtain KRRC approval and schedule its Project Implementation Work which requires partial or complete shutdowns of the Facilities. The Project Company shall make every effort to minimize the number and duration of partial or complete shutdowns.

5.6.2 Maintenance of Facilities Operations.

The Project Company shall take no actions during performance of the Project Implementation Work that adversely affect the operation of the Facilities. The Project Company shall comply with the Maintenance of Facilities Operations Plan, which is included as Attachment 5B (Maintenance of Facilities Operations Plan) to this Appendix.

5.6.3 Coordination of PacifiCorp Staff Relocations and Building Demolitions.

The Project Company shall be responsible for providing temporary conditioned work space for PacifiCorp staff as needed to accommodate the performance of the Project Implementation Work. Temporary work spaces shall be provided with hot and cold potable water and temporary shower facilities where applicable. To facilitate coordination of relocations with the KRRC, the Project Company shall prepare detailed plans as part of the Maintenance of Facilities Operations Plan describing how construction, relocations and demolition are to occur.

5.7. PROJECT SAFETY AND SECURITY

5.7.1 Safety and Security.

The Project Company shall maintain safety and security at the Project Site 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 Project Company's health and safety program.

Nothing contained in this Section shall relieve Project Company, 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 Project Agreement or any Applicable Law, the more stringent requirements that maintain a greater level of safety shall apply.

Without limiting the foregoing, the Project Company shall:

- (a) Implement a zero incident philosophy on the Project 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 Project Company agrees to develop and comply with an appropriate substance abuse policy. Project Company 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 Project Implementation Work and provide appropriate protection to prevent damage,

injury or loss related to the performance of the Project Implementation Work over the Project Implementation Period for:

- (1) Workers at the Project Site and all other persons who may be involved with deliveries or inspections;
 - (2) Visitors to the Project Site;
 - (3) Passersby, neighbors and adjacent properties with respect to the Project Implementation Work activities;
 - (4) Materials and equipment under the care, custody or control of the Project Company or Subcontractors on the Project Site;
 - (5) Other property constituting part of the premises or the Project; and
 - (6) 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 Project Site-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 Project Site-specific Health and Safety Plan, including all safety rules at the Project Site;
 - (m) Designate a qualified safety professional at the Project Site during on-site Project Implementation Work activities who shall be responsible for the implementation of safety rules at the Project Site, the prevention of fires and accidents, monitoring compliance with the Project Company's Project Site-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 Project Company's on-site safety requirements, and designate a qualified safety professional whose duty shall be

the implementation of safety rules at the Project Site and monitoring compliance of Subcontractor employees with the Subcontractor's Project Site-specific Health and Safety Plan.

- (o) The Project Company shall maintain Project safety audits, equipment safety inspection logs, incident reports, and all reports covering the implementation of Health and Safety Plan on the Project Site for review upon request by the KRRC.
- (p) If the Project Company 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 Project Company's progress payment(s) and/or suspend progress payments.
- (q) The Project Company's non-compliance with health and safety-related Applicable Law and Agreement safety requirements shall be considered failure by the Project Company to perform a provision of the Project Agreement, and may be cause for the suspension of the Project Implementation Work and/or the discharge from the Project Implementation Work of an employee, Subcontractor or Supplier as set forth in the Project Agreement. The Project Company will be responsible for all costs for stoppage of Project Implementation Work and/or replacement of employee(s).

5.7.2 Perimeter Security.

The Project Company shall develop, maintain and comply with a Project Site perimeter security plan that is approved by the KRRC and constitutes part of the Health and Safety Plan. The perimeter security plan shall assure the security of the Project Site when perimeter fencing cannot be continuously maintained.

5.8. ENVIRONMENTAL REVIEW AND PROTECTION

5.8.1 Wildlife and Protected Species Protection.

In accordance with the Governmental Approvals, the Project Company shall develop and implement a plan that is consistent with required measures for wildlife and protected species that may be affected by construction, demolition and restoration activities of the Project Company. Prior to implementing the plan, the Project Company shall obtain KRRC approval.

5.8.2 Project Company Environmental Monitor.

If required by the Environmental Mitigation Measures, the Project Company shall assign a Project Company 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 Project Implementation Work methods.
- (b) Oversight of Project Implementation 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 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 Project Site by the CEM.

5.8.3 Regulated Substances Management Program.

The Project Company 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 Project Company of any observed conditions that may be in violation of the plan. If the Project Company 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 Project Company's control. All documents required by the Regulated Substances Management Plan shall be made available to the KRRC immediately upon request.

5.8.4 Project Company Regulated Substances.

Any Regulated Substances generated by the Project Company shall be the responsibility of the Project Company. The Project Company shall obtain an EPA identification number for all Project Company Regulated Substances, listing the Project Company's name and address as the generator of the Project Company Regulated Substances. The Project Company shall be responsible for the identification, analysis, profiling, documentation, reporting, transport and disposal of Project Company Regulated Substances. Any fines that are levied against the KRRC for violations of Applicable Law as determined by any Governmental Body relating to Project Company Regulated Substances shall be reimbursed immediately by the Project Company after payment by KRRC.

5.8.5 Emergency/Spill Response Plan.

The Project Company 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 Project Site or intended to be brought to the Project Site by the Project Company. 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 Project.
- (c) Response coordination procedures between the Project Company 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 Project Company’s employees and Subcontractors.

5.8.6 Dust Control.

The Project Company shall be responsible for dust control during the performance of the Project Implementation Work and shall comply with all air pollution control Applicable Law and Governmental Approvals. The Project Company shall furnish all necessary labor, materials and equipment for dust control.

ATTACHMENT 5A

INITIAL PROJECT IMPLEMENTATION SCHEDULE

[Note: The negotiated Initial Project Implementation Schedule will be inserted here as part of the GMP Contract Amendment, based on the initial Project Implementation Work schedule in the KRRC-accepted GMP Project Submittal. All activities of the Project Implementation Work shall be scheduled and monitored by use of a Gantt or Bar Chart which presents all tasks and key subtasks in a logical and efficient work sequence that the Project Company intends to use in advancing the Project from 60% Design Completion to Project Final Completion. The Initial Project Implementation Schedule is to be approved by the KRRC prior to the commencement of Project Implementation Work activity. The Project Company shall be responsible for completing all Project Implementation Work by each Scheduled Milestone Substantial Completion Date.]

ATTACHMENT 5B

MAINTENANCE OF FACILITIES OPERATIONS PLAN

[Note: The negotiated Maintenance of Facilities Operations Plan will be inserted here as part of the GMP Contract Amendment, based on the draft Maintenance of Facilities Operations Plan in the KRRC-accepted GMP Project Submittal].

APPENDIX 6

PROJECT IMPLEMENTATION WORK QUALITY CONTROL REQUIREMENTS

APPENDIX 6

PROJECT IMPLEMENTATION WORK QUALITY CONTROL REQUIREMENTS

6.1. PURPOSE

The purpose of this Appendix is to describe the minimum requirements for the Project Implementation Quality Management Plan, including quality assurance ("QA") and quality control ("QC") procedures that shall be implemented during the Project Implementation Period. QA/QC shall include inspection, sampling and testing, and other requirements.

6.2. KRRC'S QUALITY OBJECTIVES

The Project Implementation Quality Management Plan, including QA/QC, shall be consistent with and support the following quality objectives for the Project Implementation Work:

- (a) Ensure that the Project Implementation Work is consistent with the Contract Standards.
- (b) Ensure that Governmental Approval requirements are effectively incorporated into Project Implementation 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 Project Company 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.

6.3. PROJECT IMPLEMENTATION QUALITY MANAGEMENT PLAN DEVELOPMENT AND IMPLEMENTATION

6.3.1 General Requirements.

The development and implementation of the Project Implementation Quality Management Plan shall be the responsibility of the Project Company. The Project Implementation Quality Management Plan shall integrate the permitting, design, construction, demolition and restoration phases of the Project during the Project Implementation Period and shall include detailed QA and QC programs as attachments. Other Project Implementation Quality Management Plan requirements are defined in Section 6.4 (Project Implementation Work Quality Control Requirements) of this Appendix.

6.3.2 Project Implementation Quality Management Plan Requirements.

The Project Implementation Quality Management Plan shall include a description of how the Project Company will provide the following:

- (a) Adequate resources for effective plan implementation throughout all phases of the Project Implementation Work. Information on QA/QC staff to be assigned to the Project 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 Project Company to assess Project Implementation Work quality and compliance with the Contract Standards;
- (c) How the QA/QC program shall function independently of Project Company's production staff and be empowered to enforce plan objectives, define quality requirements, independently verify quality of Project Implementation 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 Project. This shall include information on the roles, responsibilities and authorities of identified QA/QC staff; and
- (e) The Project Company shall submit its Project Implementation Quality Management Plan for KRRC review for all phases of the Project Implementation Work, including verification of compliance with the Contract Standards as part of its initial document submittal package. KRRC will provide comments on the Project Implementation Quality Management Plan and the Project Company shall make required changes and include the final KRRC-approved Project Implementation Quality Management Plan as an attachment to this Project Agreement.

6.3.3 Changes to the Project Implementation Quality Management Plan.

Revisions and updates to the Project Implementation Quality Management Plan may be proposed by the Project Company as the Project Implementation Work progresses. Changes to the initial Project Implementation 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 Project Implementation Work to which the revision applies. The KRRC will review and respond in a timely manner to Project Implementation Quality Management Plan proposed changes. The Project Company shall not initiate any of the Project Implementation Work that is impacted by such proposed revision or change until the KRRC has reviewed and accepted the change.

6.4. PROJECT IMPLEMENTATION WORK QUALITY CONTROL REQUIREMENTS

6.4.1 Project Implementation Work Quality Control Program.

The Project Implementation Quality Management Plan shall include the details of the Project Company's Project Implementation 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 Project Implementation Work by inspectors who are not responsible, in whole or in part, for the scheduling or performance of the Project Implementation Work being inspected. Inspection records must be kept current, have sufficient detail to enable the Engineer-of-Record to identify inspections which have been performed, and the results of these inspections. Inspections must be made throughout Project Implementation Period, including the initial work, in-process inspections, final inspections, and testing during the performance of the Project Implementation 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 Project Implementation Work quality meets the Contract Standards and the Project Company's Design Documents. The Project Company shall be informed of all unsatisfactory conditions that the Project Company will correct and for any nonconforming conditions for which the Project Company intends to request the KRRC's acceptance in accordance with Section 6.17 (Correction of Work) of this Project Agreement.

6.4.2 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 Project Company's Design Documents, and that quality has been controlled during the manufacture and testing of all equipment which is being fabricated for the Project. The CQCP shall require written documentation of inspection of all material and equipment to ensure that it meets all Contract Standards and the Project Company's 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 Project Company's Design Documents. The CQCP shall include monitoring procedures to ensure that material and equipment is delivered to the Project Site 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 Project Site 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 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 Project Implementation Work to which they are assigned.

6.4.3 Project Management and Testing.

The Project Company shall provide full-time Project management and full and comprehensive administration for the Project Implementation Work. Project inspectors, who shall be provided with the latest Design Documents released to construction, demolition and restoration, shall perform initial verification of procurement, construction, demolition and rehabilitation activities, so that any conflicts will be identified at an early stage. The CQCP shall clearly identify the circumstances under which the Project Company's registered soils or geotechnical engineer and the Engineer-of-Record will be involved in Project Implementation Work quality oversight. The Project Company shall perform all testing and inspections as required by the Contract Standards, approved design documents and Applicable Law (such as ACI and ASTM) which may be referenced in Appendix 4 (Project Design Requirements). Section 1.2(U)

(Applicability, Stringency and Consistency of Contract Standards) of this Project Agreement shall govern any conflicts or inconsistency in the stringency of test requirements.

6.4.4 Laboratories.

All Project Implementation Work testing shall be performed by individuals who are qualified and experienced in providing these testing services. Equipment used to perform tests shall be calibrated according to requirements in the testing procedure. The Project Company shall hire a certified independent testing laboratory to perform all laboratory testing. The laboratory selected shall be authorized to operate in the State, certified under the State's National Environmental Laboratory Accreditation Program, as applicable, and shall be subject to the approval of the KRRC. Project Company requests for laboratory approval shall be made by the Project Company in a timely manner, in writing, to the KRRC. Laboratory tests shall include the proposed concrete mix design, concrete aggregate tests, strength of concrete field test cylinders, gradation, and moisture density relationship of soils. The certified testing laboratories must also perform on-site tests that the Project Company is not experienced, qualified, or certified to perform or that require independent testing under the Contract Standards. On-site tests shall include tests for: concrete slump, concrete air entrainment, concrete temperature, casting of concrete test cylinder specimens, in-place testing of concrete strength, compaction density testing of soils, coating thickness measurements and structural bolting torque.

6.5. INSPECTION OF PROJECT IMPLEMENTATION WORK

6.5.1 Inspection and Correction.

All Project Implementation Work performed by the Project Company or its Subcontractors shall be inspected by the Project Company. All nonconforming Project Implementation Work and any safety hazards in the work area shall be noted and promptly corrected. The Project Company is responsible for the performance of the Project Implementation Work safely and in conformance with Section 5.7 (Work Safety and Security) of Appendix 5 (General Project Implementation Work Requirements).

6.5.2 KRRC Access.

The KRRC, its employees, agents, representatives and contractors shall be permitted access to all parts of the Project Implementation 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 Project Company of the responsibility for the proper execution of the Project Implementation Work in accordance with all requirements of this Project 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 Project Company of this responsibility.

6.5.3 Materials Inspection.

All materials and articles furnished by the Project Company shall be subject to documented inspection, by qualified personnel, and no materials or articles shall be used in the Project Implementation Work until they have been inspected and accepted by the QA/QC Manager or other designated representative. Any Project Implementation Work covered in the absence of inspection shall be subject to uncovering as set forth in Section 6.16 (Monitoring, Observations, Testing and Uncovering of Project Work) of this Project Agreement.

6.6. TIME OF INSPECTION AND TESTS

Whenever the Project Company is ready to backfill, bury, cast in concrete or otherwise cover any Project Implementation Work, the KRRC shall be notified before such covering and completion, and the KRRC shall notify the Project Company of a requested inspection of any such Project Implementation Work as set forth in subsection 6.16(F) (Notice of Covering Project Implementation Work) of this Project Agreement. Failure of the Project Company to properly notify the KRRC, as required by subsection 6.16(F) (Notice of Covering Project Implementation Work) of this Project Agreement, in advance of any such covering or completion shall be reasonable cause for the KRRC to request the Project Company take apart or uncover for inspection or testing any previously covered or completed Project Implementation Work in accordance with subsection 6.16(F) (Notice of Covering Project Implementation Work) of this Project Agreement. The costs of any uncovering, taking apart, remedial or corrective work required and all costs of such delays, including the impact on other portions of the Project Implementation Work, shall be borne as set forth in 6.16(F) (Notice of Covering Project Implementation Work) of this Project Agreement.

6.7. MATERIALS SAMPLING AND TESTING

6.7.1 Materials Testing and Removal.

All sampling and testing of materials shall be conducted in accordance with the methods prescribed in the current standards of the ASTM or otherwise required by the Contract Standards, as applicable to the class and nature of the article or materials considered. The KRRC reserves the right to require the Project Company to use any generally accepted system of inspection that, in the opinion of the KRRC, will ensure the KRRC that the quality of the materials and workmanship is in full accord with this Project Agreement. Results of such tests and analyses shall be considered along with the tests or analyses made by the Project Company to determine compliance with the applicable specifications for the materials so tested or analyzed. Wherever any material, as a result of such independent testing or investigation by the KRRC, fails to meet the requirements of this Project Agreement, all costs of such independent inspection and investigation and all costs of removal, correction, reconstruction, or repair of any such material shall be borne by the Project Company in accordance with subsection 6.16(F) (Notice of Covering Project Implementation Work) and Section 6.17 (Correction of Work) of this Project Agreement.

6.7.2 Materials Rejection.

The KRRC shall have the right at all times and places to reject any articles or materials to be furnished hereunder which, in any respect, fail to meet the requirements of this Project Agreement, regardless of whether the defects in such articles or materials are detected at the point of manufacture or after completion of the Project Implementation Work at the Project Site. If the KRRC, through an oversight or otherwise, has accepted materials or work which are defective or in any way contrary to this Project Agreement, such materials, no matter in what stage or condition of manufacture, delivery, or erection, may be rejected. The Project Company, at its cost and expense and without any adjustment to the Scheduled Milestone Substantial Completion Dates, shall promptly remove and replace rejected articles or materials from the Project Site after notification of rejection.

6.8. MATERIALS TESTING SERVICES

6.8.1 Project Company's Laboratories.

The Project Company shall perform all tests requiring the services of a laboratory, to determine compliance with this Project Agreement, using independent commercial materials testing firms acceptable to the KRRC. The materials testing firm's laboratory shall be staffed with

experienced technicians, properly equipped, and fully qualified to perform the tests in accordance with the specified standards. The Project Company shall obtain the KRRC's acceptance of the testing firm before having testing services performed, and pay all costs for these testing services.

6.8.2 Interruptions for Testing and Sampling.

The Project Company shall furnish all sample materials and cooperate in the testing activities, including sampling, and shall interrupt the Project Implementation Work when necessary to allow testing, including sampling, to be performed. The Project Company shall have no claim for an increase in the Contract Price or extension of the Scheduled Milestone Substantial Completion Dates due to such interruption. When testing activities, including sampling, are performed in the field by the testing firm's laboratory personnel, the Project Company shall furnish personnel and facilities to assist in the activities.

6.8.3 Test Reports.

Written reports of tests and engineering data regarding materials and equipment proposed to be used in the Project Implementation Work shall be submitted by the Project Company for the KRRC's review. The testing firm's laboratory shall perform all laboratory tests within a reasonable time, consistent with the specified standards, and shall furnish a written report of each test. The KRRC shall furnish one copy of each field and laboratory QA/QC test conducted by the KRRC to the Project Company. The testing firm retained by the Project Company for material testing shall furnish five copies of a written report for each test. Three copies of each test report shall be transmitted directly to the KRRC in a sealed envelope, within three Business Days after each test is completed. Two copies of each test report shall be transmitted to the Project Company. The Project Company shall consecutively number each report for each type of test.

6.8.4 KRRC-Approved Laboratories.

The KRRC shall have the right to inspect work performed by the KRRC-approved independent testing laboratory utilized by the Project Company, both at the Project Site and at the laboratory. This may include inspection of the independent testing laboratory's internal quality assurance records (quality assurance manual, equipment calibrations, proficiency sample performance, etc.). Testing services provided by the KRRC, if any, are for the sole benefit of the KRRC; however, test results shall be available to the Project Company. Testing necessary to satisfy the Project Company's internal QA/QC procedures shall be the sole responsibility of the Project Company.

6.8.5 Materials to be Tested.

The Project Company shall provide all testing services in connection with the following materials as required under Good Dam Removal Practice, and deliver the test reports for review by the KRRC:

- (1) Concrete materials and mix designs.
- (2) Masonry units, masonry grout, mortar materials, and design mixtures.
- (3) Asphaltic concrete materials and design mixtures.
- (4) Embankment, fill, and backfill materials.

- (5) QC testing of all precast concrete.
- (6) Holiday testing of pipeline coatings.
- (7) Air testing of field-welded joints for steel pipe and fabricated specials.
- (8) Concrete strength tests.
- (9) Test of masonry prisms.
- (10) Field control test of masonry.
- (11) Asphaltic concrete.
- (12) Magnetic particle or dye penetrant testing of field welds for steel pipe and fabricated specials.
- (13) Moisture-density and relative-density tests on embankment, fill, and backfill materials.
- (14) In-place field density test on embankments, fills, and backfill.
- (15) Other materials and equipment as specified herein.
- (16) All other tests and engineering data required for the KRRC's review of materials and equipment proposed to be used in the Project Implementation Work.

6.9. INSTALLATION

6.9.1 Inspection and Measurement.

The Project Company 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 Project Company inspections in accordance with Section 6.16 (Monitoring, Observations, Testing and Uncovering of Project Work) of this Project Agreement. The Project Company shall verify measurements and dimensions of the work as an integral step of starting each installation.

6.9.2 Manufacturer's Instructions.

Where installations include manufactured products, the Project Company 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 7

PROJECT IMPLEMENTATION WORK REVIEW PROCEDURES

APPENDIX 7

PROJECT IMPLEMENTATION WORK REVIEW PROCEDURES

7.1. OVERVIEW

7.1.1 Purpose.

The purpose of this Appendix is to set forth the procedures for the KRRC's review of each aspect of the Project Implementation Work to verify that the Project Implementation Work has been performed in accordance with the Project Design Requirements and the terms and conditions of this Project Agreement.

7.2. DOCUMENTS TO BE SUBMITTED

At a minimum, the documents to be submitted during the Project Implementation 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) Final Design Documents (Issued for Dam Removal Specifications)
- (d) Applications and supporting documents required for Governmental Approvals
- (e) Record drawings and specifications

Such documents shall be submitted in accordance with the Document Submittal Procedures.

7.2.2 Project Implementation Work Package Information.

The Project Company shall have flexibility with how it organizes and performs Project Implementation Work packages so that it can proceed with ordering any necessary equipment or commence with any necessary construction, demolition and restoration activities such as civil-site work prior to the 100% design; provided, however, such construction, demolition, restoration or ordering of equipment prior to the 100% design shall not negatively affect the remaining Project Implementation Work, the Contract Price or the Project Implementation Schedule. The Project Company shall provide the following information in the appropriate Project Implementation Work package in accordance with the Document Submittal Procedures:

- (a) Specifications, Design Narratives and Lists:
 - (1) Project design criteria
 - (2) Specifications
 - (3) Process systems piping line list
 - (4) Major equipment list (process, mechanical, electrical, instrumentation and control, support systems, other)
 - (5) Proprietary technology/equipment list

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- (b) Drawings, in both three dimensional electronic and standard design formats:
- (1) Cover sheet
 - (2) Drawing index
 - (3) Layout of the Project Site
 - (4) Project Site master planning layouts
 - (5) Landscape inventory plan
 - (6) Landscape and irrigation plans
 - (7) Project Site grading and utility plans, with sections as needed for construction, demolition and restoration clarity or dimensioning
 - (8) Surface drainage system and features plans and details
 - (9) Fire protection and security system plans
 - (10) Project Site sections and details
 - (11) Major structure foundation plans and sections
 - (12) Major structure exterior elevations and sections
 - (13) Architectural renderings
 - (14) Electrical site plan

7.3. KRRC REVIEW DURING GOVERNMENTAL APPROVAL PROCESS

7.3.1 Project Company-Managed Governmental Approvals.

The Project Company's responsibilities for obtaining and maintaining the Project Company-Managed Governmental Approvals required for implementation of the Project are described in Section 6.6 (Permitting Responsibilities and Schedule) and Appendix 3 (Governmental Approvals) to this Project Agreement. The KRRC shall have the right to review and comment on Project Company submittals as provided by Section 6.6 (Permitting Responsibilities and Schedule) of this Project Agreement and this Appendix. Governmental Approval applications shall not include design specifications or drawings that the KRRC has not previously reviewed. For all Project Company-Managed Governmental Approval applications, the Project Company shall provide draft copies of the applications and supporting documents for KRRC review and comment. The KRRC's review will not diminish the Project Company's responsibility for timely submittals of complete applications for Project Company-Managed Governmental Approvals. The KRRC may attend Project Company meetings with permitting agencies and help arrange for agency reviews and meetings.

7.3.2 KRRC-Managed Governmental Approvals.

The Project Company's responsibilities for assisting the KRRC in obtaining and maintaining the KRRC-Managed Governmental Approvals required for the implementation of the Project are

described in Section 6.6 (Permitting Responsibilities and Schedule) and Appendix 3 (Governmental Approvals) to this Project Agreement.

7.4. KRRC DOCUMENT REVIEW

7.4.1 KRRC Review Responsibilities.

On or before the Project Implementation Work Commencement Date, the Project Company shall submit updated Document Submittal Procedures that address the submittal of the Final Design Documents (the “Final Design Submittal Protocol”). In accordance with the Final Design Submittal Protocol, the KRRC shall review the Project Company’s Final Design Documents for compliance and consistency with the final 90% design documents for compliance and consistency with the Final Design Documents and both for overall compliance with the requirements of this Project Agreement. The KRRC’s input during finalization of the design documents and preparation and finalization of Project Implementation Work packages shall be solicited by the Project Company on a timely basis so as to provide adequate periods for review by the KRRC, revisions by the Project Company and final review by the KRRC without negatively impacting the Project Implementation 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 Project Company. The Project Company 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 Project Company shall provide the KRRC with Final Design Documents before commencing any Project Implementation Work activity, except as provided in Section 7.2.1 (Project Implementation Work Package Information) of this Appendix. Project Implementation Work activities shall not vary from the Final Design Documents submitted to the KRRC except where such variations are allowed, subject to the KRRC’s and applicable Governmental Body’s review and approval. Adherence to the Final Design Documents during work completion shall be a factor used by the KRRC in its review and approval of the Project Company’s Payment Requests during Project Implementation Work.

7.4.2 Changes to Project Design Requirements.

Any change requested by the Project Company to the Project Design Requirements (regardless of prior oral discussion) must be clearly identified by the Project Company in its cover letter that transmits the submittal and must be fully documented with compelling justification of the Project Company’s request for a change to the Project Design Requirements and the benefits to the KRRC for consenting to such a change. Any such change shall comply with the requirements set forth in Article 6 (Project Implementation Work) of this Project Agreement, as applicable. No change to the Project Design Requirements shall be made except with the KRRC’s approval pursuant to Section 6.8 (Changes to the Project Design Requirements at Project Company Request) of this Project Agreement. The Project Company shall assume all risks associated with obtaining KRRC approval of any change to the Project Design Requirements.

7.4.3 Time for KRRC Review.

The KRRC shall complete its review of each submittal in a timely manner in order to determine that the Project Implementation Work conforms to the Project Design Requirements and other Contract Standards. The Project Company 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.

7.4.4 Time for Project Company 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 Project Company and the KRRC, with provisions on the form for the Project Company's responses. The Project Company 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.

7.4.5 Project Progress Meetings.

For the purpose of facilitating a timely review process, the Project Company 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 Project Implementation Work package development period. Any outstanding review comments not satisfactorily resolved shall be transferred to an issues tracking form by the Project Company for subsequent follow-up. The primary purpose of these meetings shall be to discuss overall Project Company work progress, the conformance of the design and Project Implementation Work packages to the Project Design Requirements, and to address outstanding issues arising from the review and response process. The status and issues of related permitting and early Project Implementation Work activities may also be included as agenda items for each Project progress meeting. These meetings shall be held in the KRRC's offices, or another location agreed to by the KRRC. Project Company representatives with responsibility for the Project Implementation 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.

7.4.6 Design Submittals During Project Implementation Work.

It is anticipated that there could be some redesign or design clarifications needed during the performance of the Project Implementation Work. Additional design work by the Project Company shall be subject to the KRRC's review for compliance and consistency with applicable Project Design Requirements. Design changes to a particular Design Document performed following the issuance of the Design Document for the Project Implementation 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 Project Implementation Work, the Project Company 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 Governmental Approvals, the DCN must be approved by the appropriate Governmental Body if required by Applicable Law.

7.4.7 Design Change Authority.

The Project Company shall be responsible for providing design changes to the Design Documents necessary to complete the Project in accordance with this Project 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 Project Design Requirements unless approved by the KRRC in writing. Any DCN which requests a change to the Project Design Requirements shall be subject to the KRRC's rights under subsection 7.4.2 (Changes to Project Design Requirements) of this Appendix.

7.5. KRRC PROJECT IMPLEMENTATION WORK INSPECTION

7.5.1 Project Implementation 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 Project Implementation Work activities and participate in Project 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 Project Implementation Work and verify all applications for payment covering all Project Implementation Work performed during the preceding calendar month in accordance with the procedures set forth in Article 9 (Compensation) and Appendix 8 (Contract Price) of this Project Agreement. Notwithstanding the KRRC's review of Project Implementation Work activities, the Project Company shall be fully responsible for means, methods, techniques, sequences, and procedures of the Project Implementation Work, as well as safety precautions and programs in the performance of the Project Implementation Work. The KRRC's review and involvement in the Project Implementation Work activities is intended for the informational purposes of the KRRC and to monitor compliance with this Project 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 Project Implementation Quality Management Plan.

7.5.2 "Or Equals".

Whenever an item of material or equipment is specified in the Project Design 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 Project Implementation Work. The Project Company shall allocate adequate time in the Document Submittal Procedures for the KRRC to review and approve all "or equal" items for the Project Implementation 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 Project Company. The Project Company's design personnel shall be permitted to review proposed "or equal" suppliers for the balance of the Project Implementation Work.

7.5.3 Named Suppliers.

Whenever an item of material or equipment is specified in the Project Design 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 Project Company shall provide the named material or equipment.

7.5.4 Functionally Equal.

If, in the KRRC's reasonable discretion, an item of material or equipment proposed by the Project Company for the Project Implementation 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:
 - (1) it is at least equal in quality, durability, appearance, strength, and design characteristics; and
 - (2) it shall reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole; and

- (b) The Project Company certifies that it shall conform substantially, even with deviations, to the detailed requirements of the item named in this Project Agreement.

7.5.5 Corrections and Changes.

The procedures to be followed for correction of non-conforming Project Implementation Work and for instituting changes and additions to such work are set forth in Article 6 (Project Implementation Work) of this Project Agreement.

7.6. RECORD DRAWINGS

At each Milestone Substantial Completion, the Project Company shall prepare and submit to the KRRC two complete sets of record drawings for the Project Implementation Work Element 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 all electrical and control wiring schematics/diagrams. The Project Company shall obtain the KRRC's approval of the record drawings as a condition of Milestone Final Completion. The KRRC's approval of the record drawings shall not be unreasonably withheld.

APPENDIX 8
CONTRACT PRICE

APPENDIX 8

CONTRACT PRICE

8.1. PURPOSE

The purpose of this Appendix is to set forth the procedures and requirements for determining (1) the Contract Price, and (2) the Guaranteed Maximum Price.

8.2. CONTRACT PRICE

8.2.1 Payment.

The KRRC shall pay the Project Company the Contract Price for its performance of the Project Implementation Work, subject to the Guaranteed Maximum Price established in accordance with Section 8.6 (Guaranteed Maximum Price) of this Appendix.

8.2.2 Contract Price Defined.

The Contract Price shall be an amount equal to the sum of:

- (a) The Project Implementation Work Costs; and
- (b) The Project Company Fee,

all subject to the following:

- (a) The Contract Price shall not include Unallowable Costs, all of which shall be borne by the Project Company without payment or reimbursement by the KRRC; and
- (b) The Contract Price shall not exceed the Guaranteed Maximum Price.

8.2.3 Related Definitions.

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

- (a) "Contract Price" has the meaning specified in Section 8.2.2 (Contract Price Defined) of this Appendix.
- (b) "General Conditions Costs" has the meaning specified in Attachment 8A hereto (Description of General Conditions Costs).
- (c) "Guaranteed Maximum Price" has the meaning specified in Section 8.6 (Guaranteed Maximum Price) of this Appendix.
- (d) "Project Company Contingency" is [\$_____] and may be utilized as set forth in Attachment 8C (Schedule of Values and Project Company Contingency) of this Appendix. The Project Company Contingency is a subcomponent of the Base Guaranteed Maximum Price. **[Note: To be finalized on the GMP Contract Amendment Date based on the GMP Project Submittal]**
- (e) "Project Company Fee" has the meaning specified in Section 8.5 (Project Company Fee) of this Appendix.

- (f) “Project Implementation Work Costs” has the meaning specified in Section 8.3 (Project Implementation Work Costs) of this Appendix. Project Implementation Work Costs include the General Conditions Costs.
- (g) “Unallowable Costs” has the meaning specified in Section 8.4 (Unallowable Costs) of this Appendix.
- (h) “Uncontrollable Circumstance Costs” means, subject to Article 14 (Uncontrollable Circumstances), Section 17.8 (General Duty to Mitigate), and the other terms and conditions of this Project Agreement, any Project Implementation Work Costs paid by the Project Company to the extent that such Project Implementation Cost has been paid due to the occurrence of an Uncontrollable Circumstance.

8.2.4 Certification and Cost Substantiation.

In submitting each Payment Request, the Project Company shall:

- (a) Comply with and submit such Payment Request in accordance with the procedures and requirements of Article 9 (Compensation) of this Project Agreement.
- (b) Present such Payment Request by element of the Contract Price.
- (c) If Uncontrollable Circumstance Costs are being invoiced, present such Uncontrollable Circumstance Costs separately from other Project Implementation Work Costs.
- (d) If costs resulting from Subcontractor or Supplier delay or non-performance are being invoiced, present such costs separately from other Project Implementation Work Costs.
- (e) For Project Implementation Work Costs payable on a reimbursable basis, provide Cost Substantiation for the Project Implementation Cost for which reimbursement is sought, including copies of all documentation reasonably necessary to demonstrate that the reimbursable Project Implementation Cost has been paid or incurred.
- (f) For Project Implementation Work Costs payable on a lump sum basis, provide copies of all documentation reasonably necessary to demonstrate the value of the Project Implementation Work in place.

All such documentation shall be in a format and a level of detail reasonably acceptable to the KRRC. The Schedule of Values shall set forth those items that will be payable on a reimbursable basis (item (e) above) and on a lump sum basis (item (f) above).

8.2.5 Discounts, Rebates and Refunds.

All cash discounts, trade discounts, rebates, refunds and returns from the sale of surplus materials and equipment shall be reported and accrue to the benefit of the KRRC and serve to offset the Project Implementation Work Costs.

8.3. PROJECT IMPLEMENTATION WORK COSTS

“Project Implementation Work Costs” means the reasonable and necessary costs paid or incurred by the Project Company in the proper performance of the Project Implementation Work (including costs resulting from the occurrence of the risks assumed by the Project Company under the Project Agreement) that (1) are described in and meet the requirements of this Section, and (2) are not Unallowable Costs.

As used in this Section, “reasonable and necessary costs paid or incurred by the Project Company in the proper performance of the Project Implementation Work” includes: (1) costs of Project Implementation Work necessitated by ordinary mistakes or inadvertence; (2) costs incurred in repairing or correcting defective, damaged or non-conforming Project Implementation Work (including any warranty or corrective Project Implementation Work performed after Milestone Substantial Completion); (3) additional costs incurred due to Subcontractor delay or non-performance; (4) costs incurred in performing corrective action needed to address a failure to demonstrate compliance with the requirements for Milestone Substantial Completion; and (5) Uncontrollable Circumstance Costs, in all cases except to the extent any such costs constitute Unallowable Costs. The Project Company Contingency may be used to pay such costs as provided in Attachment 8C (Schedule of Values and Project Company Contingency).

8.3.1 Third-Party Professional Services Fees.

- (a) Professional fees and expenses payable by the Project Company to design engineers for design engineering services under third-party design Subcontracts.
- (b) Fees and expenses payable by the Project Company for professional services under third-party professional services Subcontracts for other professional services, including accounting, planning, surveying, consulting and other professional services.

8.3.2 Project Implementation Work Subcontractor and Major Equipment Supplier Costs.

An amount equal to the amounts properly payable by the Project Company to Subcontractors for Project Implementation Work performed under Subcontracts for construction, demolition and restoration and for major equipment entered into in accordance with the procedures and requirements set forth in Section 8.4 (Self-Performance and Subcontractor Selection) of this Project Agreement. No Subcontract shall provide for payment of Unallowable Costs.

8.3.3 Project Company’s Own Labor Costs.

Except to the extent that any of the following costs are supervisory and administrative personnel costs and, as such, constitute General Conditions Costs:

- (a) Wages or salaries of professional and non-professional direct employees of the Project Company based at the Project Site and performing Project Implementation Work at the Project Site, and wages and salaries of Key Personnel, wherever based. The costs for any such personnel of the Project Company who perform professional services shall be calculated on the basis of the rates set forth in Attachment 8B (Professional Personnel Rate Schedule) to this Appendix or, if applicable, on the basis of prevailing market rates for professionals performing similar services. Such rates are not subject to audit. The parties acknowledge and agree that the rates set forth in Attachment 8B

(Professional Personnel Rate Schedule) will be escalated in accordance with Attachment 8B. The parties further acknowledge and agree that adjustments for wages and salaries of non-professional employees, to account for inflation, will be reflected in the applicable prevailing wage rate schedules established by the States.

- (b) Wages and salaries paid to employees of the Project Company described in item (a) of this subsection may include compensation in excess of the applicable State prevailing wages, as and to the extent needed to retain safe and dependable craft workers in light of the remote location of the Project Site.
- (c) Costs reasonably paid or incurred by the Project Company for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations, retirement and pension contributions, paid by the Project Company, excluding bonuses, as and to the extent such costs are based on wages and salaries paid to non-professional employees and craft workers of the Project Company described in item (a) of this subsection.
- (d) The cost of travel, accommodations, subsistence and meals for (i) Project Company employees described in item (a) of this subsection; and (ii) Project Company employees whose wages or salaries constitute General Conditions Costs, in any case necessarily and directly incurred in connection with the performance of Project Implementation Work, as approved by the KRRC acting reasonably. The parties acknowledge and agree that the KRRC will not pay for any costs incurred in this item (d) in excess of the then prevailing and applicable General Services Administration (GSA) per diem rates.

8.3.4 Costs of Materials, Equipment and Supplies.

Except to the extent any of the following constitute General Conditions Costs or costs paid or incurred under Subcontracts with Suppliers for Major Equipment:

- (a) Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated, to be incorporated or reasonably used in completing the Project Implementation Work.
- (b) Costs of materials, equipment and supplies, described in item (c) of this subsection, in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, equipment and supplies, if any, shall become the KRRC's property at the completion of the Project Implementation Work or, at the KRRC's option, shall be sold by the Project Company. Any amounts realized from such sales shall be credited to the KRRC as a deduction from the Contract Price.
- (c) Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the construction, demolition and reconstruction workers, that are provided by the Project Company at the Project Site and fully consumed in the performance of the Project Implementation Work; and costs (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Project Company. The basis for the cost of items previously used by the Project Company shall be fair market value.

- (d) Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the construction, demolition and reconstruction workers, which are provided by the Project Company at the Project Site, whether rented from the Project Company or others, and incurred in the performance of the Project Implementation Work. Rates and quantities of equipment rented shall be subject to the KRRC's prior written approval.
- (e) Costs of materials and equipment suitably stored off the Project Site at a mutually acceptable location, if approved in advance in writing by the KRRC.

8.3.5 Other Costs.

Except to the extent any of the following constitute General Conditions Costs:

- (a) Premiums for the Performance Bond and the Payment Bond required by Section 16.2 (Bonds) of this Project Agreement.
- (b) Premiums and fees for Required Insurance, except to the extent such premiums and fees constitute Unallowable Costs in Section 8.4.2 (Unallowable Costs) of this Appendix. **[DRAFTING NOTE: AWAITING FINAL REVIEW BY AON TO LIST ALL PROJECT-SPECIFIC POLICIES.]**
- (c) Costs of handling, removal and disposal of Hazardous Material and remediating Hazardous Environmental Conditions (except as provided in subsection 6.5(A) (Project Company Responsibilities and Indemnity) of this Project Agreement).
- (d) Fuel and utility costs paid or incurred in the performance of the Project Implementation Work.
- (e) Sales, use or similar taxes, tariffs or duties imposed by a Governmental Body and incurred by the Project Company in the performance of the Project Implementation Work for which the Project Company is not able to obtain an exemption under Applicable Law.
- (f) Costs for obtaining and maintaining Project Company-Managed Governmental Approvals, and assisting KRRC in obtaining and maintaining KRRC-Managed Governmental Approvals.
- (g) Fees of laboratories for tests required by this Project Agreement.
- (h) Royalties and license fees paid for the use of a particular design, process or product required by this Project Agreement.
- (i) Any other reasonable and necessary costs paid or incurred by the Project Company in the proper performance of the Project Implementation Work, as described in the second paragraph of Section 8.3 of this Appendix.

8.3.6 General Conditions Costs.

The Project Company will incur and be paid for certain General Conditions Costs in connection with the performance of the Project Implementation Work. Such General Conditions Costs shall include only the items specified in Attachment 8A (Description of General Conditions

Costs) to this Appendix. In no event shall any General Conditions Costs be duplicative with any other Project Implementation Work Costs specified in Section 8.3 of this Appendix.

8.4. UNALLOWABLE COSTS

8.4.1 No Payment Obligation.

Notwithstanding any other provision of this Project Agreement, the KRRC shall have no obligation to pay the Project Company for any Unallowable Costs.

8.4.2 Unallowable Costs Defined.

“Unallowable Costs” means:

- (a) Costs for wages, salaries and benefits for non-professional employees and craft workers, as and to the extent they exceed wage, salary and benefit rates, fees or compensation customarily paid for similar services, in a similar locale, by comparably qualified non-professional employees and craft workers.
- (b) Any costs incurred in handling disputes or litigation with Subcontractors or any other third party, except as such costs are reasonably incurred with respect to Subcontractors pursuant to Attachment 8C (Schedule of Values and Project Company Contingency).
- (c) Salaries and other compensation for the Project Company’s personnel stationed at the Project Company’s principal office or branch offices other than the Project Site, except as provided in Section 8.3.3 (Project Company’s Own Labor Costs) and Attachment 8A (Description of General Conditions Costs) of this Appendix.
- (d) Overhead, office and general and administrative expenses at any location, other than at the Project Site, except as provided in Section 8.3.3 (Project Company’s Own Labor Costs) and Attachment 8A (Description of General Conditions Costs) of this Appendix.
- (e) The cost of the capital (including interest on capital) used in the performance of the Project Implementation Work or otherwise.
- (f) Rental costs of machinery and equipment, except as specifically provided for in item (d) of Section 8.3.4 (Costs of Materials, Equipment and Supplies) of this Appendix.
- (g) Costs incurred as a result of the negligence or willful misconduct of the Project Company, any Affiliate, any Subcontractor or any other party performing any aspect of the Project Implementation Work.
- (h) Fines, penalties, sanctions or impositions assessed or imposed by any Governmental Body as a result of Project Company Fault, including violations of or non-compliance with any Governmental Approval.
- (i) Any costs relating to Regulated Substances or Regulated Site Conditions for which the Project Company is responsible under Section 6.5 (Regulated Site Conditions) of this Project Agreement.

- (j) Any cost relating to the Project Company's indemnification obligations hereunder.
- (k) Premiums or fees payable by the Project Company for the following Required Insurance: (a) **[DRAFTING NOTE: TO BE COMPLETED UPON THE RESOLUTION OF AON'S REVIEW OF APPENDIX 9 AND RELATED INSURANCE ISSUES, WITH THE GOAL OF IDENTIFIED SUCH INSURANCE WHICH WILL BE NON-COMPENSABLE BECAUSE SUCH POLICIES ARE ACQUIRED UNDER THE PROJECT COMPANY'S CORPORATE POLICY.]**
- (l) The cost of any deductibles, self-insured retentions and exceedances incurred under any Required Insurance.
- (m) Travel and subsistence expenses, in excess of those specifically provided for in subsection 8.3.3 (Project Company's Own Labor Costs) of this Appendix.
- (n) Legal costs incurred for any reason.
- (o) The fees of independent experts hired to assist in connection with dispute resolution.
- (p) Amounts required to be paid the Project Company or any Subcontractor for federal or State income, franchise or other business Taxes.
- (q) Any costs associated with establishment of a joint venture (or other legal entity), including registration and accounting costs.
- (r) Any costs that would cause the Guaranteed Maximum Price to be exceeded.
- (s) Any other costs specifically identified as "Unallowable Costs" in this Project Agreement.

8.5. PROJECT COMPANY FEE

The "Project Company Fee" is an amount equal to ■% of the Project Implementation Work Costs (other than the General Conditions Costs and the costs of the Performance Bond and the Payment Bond). The Project Company Fee is an amount attributable to profit and risk, and includes consideration for all costs that the Project Company may incur in connection with or related to the Project that are not specifically compensable hereunder as Project Implementation Work Costs. The Project Company acknowledges and agrees that full consideration for all Unallowable Costs has been taken account of, and priced into, the Project Company Fee.

8.6. GUARANTEED MAXIMUM PRICE

8.6.1 Guaranteed Maximum Price Generally.

The KRRC shall pay the Project Company the Contract Price for the Project Implementation Work, subject to the Guaranteed Maximum Price calculated in accordance with this Section. The "Guaranteed Maximum Price" shall be the sum of (1) the Base Guaranteed Maximum Price, and (2) the Base Guaranteed Maximum Price Adjustments. The Guaranteed Maximum Price represents the absolute limit of the total of all amounts payable to the Project Company by the KRRC for the performance of the Project Implementation Work. In the event additional amounts are required to be expended over and above the Guaranteed Maximum Price to

perform the Project Implementation Work and achieve Project Final Completion, liability for and payment of such additional amounts shall be the sole responsibility of the Project Company. The KRRC shall not be liable for any such amounts, and the Project Company shall not pursue any claim for any such additional amounts against the KRRC. Notwithstanding any reference in the Project Agreement to the terms “mark-up” or “profit”, the Project Company acknowledges that (1) the KRRC is not guaranteeing the Project Company any profit, a particular level of profit, or the avoidance of any loss in the overall performance of the Project Implementation Work, and (2) the obligation of the Project Company to complete the Project Implementation Work may result in a loss or in a mark-up and profit that is less than the mark-up and profit amounts anticipated by the Project Company in proposing its Project Company Fee, in making its GMP Project Submittal, and in entering into this Project Agreement.

8.6.2 Base Guaranteed Maximum Price.

The “Base Guaranteed Maximum Price” is [_____]. **[Note: To be negotiated based on the GMP Project Submittal and incorporated in this Section on the GMP Contract Amendment Date.]** Except as provided in Section 8.6.3 (Base Guaranteed Maximum Price Adjustments) of this Appendix, the Base Guaranteed Maximum Price shall not be increased for any reason.

8.6.3 Base Guaranteed Maximum Price Adjustments.

The adjustments to the Base Guaranteed Maximum Price provided for in this subsection constitute the “Base Guaranteed Maximum Price Adjustments”, and each adjustment shall be reflected in a Contract Administration Memorandum. The Base Guaranteed Maximum Price shall be adjusted (increased or decreased) only to reflect adjustments required on account of:

- (a) Uncontrollable Circumstances generally, as provided in Section 14.3 (Uncontrollable Circumstances Relief) of this Project Agreement);
- (b) Project Design Requirements Changes made under Section 6.9 (Other Changes to the Project Technical Requirements) of this Project Agreement; or
- (c) Unilateral Change Directives made under Section 6.10 (Unilateral Change Directives) of this Project Agreement.

8.6.4 Value of Base Guaranteed Maximum Price Adjustments.

The value of a Base Guaranteed Maximum Price Adjustment shall be determined as follows:

- (a) Where the Project Implementation Work involved is covered by unit prices contained in this Project Agreement, by application of such unit prices to the quantities of the items involved;
- (b) To the extent unit prices are not applicable, by a mutually agreed lump sum; or
- (c) To the extent unit prices are not applicable and the parties are unable to reach agreement on a lump-sum value, on the basis of the Project Implementation Work Costs of the associated Project Implementation Work, as determined in accordance with this Appendix.

A Base Guaranteed Maximum Price Adjustment may provide for mark-up payable to Subcontractors where Project Implementation Work is performed through Subcontracts. Any

such Subcontractor mark-up shall not exceed (a) for the Subcontractor who actually performs or furnishes the additional Project Implementation Work, 15% of the costs incurred by such Subcontractor in respect of labor, materials, equipment and supplies, and (b) for any higher tier Subcontractor, 5% of the amount paid to the next lower tier Subcontractor.

8.7. SHARED SAVINGS AMOUNT

8.7.1 Entitlement to Shared Savings Amount

In the event that upon Project Final Completion the Contract Price is less than an amount equal to (1) the Guaranteed Maximum Price minus (2) the Project Company Contingency, as each such amount is finally determined in accordance with this Appendix, the KRRC shall pay the Project Company an amount equal to 40% of the difference between the Guaranteed Maximum Price (minus the Project Company Contingency) and the Contract Price (the "Shared Savings Amount"). The Project Company Contingency is the dollar amount set forth in the definition thereof in Section 8.2.3 of this Appendix, and shall be applied irrespective of any amount actually expended for Project Implementation Work Costs from the Project Company Contingency. The Shared Savings Amount shall be paid as part of the final payment to the Project Company in accordance with Section 9.5 (Payment Upon Milestone Final Completion) of this Project Agreement.

8.7.2 Example Shared Savings Amount Calculation

By way of example, if the Guaranteed Maximum Price (which is inclusive of the Project Company Contingency) is \$250,000,000 and the Project Company Contingency is \$10,000,000, then (a) a Contract Price of \$220,000,000 will result in a Shared Savings Amount of \$8,000,000 (a \$250,000,000 Guaranteed Maximum Price less a \$10,000,000 Project Company Contingency equals \$240,000,000; less a \$220,000,000 Contract Price equals \$20,000,000; multiplied by a 40% shared savings factor equals \$8,000,000); and (b) a Contract Price of \$245,000,000 will result in no Shared Savings Amount because the Contract Price exceeds \$240,000,000 (the Guaranteed Maximum Price less the Project Company Contingency).

ATTACHMENT 8A**DESCRIPTION OF GENERAL CONDITIONS COSTS****GENERAL CONDITIONS COSTS**

In connection with the Project Implementation Work, the Project Company is responsible for the General Conditions Costs, as well as the performance of the related obligations, identified in this Section. The General Conditions Costs shall constitute Project Implementation Work Costs, but shall be separately stated from other Project Implementation Work Costs in each Payment Request and the Schedule of Values. The Project Company Fee shall not be applied to the General Conditions Costs. The General Conditions Costs consist solely and exclusively of costs incurred for the following items with respect to the Project Implementation Work:

(1) Project Company Home Office Employee Supervisory and Administrative Personnel Costs

Costs of base wages or salaries of supervisory and administrative personnel of the Project Company stationed at the Project Company's principal or branch offices and engaged in the performance of the Project Implementation Work (except as provided in subsection 8.3.3 (Project Company's Own Labor Costs)) of this Appendix.

(2) Field Office and Project Implementation Work Supply Costs for Project Company Staff Only

- Project Company field office mobilization and demobilization
- Office trailer rental
- Office furniture and equipment
- Office janitorial
- Document reproduction services (off-site or custom)
- Copy machines, fax machines, printers, scanners and paper shredders
- Office computers, software and maintenance.
- Office telephones, and telephone and internet service
- Accounting and data processing costs
- Jobsite radios/cellular phones
- Postage, courier, and express delivery
- Scheduling expenses
- Job travel, including fuel and vehicle
- Job meeting expenses
- Temporary parking and laydown areas
- Storage facilities, both on and off site
- Tools and tool shed
- Surveying equipment and supplies
- Office supplies
- Partnering sessions
- Project redline drawings
- Project specific signage
- Reference manuals
- Employee identification system

(3) Temporary Amenities for Project Company Project Site activities:

- Temporary toilets
- Temporary fire protection
- Project Site security
- Traffic control equipment rental
- Fencing, barricades, partitions and protected walkways
- Temporary water distribution and meters
- Temporary power generation
- Temporary and emergency lighting
- Site erosion control
- Drinking water
- Temporary construction, demolition and restoration facilities and services
- Temporary heat and ventilation

(4) Site Cleanup

- Daily site cleanup and dumpsters
- Cleanup at Milestone Substantial Completion
- Cleanup at Milestone Final Completion

(5) Project Implementation Work Trade Training Program

(6) Health and Safety Program

(7) Project Information and Documentation

- Project photographs
- Pre-Project Implementation Work video

ATTACHMENT 8B

PROFESSIONAL PERSONNEL COST SCHEDULE

**[To be Finalized on the GMP Contract Amendment Date
Based on the GMP Project Submittal]**

ATTACHMENT 8C**SCHEDULE OF VALUES AND PROJECT COMPANY CONTINGENCY****GENERAL**

The purpose of this Attachment is (1) to define the requirements for the Project Company's preparation of a Schedule of Values and the Project Company Contingency, which will be used as the basis for payments of the Contract Price pursuant to Article 9 (Compensation) of this Project Agreement, and (2) to describe the manner in which payment of the Contract Price will be made based on the Schedule of Values and the Project Company Contingency. **[The Schedule of Values and the Project Company Contingency will be negotiated based on the GMP Project Submittal, and incorporated in this Attachment 8C on the GMP Contract Amendment Date]**

EARLY PROJECT IMPLEMENTATION WORK PACKAGES

As provided in subsection 5.7(F) (Complete Early Work Package Pricing) of this Project Agreement, the parties intend that each Early Design-Build Work Package Amendment will contain complete pricing for the Project Implementation Work covered by the Early Project Implementation Work Package, and that a schedule of values and contingency will be established for such Early Project Implementation Work Package separate and apart from the Schedule of Values and Project Company Contingency established on the GMP Contract Amendment Date for the balance of the Project Implementation Work.

TOTAL SCHEDULE OF VALUES AMOUNT

The sum of all amounts comprising the line items in the initial Schedule of Values shall be equal to the total amount of the reasonably estimated costs of achieving each Milestone Substantial Completion, as such total amount of reasonably estimated costs is negotiated by the parties pursuant to subsection 5.9(E) (Base Guaranteed Maximum Price Negotiating Principles) of this Project Agreement. The total Schedule of Values amount, and the line items in the Schedule of Values, shall be adjusted appropriately by agreement of the parties to account for Base Guaranteed Maximum Price Adjustments.

PROJECT COMPANY CONTINGENCY AMOUNT

The Project Company Contingency amount shall be a single stated dollar amount equal to the amount negotiated by the parties pursuant to subsection 5.9(E) (Base Guaranteed Maximum Price Negotiating Principles) of this Project Agreement.

SUM OF THE SCHEDULE OF VALUES AMOUNT AND THE PROJECT COMPANY CONTINGENCY AMOUNT

The sum of the total Schedule of Values amount and the Project Company Contingency amount shall be equal to the Base Guaranteed Maximum Price.

PREPARATION OF THE SCHEDULE OF VALUES

As part of the GMP Project Submittal, the Project Company shall prepare a Schedule of Values identifying, on a line item basis, costs of major items of Project Implementation Work and other costs in accordance with this Attachment, and which shall include a Project Company Contingency separately stated as a block amount.

The Schedule of Values shall be consistent with the work scope and cost breakdown structure presented in the GMP Project Submittal, as negotiated and agreed to by the KRRC. The Schedule of Values shall assign prices to major elements of the Project Implementation Work based on costs associated with scheduled activities for each such element.

The Schedule of Values shall:

- (a) Be broken down by each structure at the Project Site and show each specification division within each structure;
- (b) Show the division of work between the Project Company and each of the Subcontractors;
- (c) Include an item for:
 - (1) The General Conditions Costs;
 - (2) The Project Company Fee;
 - (3) The Required Insurance, the Performance Bond and the Payment Bond; and
 - (4) The Project Company Contingency.

The Project Company shall provide supporting data, including certified payrolls, as requested by the KRRC for any Schedule of Values item. The final Schedule of Values must be approved by the KRRC.

USE OF THE PROJECT COMPANY CONTINGENCY

The Project Company shall be compensated by receiving payments of the Contract Price based on the Schedule of Values line items. The Project Company Contingency shall be used for payment of Project Implementation Work Costs only as provided in this Section.

In the event the cost for completing Project Implementation Work described in any particular Schedule of Values line item exceeds the Schedule of Values dollar amount listed for such line item, the Project Company shall have the right to receive compensation for such excess amounts from any remaining balance in the Project Company Contingency. If and when the Project Company Contingency has been fully used in compensating the Project Company for such excess amounts, the Project Company shall not be entitled to any compensation for costs of Project Implementation Work exceeding the Schedule of Values line item relating to such cost (except as provided below in "Use of Line Item Savings"), notwithstanding the fact that the Project Company has paid or incurred Project Implementation Work Costs in excess of such line item in the Schedule of Values; provided, however, that upon Project Final Completion the Project Company shall be entitled to receive compensation for such excess Project Implementation Work Costs to the extent that payment of such costs does not cause the Project Implementation Work Costs to exceed the Guaranteed Maximum Price.

The Project Company shall keep and provide the KRRC with an ongoing record of the original amount of the Project Company Contingency, all uses thereof under this Appendix, and the remaining balance of the Project Company Contingency at any time. The Project Company shall provide the KRRC with notice of all anticipated charges against the Project Company Contingency, and shall provide the KRRC as part of the monthly status report all reasonably

foreseeable potential uses of the Project Company Contingency in the upcoming three month period. Any use of the Project Company Contingency must be clearly identified in the associated Payment Request.

USE OF LINE ITEM SAVINGS

In administering payment of the Contract Price based on the Schedule of Values line items, the parties acknowledge that the Project Implementation Work Costs associated with any particular line item may be less than the dollar amount provided for such line item in the Schedule of Values. The Project Company may request at any time a determination by the KRRC that the Project Implementation Work Costs associated with a particular Schedule of Values line item are reasonably projected to be less than the dollar amount provided for such line item in the Schedule of Values. The KRRC shall have the right, acting reasonably, to approve or disapprove any such request. In the event the KRRC approves any such request, the dollar value associated with the line item cost underage shall be available to be requested by and paid to the Project Company in the event the Project Implementation Work Costs associated with another particular line item exceed the Schedule of Values dollar amount listed for such line item. Such line item savings amounts shall be in addition to any Project Company Contingency amounts that may be available to pay such Schedule of Values line item excess costs.

DAMAGE TO THE PROJECT AND INSURANCE RECOVERIES

The costs of repairing any damage to the Project constitute Project Implementation Work Costs, and (1) are payable to the Project Company as part of the Project Implementation Work Costs, as provided in Section 8.3 (Project Implementation Work Costs) of this Appendix, (2) shall result in an appropriate revision of the Schedule of Values, and (3) shall result in a Base Guaranteed Maximum Price Adjustment, as provided in subsection 8.6.3 (Base Guaranteed Maximum Price Adjustments) of this Appendix. All recoveries under policies of Required Insurance on account of any damage to the Project shall be applied to the payment of such repair costs, as provided in Article 13 (Insurance) of this Project Agreement.

SUBCONTRACTOR AND SURETY RECOVERIES

A substantial portion of the Project Implementation Work of the Project is expected to be performed by Project Implementation Work Subcontractors. The risks of delay and non-performance by Subcontractors are borne by the Project Company, and costs incurred by the Project Company that result from the occurrence of such risks constitute Project Implementation Work Costs payable by the KRRC from the Project Company Contingency hereunder, subject to the Guaranteed Maximum Price. All payments from the Project Company Contingency for costs incurred as a result of the occurrence of the risk of Subcontractor delay or non-performance shall be separately identified and recorded. In the event the Project Company, in the exercise of its mitigation duties under this Project Agreement, receives any judgment or settlement awards or otherwise makes any financial recoveries from Subcontractors or their guarantors or sureties on account of any such delays or non-performance, the amounts so received (net of reasonable enforcement costs), whether before or after Project Final Completion, shall be paid by the Project Company first to KRRC, up to the amount of any Project Company Contingency payments made due to the occurrence of such risks. Any remaining amounts then may be retained by the Project Company for its own account. The obligation of the Project Company to take such mitigation measures and to make such payments to the KRRC shall survive termination of this Project Agreement.

ATTACHMENT 8D
INITIAL MONTHLY CASH FLOW SCHEDULE

[Note: The Initial Monthly Cash Flow Schedule will be finalized on the GMP Contract Amendment Date based on the GMP Project Submittal, and attached to Appendix 8 as part of this Attachment 8D]

APPENDIX 9
INSURANCE REQUIREMENTS

APPENDIX 9**INSURANCE REQUIREMENTS****9.1. INSURANCE REQUIREMENTS GENERALLY****9.1.1 Maintenance of Insurance.**

The Project Company shall obtain and keep in force, or cause to be obtained and kept in force, the policies of insurance described below in accordance with the terms of this Appendix and Article 13 (Insurance) of this Project Agreement. By requiring the insurance herein, the KRRC does not represent that the insurance coverage and limits will necessarily be adequate to protect the Project Company and such coverage and limits shall not be deemed as a limitation on the Project Company's liability under the indemnities granted to the KRRC in this Project Agreement. Each policy shall be obtained and be in force prior to the performance of any work or commencement of any activity intended to be insured by each policy. To the extent permitted by Applicable Law, the KRRC reserves the right to adjust or waive any insurance requirements contained in this Appendix and applicable to the Project Agreement.

9.1.2 Compliance with Insurance and Bonding Requirements.

The Project Company's failure to comply with all insurance and bonding requirements set forth in this Project Agreement shall not relieve the Project Company from any liability under this Project Agreement. The Project Company's obligations to comply with all insurance and bonding requirements set forth in this Project Agreement shall not be construed to conflict with or limit the Project Company's indemnification obligations under this Project Agreement.

9.2. INSURANCE DURING THE PRELIMINARY SERVICES PERIOD

The insurance requirements described in this Section 9.2 reflect the parties' expectations as of the Contract Date. The parties intend to continue to consider the optimal insurance program throughout the Preliminary Services Period, including the specific structure of the project-specific professional liability/errors or omissions liability insurance policy contemplated by Section 9.2.1. The parties acknowledge and agree that the requirements set forth in this Section 9.2 may be revised during the Preliminary Services Period, by the mutual agreement of the KRRC and the Project Company. The KRRC shall, consistent with the KHSa, consult with the States and PacifiCorp before agreeing to any changes to this Section 9.2.

During the Preliminary Services Period, the Project Company shall provide the insurance required by this Section 9.2 through the general corporate policies of the Project Company or its Affiliates, except as provided in Section 9.2.1 (Professional Liability/Errors or Omissions Liability Insurance) of this Appendix with respect to a project-specific policy of a professional liability/errors or omissions liability insurance policy.

The Project Company shall obtain, by itself or through a Subcontractor, and keep in force throughout the Preliminary Services Period:

9.2.1 Professional Liability/Errors or Omissions Liability Insurance.

A professional liability/errors or omissions liability insurance policy, covering liabilities arising out of all professional services rendered by or on behalf of the Project Company related to professional, advisory, architectural, engineering, environmental, design and survey services for the Project, which policy shall be provided under the Project Company's corporate policy. For as long as the Project is covered by the Project Company's professional liability/errors or

omissions corporate policy, the Project Company shall not make any material changes to such corporate policy after the Contract Date without the KRRC's approval, acting reasonably.

The parties acknowledge and agree that a project-specific professional liability/errors or omissions liability insurance policy will likely be required before the Project Implementation Contract Amendment Date. The parties intend to continue to consider the specific structure and requirements of the project-specific professional liability/errors or omissions liability insurance policy. Such policy shall at a minimum (A) ensure that the KRRC is able to make a claim under such insurance policy; (B) be in an amount not less than \$25 million per claim and in the aggregate (this shall be a single non-reinstating limit) on a "claims-made" basis; and (C) have a retroactive date effective before the commencement of any design, including preliminary design, and shall not include any exclusionary language relating to prior acts applying to any pre-award professional services provided by any insured. The parties shall work together, given market conditions and requirements, to acquire such project-specific professional liability/errors or omissions liability insurance policy at the appropriate time. The KRRC shall pay the Project Company for the cost of the project-specific policy when it is acquired by the Project Company. The Project Company shall not acquire such project-specific policy without the KRRC's consent, acting reasonably.

9.2.2 Business Automobile Liability.

A business automobile liability insurance policy with limits of liability of not less than \$10 million combined single limit for bodily injury and property damage, each accident, which requirement may be met by any combination of primary and excess coverage so long as the excess is as broad as specified for underlying coverage. The insurance must cover liability arising from any motor vehicle, including owned, hired or non-owned vehicles or those assigned to or used in connection with the performance of the Project Implementation Work and include a Motor Carrier Act Endorsement and contractual liability coverage. The policy must provide pollution cover and evidence financial responsibility pursuant to CA 9948 and MCS 90.

Named Insured: Project Company

Additional Insured: KRRC and all other Project Company Indemnitees

9.2.3 Commercial General Liability.

A commercial general liability insurance policy (coverage shall be as broad as provided by Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001)) written on an occurrence basis and covering liabilities arising out of the performance of the Preliminary Services Work, including independent contractors, products and completed operations, personal and advertising liability, premises/operations, bodily injury and property damage liability and liability assumed under an insured contract. The policy shall not contain exclusions for property damage from explosion, collapse or underground hazard, or construction defects. 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:

- (a) have coverage for any one occurrence or claim of not less than \$2 million per occurrence, \$4 million products completed operations, and a \$4 million aggregate limit applicable solely to the performance of the Project Implementation Work, which requirement may be met with any combination of primary and excess coverage so long as the excess coverage is as broad as specified for underlying coverage;

- (b) be maintained throughout the Term until Project Final Completion;
- (c) the products and completed operations liability coverage shall be maintained for a period of not less than 10 years following Project Final Completion or the Termination Date, whichever occurs first;
- (d) provide that defense costs are outside the limits;
- (e) provide for sudden and accidental pollution 240 hour detection and 240 hour reporting; and
- (f) provide for broad form named insured.

Named Insured: Project Company

Additional Insured: KRRC and all other Project Company Indemnities

9.2.4 Worker's Compensation and Employer's Liability.

A worker's compensation insurance policy as required by Applicable Law, and employer's liability insurance policy 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). Coverage is to also include USL&H (United States Longshore and Harbor Worker's Compensation Act) when required by Applicable Law, voluntary compensation (WC 00 03 11 A) and alternative employer (WC 00 03 01 A).

9.2.5 Excess Liability.

An excess liability insurance policy with limits of liability of not less than \$200,000,000. The insurance coverage shall be as broad as and follow form of the commercial general liability, business automobile liability, and employer's liability coverages required pursuant to Sections 9.2.2 (Business Automobile Liability), 9.2.3 (Commercial General Liability), and 9.2.4 (Worker's Compensation and Employer's Liability) of this Appendix. The policy shall include a drop down provision over the primary policies and a priority of coverage endorsement.

Named Insured: Project Company

Additional Insured: KRRC and all other Project Company Indemnities

9.3. INSURANCE DURING THE PROJECT IMPLEMENTATION PERIOD

[Note: The insurance described in this Section 9.3 reflects the parties' expectations as of the Contract Date. The parties intend, in particular, to continue to study the advantages and disadvantages of utilizing a contractor controlled insurance policy compared to corporate policies with dedicated limits. The parties acknowledge and agree that the requirements set forth in this Section 9.3 may be revised on the GMP Contract Amendment Date, based on changes suggested by the Project Company in the GMP Project Submittal, with the KRRC's approval. The KRRC shall, consistent with the KHSA, consult with the States and PacifiCorp before agreeing to any changes to this Section 9.3.]

The Project Company shall obtain and keep in force, or cause to be obtained and kept in force, upon the earlier of (a) any Early Work Package Amendment Date which requires physical Project Implementation Work at the Project Site, or (b) the Project Implementation Contract

Amendment Date, and throughout the Project Implementation Period the following insurance coverage:

9.3.1 Professional Liability/Errors or Omissions Liability Insurance.

A project-specific professional liability/errors or omissions liability insurance policy that meets the requirements set forth in Section 9.2.1 (Professional Liability/Errors or Omissions Liability Insurance) of this Appendix.

9.3.2 Business Automobile Liability.

A business automobile liability insurance policy, provided through the general corporate policies of the Project Company or its Affiliates, a project-specific policy, or a contractor controlled insurance program, that meets the requirements set forth in Section 9.2.2 (Business Automobile Liability) of this Appendix. If the general corporate policy of the Project Company or its Affiliates is used to satisfy the insurance required by this Section 9.3.2, an endorsement for dedicated limits for the Project, equal to the amounts described herein, shall be provided.

9.3.3 Contractor Controlled Insurance Policy.

A project-specific contractor controlled insurance policy composed of a commercial general liability insurance policy, a worker's compensation and employer's liability insurance policy and an excess liability insurance policy meeting the following requirements:

- (a) A commercial general liability insurance policy covering liabilities that arise out of the performance of the Project Implementation Work that meets the requirements set forth in Section 9.2.3 (Commercial General Liability) of this Appendix;
- (b) A worker's compensation insurance policy and an employer's liability insurance policy that meets the requirements set forth in Section 9.2.4 (Worker's Compensation and Employer's Liability) of this Appendix and includes FEL on an "if any" basis; and
- (c) An excess liability insurance policy that follows form to the general liability, workers compensation and employer's liability coverage and which provides for worldwide coverage, priority of coverage, no contractor limitation, drop down coverage, "pay on behalf of" wording, and defense costs out of the policy limits.

9.3.4 Builder's Risk/Inland Marine.

An "all-risk" builder's risk/inland marine insurance policy obtained on a basis to be agreed upon by the KRRC and the Project Company prior to the Project Implementation Contract Amendment Date, with a limit in an amount not less than the probable maximum loss (PML). The limits for flood, earthquake/earth movement, and soft costs should also be on a PML basis. Coverage shall include all Project Work. The all other perils deductible shall not exceed \$100,000; the flood deductible shall not exceed \$500,000; and the earthquake/earth movement deductible shall not exceed 2% of values at risk at time of loss, subject to a minimum of \$100,000.

Named Insured: Project Company, the KRRC, all other Project Company Indemnites, and Subcontractors of all tiers performing work at the Project Site or off-site locations covered by the policy

9.3.5 Watercraft and Aircraft Liability.

If the Project Company or any Subcontractor intends to utilize any watercraft, aircraft, helicopters or drones as part of the Project Implementation Work, the Project Company or such Subcontractor must procure and maintain insurance, through the general corporate policies of the Project Company 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:

- (a) Watercraft \$5,000,000 per occurrence
- (b) Aircraft \$5,000,000 per occurrence
- (c) Helicopters \$10,000,000 per occurrence
- (d) Drones \$5,000,000 per occurrence

Named Insured: Project Company

Additional Insured: KRRC and all other Project Company Indemnitees

If the general corporate policy of the Project Company or its Affiliates is used to satisfy the insurance required by this Section 9.3.5, an endorsement for dedicated limits for the Project, equal to the amounts described herein, shall be provided.

Watercraft and aircraft liability insurance is not required if the Project Company 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 9.3.2 (Contractor Controlled Insurance Policy) of this Appendix.

9.3.6 Machinery, Tools and Equipment Insurance.

The Required Insurance hereunder is not intended to cover machinery, tools or equipment owned or rented by the Project Company or its Subcontractors, which are utilized in the performance of the Project Implementation Work but not incorporated into the permanent improvements. The Project Company and its Subcontractors shall, at their own expense, purchase and maintain property insurance coverage for owned, leased or rented machinery, tools or equipment. The Project Company hereby waives, and shall cause its Subcontractors to waive, all rights against the KRRC and all other Project Company Indemnitees for property damage to or loss of use of such machinery, tools or equipment to the extent that such property damage or loss of use is covered by the Project Company's or the Subcontractor's property or equipment floater insurance or other similar property insurance maintained by the Project Company or its Subcontractors. The policies shall provide such waivers of subrogation by endorsement.

9.4. OTHER INSURANCE**9.4.1 In General.**

The Project Company shall obtain and keep in force, or cause to be obtained and kept in force, any other form of insurance and with such limits, in such form, in amounts and for risks as the KRRC, acting reasonably, may require from time to time. The Preliminary Services Fee and Base Guaranteed Maximum Price, as applicable, shall be adjusted through a direct payment from the KRRC to reflect the cost of any such additionally required insurance.

9.4.2 KRRC Provided Contractor's Pollution Liability and Fixed Site Pollution Liability.

The KRRC shall be responsible for acquiring a contractor's pollution liability insurance policy and a fixed site pollution 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 and including 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, for not less than 10 years following Project Final Completion.

9.5. OTHER POLICY REQUIREMENTS**9.5.1 Project Company Waiver of Subrogation.**

All Required Insurance, except the professional liability/errors or omissions liability insurance acquired under Section 9.2.1 and Section 9.3.1 must contain a waiver of subrogation in favor of the KRRC and all other Project Company Indemnitees. The waiver of subrogation endorsement must be attached to the certificate of insurance in order to effectuate waiver of subrogation required hereunder. The Project Company shall require similar waivers by its Subcontractors.

9.5.2 Non-Recourse to KRRC.

All insurance policies shall provide that the insurers shall have no recourse against the KRRC for payment of any premium or assessment and shall contain a severability of interest provision in regard to mutual coverage liability policies.

9.5.3 Additional Insured Requirements.

Required additional insureds are identified for commercial general liability, business automobile liability, builder's risk/inland marine, excess liability and pollution liability insurance in this Appendix.

Additional insured coverage for the KRRC (and all other Project Company Indemnitees) shall apply for defense of claims and damages for injury to persons, including bodily injury, death or any form of personal or advertising injury, or property damage arising out of or resulting from the performance of the work or product, whether caused or alleged to be caused in whole or in part by any negligent act or omission of the Project Company, or any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them or the KRRC or its agents or employees may be liable. See below for acceptable forms. The multiple forms combination shown below, or their equivalent, shall be provided by the Project Company that would be considered Project Implementation Work as defined in ISO form CG 0001. Other Subcontractors or vendors shall provide additional insured status per form CG 2010 or its equivalent. The additional insured endorsements must be attached to the certificate of insurance in order to effectuate the additional insured status required hereunder.

The Project Company's insurance, shall not include any design-build or similar exclusions that would compromise coverages because of the design-build nature of the work to be performed pursuant to this Project Agreement.

The following combinations of ISO forms, or their equivalent, shall be acceptable:

- (a) CG 2010 entitled “Additional Insured - Owners, Lessees or Contractors - Scheduled Person or Organization” and CG 2037 entitled “Additional Insured - Owners, Lessees or Contractors - Completed Operations”; or
- (b) CG 2033 entitled “Additional Insured - Owners, Lessees or Contractors - Automatic Status When Required in Construction Agreement With You” and CG 2037 entitled “Additional Insured - Owners, Lessees or Contractors - Completed Operations”.

9.5.4 Claims Made Liability Insurance.

If any liability insurance purchased by the Project Company has been issued on a “claims made” basis, the Project Company shall comply with the following additional conditions. The limits of liability and extensions as described elsewhere in this Appendix shall remain the same. The Project Company shall either:

- (a) agree to provide certificates of insurance evidencing the required coverages for a period of 10 years after final payment under this Project Agreement. Such certificates shall evidence a retroactive date, no later than the beginning of the Project Company’s or Subcontractor’s work under this Project Agreement; or
- (b) purchase an extended (minimum 10 years) reporting period endorsement for the policy or policies in force during the Term and evidence the purchase of this extended reporting period endorsement by means of a certificate or insurance or a copy of the endorsement itself.

9.6. GENERAL POLICY REQUIREMENTS

Each policy of insurance required under this Appendix shall:

- (a) be issued by a company or companies with a rating of not less than A-VIII in the last available Best’s Rating Guide unless otherwise approved by the KRRC and be authorized to conduct and transact insurance business in the States;
- (b) be in a form approved by the KRRC, such approval not to be unreasonably withheld;
- (c) with the exception of professional liability/errors or omissions liability, worker’s compensation and employers liability, be primary and non-contributing;
- (d) contain an undertaking by the insurers or the insurer’s designated representative to notify the KRRC in writing not less than 30 days before any material change, cancellation or termination (except 10 days for non-payment of premiums); and
- (e) where the KRRC is an additional insured, insure the Project Company Indemnitees (except Subcontractors who are indemnified parties).

If the KRRC is damaged by the failure or neglect of the Project Company to purchase or maintain Required Insurance, without so notifying the KRRC, then the Project Company shall bear all reasonable costs properly attributable thereto.

9.7. EVIDENCE OF INSURANCE**9.7.1 Certificates, Endorsements and Policies.**

The Project Company shall deliver to the KRRC a copy of certificates and policy endorsements (i.e., additional insured, waiver of subrogation) provided by its insurance broker or agent for all Required Insurance within 10 days after receipt of a notice of award of this Project Agreement. All such certificates and policy endorsements must be issued and approved by the KRRC.

Upon the issue of a policy of insurance and annually thereafter, the Project Company shall deliver to the KRRC a copy of certificates and policy endorsements provided by its insurance broker or agent for all Required Insurance. Upon request by the KRRC, the Project Company shall also deliver to the KRRC a copy of policy endorsements and certificates maintained by its Subcontractors. Upon request by the KRRC, the Project Company 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 Project Agreement; provided that the Project Company, acting reasonably, may redact proprietary information from such copies. Upon request by the KRRC, the Project Company shall deliver proof of payment of premiums for insurance required to be effected pursuant to this Appendix. 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 Project Agreement.

Before an exposure to loss may occur, the Project Company shall file with the KRRC a copy of each policy that includes insurance coverages required by this Appendix. Each policy shall contain all conditions, definitions, exclusions and endorsements applicable to the coverage for this Project.

9.7.2 Notification of Cancellation or Non-Renewal

A minimum of 30 days written notification must be given by an insurer of any alteration, material change or cancellation or non-renewal of any insurance required under this Project Agreement. Such required notification must be sent via Registered or Certified Mail to the address indicated below:

Klamath River Renewal Corporation
2001 Addison Street, #317
Berkeley, CA 94704

9.8. PREMIUM PAYMENTS, DEDUCTIBLES/RETENTIONS AND COMMISSION ACCEPTANCE

The premium to be expended for all of the above-referenced policies of insurance (and any other Security Instruments) shall be paid by the Project Company. Payment of any deductibles or self-insured retentions applying under any policies shall be the responsibility of the Project Company. The KRRC shall have the right to approve any such deductible or self-insured retention amount designated by the Project Company, such approval not to be unreasonably withheld. The policies of insurance, certificates of insurance and the insurance company or insurance companies issuing such policies (or other Security Instruments) must be acceptable to the KRRC. All companies providing such coverage, for all contracts, regardless of size, must be allowed to conduct and transact business in the States.

9.9. SUBCONTRACTORS

The Project Company shall not allow any Subcontractor to start work on any Subcontract until all insurance required of the Subcontractor has been obtained and approved by the Project Company. The Project Company shall require all Subcontractors to maintain workers compensation and employer's liability, business automobile, commercial general liability, excess liability and any other applicable coverage in the same manner, as applicable, as specified for the Project Company hereunder.

APPENDIX 10

KEY PERSONNEL AND APPROVED SUBCONTRACTORS

APPENDIX 10

KEY PERSONNEL AND APPROVED SUBCONTRACTORS

10.1. PURPOSE

The purpose of this Appendix is to identify (1) the key management and supervisory personnel proposed to be used by the Project Company in performing the Contract Services and (2) those Subcontractors that the KRRC has approved for use by the Project Company in performing the Contract Services.

10.2. KEY PERSONNEL

10.2.1 Key Personnel Generally.

As referenced in Section 8.1 (Management) of this Project Agreement, certain key management and supervisory personnel were proposed by the Project Company and shall be used by the Project Company in connection with the performance of the Contract Services (the “Key Personnel”). The Key Personnel are identified in the Project Company’s organization chart(s) as set forth in Attachment 10A to this Appendix. Any change in the Key Personnel shall be subject to review and approval of the KRRC in accordance with Section 8.1 (Management) of this Project Agreement. Resumes for the Key Personnel are included in Attachment 10B and establish the general level of qualifications for the role identified.

10.2.2 Key Personnel.

At a minimum, the Key Personnel shall include the following:

	Project Company Party	Position	Name
1.	Project Company	Project Company Contract Representative	[Insert Name]
2.	Project Company	Project Executive	[Insert Name]
3.	Project Company	Project Manager	[Insert Name]
4.	Project Company	Senior Supervisor	[Insert Name]
5.	[Subcontractor]	Construction Design Coordinator	[Insert Name]
6.	[Subcontractor]	Construction Manager	[Insert Name]
7.	[Subcontractor]	Health and Safety Representative	[Insert Name]
8.	[Subcontractor]	Engineer of Record	[Insert Name]
9.	[Subcontractor]	Civil Design Lead	[Insert Name]
10.	[Subcontractor]	River Restoration Design Lead	[Insert Name]
11.	[Subcontractor]	Habitat Restoration Design Lead	[Insert Name]
12.	[Subcontractor]	Environmental Compliance Lead	[Insert Name]
13.	[Subcontractor]	QA/QC Manager	[Insert Name]
14.	[Subcontractor]	Safety Manager	[Insert Name]
15.	[Subcontractor]	[Insert Position]	[Insert Name]

10.3. SUBCONTRACTORS

10.3.1 Required Subcontractors.

The Subcontractors with whom the KRRC requires the Project Company to enter into a Subcontract for the performance of certain aspects of the Project Implementation Work are the following: **[Note: To be completed on the GMP Contract Amendment Date.]**

	Subcontractor	Role
1.	[Insert Name/Entity]	[Insert Role]
2.	[Insert Name/Entity]	[Insert Role]
3.	[Insert Name/Entity]	[Insert Role]

10.3.2 Approved Subcontractors.

The Subcontractors that the KRRC has approved as of the Contract Date, and the Project Company is permitted to engage for the Contract Services in accordance with Section 8.4 (Self-Performance and Subcontractor Selection) of this Project Agreement, are the following: **[Note: To be completed on the GMP Contract Amendment Date.]**

	Subcontractor	Role
1.	[Insert Name/Entity]	[Insert Role]
2.	[Insert Name/Entity]	[Insert Role]
3.	[Insert Name/Entity]	[Insert Role]

ATTACHMENT 10A

KEY PERSONNEL ORGANIZATION CHART

[Note: To be completed on the GMP Contract Amendment Date].

ATTACHMENT 10B

KEY PERSONNEL ROLES

[Note: To be completed on the GMP Contract Amendment Date].

ATTACHMENT 10C

SUBCONTRACTING PLAN

[Note: To be completed on the GMP Contract Amendment Date].