

December 4, 2017

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DELIVERY VIA ELECTRONIC FILING

The Honorable Kimberly D. Bose
Secretary, Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Response to October 5, 2017 Additional Information Request; Joint Application for License Transfer and License Amendment; Project Nos. 2082-062 and 14803-000

Dear Secretary Bose:

We submit on behalf of the Klamath River Renewal Corporation (“KRRC”), co-applicant in the above-referenced Transfer Proceeding, the attached responses to the Federal Energy Regulatory Commission’s (FERC) October 5, 2017 Additional Information Request (“AIR”). Upon receipt of this AIR, KRRC and PacifiCorp conferred and determined that KRRC would respond to FERC’s questions. These responses are included as Attachment A (together with Exhibit A, B, C and D).

A number of responses refer to the Definite Plan and are provided herein because FERC sought the information in the Transfer Proceeding. Notwithstanding, KRRC respectfully submits that such information appropriately belongs in the docket for the Surrender Application that was filed by KRRC.¹ The response to each question reflects facts and information that are known to KRRC. All responses, statements of fact, views, opinions, interpretations and other communications set forth in this response are solely and exclusively attributable to KRRC, and not to PacifiCorp. The response to AIR No. 4 was filed on November 30 in the Surrender Application docket in accordance with the procedures for confidential treatment in 18 CFR 388.112 (2017).

Respectfully submitted,

/s/ Markham Quehrn
Markham Quehrn
Perkins Coie, LLP
Counsel for Klamath River Renewal
Corporation

cc: Hallie Meushaw, Counsel for PacifiCorp
Service List

¹ *Klamath River Renewal Corp.*, Application for Surrender of License for Major Project and Removal of Project Works, Project Nos. 14803-001 and 2082-063 (Sept. 23, 2016), FERC Accession No. 20160923-5370.

Attachment A

1. In your June 23, 2017 response to Commission staff's April 24, 2017 additional information request, you provide an updated "most probable cost estimate" for the full removal alternative as shown on page 8 of the U.S. Department of the Interior's Detailed Plan, prepared by Interior's Bureau of Reclamation (Reclamation) and included as Exhibit E.3 to PacifiCorp's and the Renewal Corporation's September 23, 2016 surrender application for the Lower Klamath Project facilities. The analysis in support of this updated cost estimate suggests that the most probable cost estimate has decreased from \$291,600,000 to \$274,350,000. However, Reclamation's cost range analysis indicates that the "maximum cost estimate" for the full removal alternative could be as high as \$493,100,000. Please provide an updated estimate for this maximum cost amount. Please also quantify and provide the probability that the most probable and maximum cost estimates will occur.

Response: KRRC intends to provide an updated "maximum cost estimate" when it files the Definite Plan in the proceeding on the Surrender Application, to ensure the plan is consistent with the updated field studies, inspections, and technical analyses needed to complete the Definite Plan. As stated in a letter to be filed in the proceeding on the Surrender Application, KRRC respectfully requests an extension of the date for filing this updated cost estimate. With the cost estimate, KRRC will also quantify and provide the probability that the most probable and maximum cost estimates will occur.

FERC has also requested that KRRC "quantify and provide the probability that the most probable and maximum cost estimates will occur." As noted in the Klamath Renewal Project Initial Budget Verification Report (June 2017) (Attachment D to the June 23, 2017, response to AIR,) AECOM reviewed the budget prepared by the United States Bureau of Reclamation ("Reclamation") in 2010 to implement the "full removal alternative" as reflected in the Detailed Plan. The cost estimate methodologies employed by AECOM included an escalation approach, and a unit cost approach, based on a build up for significant cost items, (resulting in a review of any pay items over \$100,000 in total cost). As to these items, historical production rates, Davis Bacon Wage Determination, regional equipment rates, local fuel prices, and supplier/vendor inputs were utilized to determine costs in 2017 dollars (escalated to 2020 dollars using 3.00% per year for 3 years resulting in a blended factor of 1.0927). Non-build up items were escalated at the same rate. A risk assessment was also done, looking at various "what if" case scenarios, that included items such as increased fuel costs, delays in project start, construction delays, and increased labor costs. These scenarios (over a period from 2021 to 2023) considered risk that ranged (at the low end) of \$3.3 million (fuel costs) to the high end of \$30.2 million (2023 dollars). AECOM has advised KRRC that it ascribes a high confidence factor in the budget verification it provided in June 2017, subject to the disclaimers set forth in section 2.1 of that report.

The terms "most probable estimate", "probable high estimate" and "probable low estimate" are derived from the Detailed Plan, and Reclamation's cost estimate. See section 9 of the Detailed Plan. For each of the forecasted values, Reclamation developed a probability curve and sensitivity chart, which can be found at Attachment F to the Detailed Plan. In its June 2017 budget verification, AECOM did not reassess the probability of the estimated project cost, rather, AECOM verified the cost inputs and determined that Reclamation's "most probable estimate" was overstated by \$17.3 million based upon cost inputs, not their probability of

occurrence. As such, although the dollar amount of the "most probable estimate" has been reduced, the probability that the "most probable" and "probable high" cost estimates will occur are as stated in the Detailed Plan.

AECOM's upcoming cost analysis will include a refined construction cost estimate that will contain a detailed breakdown of crew make up, labor rates, crew productivity, task duration, updated quantities, equipment costs, and material costs for individual line items. The task effort and duration for the line items will be back checked against the construction schedule that will refine the understanding of overhead premium costs to meet the schedule within the allocated window of deconstruction. There will be multiple items with substantial uncertainty that may present higher risks. For these items, a Monte Carlo simulation will be performed (similar to that performed by Reclamation in the Detailed Plan, but with a refined understanding of the latest technical approach and risks) with input that will provide tens of thousands of recalculations per item that results in a distribution of possible outcomes. This analysis will be used to determine the updated most probable and maximum cost estimates.

2. Commission staff must ensure that the most probable and maximum cost estimates are reasonable. Please obtain the services of a fully independent third party or parties to assess the most probable and maximum cost estimates and the assumptions made to calculate those estimates. The third party or parties may include civil dam engineers and aquatic and terrestrial biologists who have experience with dam removal and restoration activities. Please provide a report prepared and certified by the third party or parties and the resumes or CVs listing the third party or parties' qualifications.

Response: By letter dated October 5, 2017, FERC required that an Independent Board of Consultants be convened to address, among other things, the "[a]dequacy of available funding and reasonableness of updated cost estimates for the most probable cost and maximum cost for the full removal alternative, and the assumptions made to calculate those estimates." FERC's request further provides: "[y]ou may propose using the same individuals chosen to respond to the cost, insurance, bonding and other questions contained in Commission staff's additional information request issued October 5, 2017."

KRRC will convene the Independent Board of Consultants in connection with the "Application for Surrender of License for Major Project and Removal of Project Works, Project Nos. 2082-063 and 14803-001" ("Surrender Application"). KRRC is reviewing the qualifications of third-party experts in response to this request. No later than April 5, 2018, KRRC will provide resumes or CVs listing the third party or parties' qualifications to FERC for FERC approval, together with a plan and schedule to provide the requested report.

3. Please provide a detailed explanation of how the Renewal Corporation would provide or obtain the necessary funds to decommission and remove the Lower Klamath Project facilities in the event that funds equal to or greater than the maximum cost estimate for the full removal alternative are required.

Response: The Klamath Hydroelectric Settlement Agreement, as amended ("KHSA") provides that the States of California and Oregon will make up to \$450 million available to KRRC for implementation of the Amended KHSA. These funds come from customer surcharges authorized by orders of the California Public Utilities Commission ("CPUC") and the Public Utility Commission of Oregon ("OPUC"), and the proceeds of California's Proposition 1 state bond issue, as appropriated by the California Legislature. All of these funds are now committed to

KRRC through funding agreements. With the exception of the CPUC funding agreement, these funding agreements have been previously provided to FERC and are discussed further in response to AIR 13, below.

On November 30, 2017, the CPUC approved a form of funding agreement for disbursing to KRRC the customer surcharges previously authorized by the CPUC. The approved form of the California "Funding Agreement" is attached as Exhibit A. In so doing, the CPUC took "official notice" of the Oregon Funding Agreement filed in this docket by the KRRC on May 8, 2017, and found that "...the Oregon Funding Agreement provides almost all of the terms necessary to ensure that all surcharge funds are used for ratepayer benefit. Therefore, we use the Oregon Funding Agreement as a basis for a funding agreement we adopt between this Commission and the KRRC."

In June 2017, KRRC's technical representative, AECOM, reviewed the budget prepared by the Bureau of Reclamation in 2010 to implement the "full removal alternative" as reflected in the Detailed Plan. This review took into consideration construction, engineering, and mitigation costs, escalation and included a unit cost build up for significant cost items. Based on this analysis, AECOM provided a construction-cost budget verification that projects a total project construction cost of \$274,350,000 (2020 dollars). Committed and available funds to implement the KHSA exceed AECOM's verified budget by well over \$100,000,000.00.

As noted in prior filings and discussed below, KRRC, in connection with its role in implementing the Definite Plan, will use a variety of risk-management tools and procedures to prevent and, if necessary, correct cost overruns. This includes, among other things, a competitive contractor selection process, a project delivery method that allocates risk to the contractor, bid bonds, payment and performance bonds (and/or parent company guaranty or standby letter of credit) to secure contractor performance, qualified construction-management services, insurance and other security devices. These measures will be employed to keep the project on budget and to avoid eroding any surplus funds. Similarly, insurance products and other risk-management tools identified in Appendix L to the KHSA will be used to respond to various costs and liabilities and to avoid eroding any surplus funds.

KRRC anticipates that the amount of funding that has been provided will exceed the cost of implementing the Definite Plan. However, if AECOM's construction-cost budget verification is off the mark by more than \$100 million dollars, and further assuming that the risk management measures discussed above do not cover or avoid some or all of this increased cost, it is theoretically possible that the full amount of the \$450 million would not be sufficient. KRRC will address this contingency in its Definite Plan in the proceeding on the Surrender Application.

4. For the amendment and transfer application, PacifiCorp and the Renewal Corporation filed both a public version and a non-public version of the application, with CEII redacted from the public version. For the surrender application, you filed only a public version, with CEII redacted. As a result, the only copy of the Detailed Plan in the Commission's official record for the proceeding is the redacted public version. Please file a non-redacted version of the Detailed Plan in accordance with the procedures for confidential treatment in 18 CFR 388.112 (2017).

Response: KRRC filed a non-redacted version of the Detailed Plan in the docket for the Surrender Application (Project Nos. 2082-063 and 14803-001) on November 30, 2017 in accordance with the procedures for confidential treatment in 18 CFR 388.112 (2017).

5. On page 14 of your response, you state that your contractor is preparing a risk register and risk management plan. Please provide copies of these documents.

Response: KRRC intends to file these documents with the Definite Plan in support of the Surrender Application. The risk register and risk-management plan are specific to the Definite Plan, and this information can be better evaluated and understood in that context. Additionally, on October 5, 2017, FERC required that an Independent Board of Consultants be convened to “review and assess all aspects of the proposed dam removal” and depending upon how soon an Independent Board of Consultants can be convened, KRRC would like to explore the possibility of having the Board review the Definite Plan (or portions thereof) before it is filed with FERC, including the risk register and risk-management plan.

6. On pages 17-18 of your response, you state that the Renewal Corporation “will retain the risk of any delays caused by uncontrollable circumstances (such as changes in law, force majeure, the discovery of cultural resources, and dam conditions unknown at the time the contract is entered into); any work scope changes directed by KRRC; and the inaccuracy of any information provided by KRRC to the project contractor that formed the basis of the decommissioning plan and that could not reasonably be verified by the project contractor.” You further state that the project budget will include an appropriate contingency reserve for these retained risks, and that the Renewal Corporation will determine the amount of the reserve in consultation with its consultants and professional advisors. Please provide additional information about the projected amount of this contingency reserve. If it is less than the amount needed to provide up to Reclamation’s maximum cost amount of \$493,100,000, please provide a detailed explanation of your reasons for providing a reserve of less than that amount.

Response: Retained risks are a reality of every construction project and are typically addressed with a commercially reasonable contingency reserve. In a typical development project budget, the contingency reserve ranges between 5% and 15% of the projected project cost, with 10% being most common. The primary factors that affect the determination of the project contingency amount include: (1) the size of the project, with smaller projects requiring higher percentages to assure adequate actual dollar amounts; (2) the complexity of the project; (3) the level of design completed at the time the contingency is established; and (4) the risks to be assumed by the contractor under the construction contract. KRRC will consider these factors when the scope of work is established for the Definite Plan and then determine the prudent and reasonable project reserve amount. Based upon the information available to KRRC at this time, the reserve would be between 5% and 15% of \$274,350,000 (2020 dollars), subject to further review when the scope of work for the Definite Plan is established, a construction contract has been negotiated, and the risk-management tools and procedures KRRC intends to use to prevent cost overruns are in place.

It would not be typical or commercially reasonable to maintain a contingency reserve in excess of these thresholds. AECOM’s “most probable cost estimate” for the full removal alternative, developed after a full examination of the scope of the project and with AECOM’s breadth of experience on projects of this magnitude, as well as following sign-off by the Independent Board of Consultants to be convened per FERC’s October 5, 2017 letter, will be a more reasonable and current cost estimate from which to assess the need for and the amount of any cash reserve contingency fund.

7. In your response at pages 20-22, you list a number of different insurance policies purchased or to be purchased by either the Renewal Corporation or the project contractor, as appropriate. Most of these policies are not yet in effect. Please provide information on the amounts of each type of insurance that will be purchased, when you expect to purchase the policies, when the coverage will begin, and whether the insurance policies will be purchased by the Renewal Corporation, the project contractor, or both entities. Please provide a copy of each policy or a schedule for providing each policy, as applicable

Response: KRRC will ultimately maintain two insurance programs, each of which will be designed to address different insurance needs. The insurance currently maintained by KRRC and discussed in response to AIR 8 below is best viewed as a corporate insurance program that is intended to address KRRC's general risks as a business entity. The insurance policies referred to above and at pages 20-22 of KRRC's June 23, 2017 response to FERC's April 24, 2017 AIR reflect KRRC's project-specific insurance needs in connection with the proposed dam removal project.

KRRC's prior insurance discussion was intended to provide an overview of the commercial insurance solutions that KRRC expects to use in conjunction with dam removal. KRRC intends to use an "owner controlled insurance program" or OCIP for purposes of securing certain coverages. Under an OCIP, the owner establishes a Commercial General Liability and Umbrella insurance program in which contractors and subcontractors enroll for coverage, rather than requiring each contractor or subcontractor to procure insurance independently. The net result is a more comprehensive, seamless and efficient insurance program where insurers are precluded from denying coverage based on a claim that a different insurer is responsible. By consolidating the risks into a single insurance program, this approach best removes cross-litigation costs caused by multi-party losses on a construction project. This is because each contractor and subcontractor is essentially covered under the same policy. An OCIP also allows the project sponsor/owner to control and design the coverage it intends to procure and the cost of coverage. Specific decisions regarding which policies to purchase, when to purchase them, and what insurance limits to obtain will be largely driven by the timing and structure of the dam removal. That said, set forth below are KRRC's current expectations regarding its project-specific insurance program.

Timing – KRRC's project-specific coverage will be put in place in coordination with the beginning of the dam removal work to which it relates, including certain preliminary site work. The reason for this timing is two-fold: first, because the insurance is designed to cover the project work and specifically the deconstruction activities on and at the project site, there are insufficient details available at this time to obtain an appropriately tailored insurance policy and because KRRC derives no benefit from triggering coverage any sooner; second, as a result, it would not be prudent stewardship of the customer and public funding available to KRRC to incur the up-front costs of project insurance until the relevant approvals and other milestones have been achieved and the project is ready to move forward. The Definite Plan will contain detailed requirements for the project-specific coverage, including a schedule for when each coverage will be put in place.

Insurance Coverage Limits – KRRC expects to secure the following project-specific coverages:

- *Commercial General Liability (CGL): KRRC will obtain primary Commercial General Liability coverage with limits of \$2,000,000 per occurrence and \$4,000,000 general*

aggregate. This policy is dedicated to this project. The policy will extend liability coverage to the dam removal contractor and all eligible subcontractors for their work at this project. The policy will also respond to third-party damage from the construction activity after the project. This tail coverage will last for ten years or to the statute of repose for the respective state of construction operations. This tail coverage will trigger once the project has reached substantial completion.

- Umbrella Liability: The liability coverage provided by KRRC's CGL policy will be augmented under the OCIP by an Umbrella Liability policy of \$200,000,000 in limits. This policy will follow the terms and conditions of the underlying primary CGL. All enrolled parties will be covered under this Umbrella limit which is an added value for smaller subcontractors that cannot afford such high limits.*
- Worker's Compensation/Employer's Liability: KRRC will require that all contractors and subcontractors maintain at all times Worker's Compensation and Employer's Liability coverage. This coverage will be maintained in the amounts no less than the applicable statutory requirements for Worker's Compensation and \$1,000,000 for Employer's Liability. Because this coverage is statutory, it is not efficient to include it in the OCIP and will be procured directly by each contractor and subcontractor.*
- Commercial Automobile Liability: KRRC will require that all contractors and subcontractors maintain auto liability insurance limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage. This coverage will also be outside the OCIP and will be procured directly by KRRC's contractors and subcontractors covering all owned, leased and non-owned vehicles used in connection with the work.*
- Builder's Risk/Inland Marine or Commercial Property Insurance: Builder's risk insurance is a type of insurance typically associated with vertical construction where an improvement is increasing in value and where the cost of restoration increases as the project progresses, such as the construction of an office building. In procuring it for a dam removal project a slightly unconventional analysis will apply to determining prudent limits of coverage. KRRC anticipates obtaining coverage for 100% of the replacement value of any salvaged material or property. Builder's risk is project-specific property coverage and will be purchased by KRRC.*
- Contractor's Pollution Liability (CPL): KRRC anticipates that coverage of up to \$100,000,000 limits will be included as part of the project program. It will be a dedicated policy covering all contractors and subcontractors at the project site with no enrollment process.*
- Fixed Site Pollution Liability: This coverage will be acquired by KRRC outside the OCIP and will go into effect when KRRC acquires title to the dam facilities and will be in an amount up to \$100,000,000. It is the intent to underwrite this policy with the same insurers and in conjunction as the CPL policy to address any pre-existing environmental damages.*
- Professional Liability/Errors and Omissions Insurance: This coverage will be required under the terms of KRRC's design contract procurement, whether on a stand-alone basis or as part of a design-build procurement. It will go into effect when the design*

professional is retained. The coverage limits are expected to be up to \$25,000,000. In addition, KRRC will consider whether to purchase an Owner's Protective Professional Indemnity (OPPI) insurance policy as a back-stop to all the design professional's' liability available limits coverage. This decision will be made based on the size, experience and financial strength of the design team and their respective insurance limits available to the project. Coverage limits selected may be as high as 20-40% of the value of construction.

A pro forma schedule of project-specific insurance submissions is attached as Exhibit B.

8. In your response, you indicate that the Renewal Corporation currently has in place a Commercial General Liability policy of \$1 million, an Umbrella Liability Policy of \$5 million, and Directors and Officers Liability Insurance of \$1 million. You state that the sufficiency of these policies will be reviewed on a not-less-than Biannual basis relative to the then-current stage of project implementation. Please provide information on the planned amounts of these policies that will be in place when decommissioning and dam removal activities are scheduled to begin.

Response: As indicated above, KRRC's current insurance coverages represent its corporate insurance program. The corporate insurance coverage is renewed on an annual basis. After KRRC's prior submission, it increased its current Director's & Officers Liability policy limit to \$10 million. The KRRC also enhanced its corporate program to schedule Workers Compensation/Employers Liability to their first hired employee.

To summarize KRRC's current corporate coverages: there is a \$1,000,000 Commercial General Liability policy which is supplemented by a \$5,000,000 Umbrella policy. There is a \$10,000,000 Directors and Officers policy that protects the KRRC's board members. There is a Worker's Compensation and Employer's Liability policy with a \$1,000,000 limit for the KRRC employee(s). There is also a Commercial Automobile policy with \$1,000,000 in limits and a Commercial Property policy that covers the KRRC's scheduled property.

KRRC does not currently anticipate significant changes to the scope of its corporate insurance program as project risks arising in the future will be addressed by the project-specific program. As KRRC expands its operations, the risk profile and corporate coverage will be continually evaluated and coverages procured accordingly. Factors that could lead to modifications of KRRC's corporate insurance program in the meantime include a change in the number of employees, offices, or other business property.

9. To ensure the proposed insurance and bonding coverage are sufficient, please obtain the services of a fully independent third party or parties to evaluate preliminary coverage amounts and exclusions for each insurance policy. The third party or parties may be an insurance broker or a consulting company that has expertise advising clients with regard to insurance scope and quantity of coverage. Please provide a report prepared and certified by the third party or parties and the resumes or CVs listing the third party or parties' qualifications

Response: By letter dated October 5, 2017, FERC required an Independent Board of Consultants to be convened to address, among other things, the "[a]dequacy of amounts and types of insurance coverage and bonding arrangements for dam removal." FERC's request further provides "[y]ou may propose using the same individuals chosen to respond to the cost,

insurance, bonding and other questions contained in Commission staff's additional information request issued October 5, 2017."

KRRC will convene the Independent Board of Consultants in connection with the Surrender Application to further develop this and other elements of the Definite Plan. KRRC is reviewing the qualification of third-party experts in response to this request. KRRC will provide resumes or CVs listing the third party or parties' qualifications to FERC for FERC approval, together with a plan and schedule to provide the requested report, no later than April 5, 2018.

10. You state that the project contractor will furnish a conventional performance bond from a financially sound surety company, and may be asked to provide a parent company guaranty or to furnish a standby letter of credit securing performance of the project agreement. Please provide additional information on the projected amounts and types of these arrangements, and file copies of these instruments or a schedule for providing these instruments along with a certified statement by a fully independent third party or parties that the performance bond is consistent with industry standards. In addition, please provide information on whether the Renewal Corporation will provide a performance bond covering the retained risks discussed in item 6 above, and if so, the planned amount of the bond.

Response: The conventional performance bond will secure the contractor's performance under the dam removal contract and will be in the full amount of the dam removal contract. The form of bond will be determined by the contractor's surety company issuing the bond; however, the AIA Form 312, a copy of which is attached as Exhibit C, is the predominant form in use at this time. To the extent alternate forms are used they will be substantively similar.

KRRC proposes to have the FERC-approved Independent Board of Consultants evaluating insurance coverages (in response to AIR 9 above) certify that bond form AIA Form 312 is consistent with industry standards. Because the performance bond back-stops the dam removal contractor's performance it cannot be issued until the dam removal contract is in place, and it will be issued at that time. A copy will be submitted to FERC, along with the certification requested.

In addition to the performance bond, KRRC will consider requiring additional support for contractor performance. The amount and types of additional support will be determined as part of the contract procurement based on the experience and financial strength of the teams that respond to the procurement.

To KRRC's knowledge, performance bonds are not available to cover retained risks. Accordingly, KRRC does not intend to obtain a performance bond to cover those risks.

11. You state on page 23 that, in entering into the project agreement, the Renewal Corporation will comply with the requirements of Appendix L to the Amended KHSa to identify and contract with a specialty corporate indemnitor, or "Liability Transfer Corp.," to protect the states of California and Oregon and PacifiCorp from certain potential liabilities from actions associated with Lower Klamath Project facilities removal, including damage caused by the release of any material or substance, including hazardous substances, not covered contractually or by insurance. Please provide a more complete discussion of the purpose and function of the Liability Transfer Corp. In addition, Appendix L to the Amended KHSa provides that the dam removal entity (i.e., the Renewal

Corporation) “may also transfer its ownership of the Facilities and Parcel B Lands, in whole or in part, to that entity [i.e., the Liability Transfer Corp.]” In general, project facilities under a Commission license cannot be transferred to a third party without prior Commission approval. Please provide an explanation of whether the Renewal Corporation intends to transfer ownership of the facilities to a Liability Transfer Corp. and, if so, at what point in the transfer or removal process this would occur and, depending on the timing, whether prior Commission approval would be sought.

Response: The purpose and function of a Liability Transfer Corp. is described in Appendix L to the KHSA as a risk-management mechanism:

[T]o protect the States and PacifiCorp against any harm to persons, property, or the environment, or damages resulting from either Facilities Removal or Facility operation arising from, relating to, or triggered by actions associated with Facilities Removal, including but not limited to any damage caused by the release of any material or substance, including but not limited to hazardous substances that is not covered contractually or by insurance.

A Liability Transfer Corp. is an entity that can assume certain environmental or other liabilities that are not typically covered by insurance. This additional protection can be structured contractually, through third-party indemnities, or potentially with additional special insurance products. KRRC is exploring with its risk-management advisors the optimal structure for meeting this requirement of the KHSA and will structure its dam removal contract to provide for this additional level of risk protection. Under Appendix L of the Amended KHSA, the selection of a Liability Transfer Corp. is subject to the approval of the States and PacifiCorp, in consultation with the Federal Parties. The Definite Plan will contain detailed requirements for this indemnification mechanism.

Certain Liability Transfer Corp. structures use transfers of title to achieve the desired protection. If such a structure is used, and if the property in question is subject to FERC jurisdiction, KRRC understands that it would require additional approvals by the Commission. However, KRRC does not foresee the need to transfer any FERC-jurisdictional facilities to a Liability Transfer Corp. at this time.

12. If the Commission were to approve your amendment and transfer request, depending on the conditions in the Commission’s order, the amendment and transfer could possibly take effect before the Commission has completed its review of the application for license surrender and dam removal. The Commission cannot lawfully presume that the surrender and dam removal application will be approved. Under the terms of the Amended KHSA and the planned Operations and Maintenance Agreement between PacifiCorp and the Renewal Corporation, PacifiCorp’s authorization to operate the Lower Klamath Project and consequently, its responsibility to provide funding for project operation, are scheduled to end on December 31, 2019. In the event that the Commission has not acted on the surrender application by that date, or if the Commission were to ultimately determine that the surrender application should not be approved, what authority and funding would the Renewal Corporation have to continue to operate the project for the foreseeable future under those circumstances?

Response: The qualifications of and legal authority for KRRC to operate the Lower Klamath Project for the foreseeable future is discussed in the Joint Applicants "Response to April 24, 2017 Additional Information Request" (June 23, 2017) in response to AIR 6 (pp. 28-32)¹.

Moreover, under the KHSA and the O&M Agreement, PacifiCorp's operation of the Lower Klamath Project does not end on December 31, 2019.² Under the KHSA and the O&M Agreement, PacifiCorp will operate each facility in the Lower Klamath Project until removal of that facility is imminent. The KHSA establishes certain milestones and "target dates" that relate to the period during which PacifiCorp will be operating the facilities under the O&M Agreement. Under section 7.3.3 of the KHSA December 31, 2019, is the date through which PacifiCorp has an unqualified right to operate the facilities for the benefit of its customers. Under section 7.3.1 of the KHSA December 31, 2020, is a "target date" for the completion of facilities removal and a date when certain interim measures to be conducted by PacifiCorp may need to be revisited. None of these— or any other—milestones and target dates, however, have the effect of truncating PacifiCorp's rights and obligations under the O & M Agreement to operate the Lower Klamath Project.

Commission Staff may be referring to section 7.3.3 which provides, among other things: "The Parties agree that PacifiCorp may continuously operate the Facilities subject to the ICP and Non-ICP Interim Measures identified in Appendices C and D to this Settlement and generate electricity at the Facilities through December 31, 2019." But section 7.3.3 expressly contemplates PacifiCorp's continuing operation of the facilities by providing a schedule of "Value to Customer" payments that will become due to PacifiCorp if decommissioning begins after January 1, 2020, but before December 31, 2020, and to further provide that if facilities removal occurs after December 31, 2020, then no additional "Value to Customer" payments are required. It is thus the clear expectation of the parties that PacifiCorp's operation of the facilities could extend beyond December 31, 2019.

The O&M Agreement affords KRRC the contractual right to draw upon PacifiCorp's technical hydroelectric plant operations expertise and personnel once the license is transferred. From a financial perspective, section 1.5 of the O&M Agreement requires PacifiCorp to pay "all costs associated with operating and maintaining the Facilities between the time of license transfer and Decommissioning, and indemnify, defend, and hold KRRC harmless with respect to those operations." The term Facilities is defined under the O&M Agreement as "individually or collectively Copco No. 1, Copco No. 2, Iron Gate or J.C. Boyle, as the context requires" and includes "all associated real property interests transferred to KRRC, consistent with Section 7.6.4 of the Amended KHSA, whether or not such interests are included by FERC in the applicable boundaries of the Lower Klamath Project." Because the O&M Agreement does not expire on December 31, 2019, if the Commission has not acted on the surrender application by December 31, 2019, PacifiCorp would continue to operate the project under the O&M Agreement.

¹ FERC Accession No. 20170623-5103; see also, *Klamath River Renewal Corporation Informational Filing in Support of Joint Application for License Transfer and License Amendment*, (March 1, 2017) FERC Accession No. 20170301-5273, pp. 5-14.

² The "Agreement for the Operation and Maintenance of the Lower Klamath Project between Klamath River Renewal Corporation and PacifiCorp" was executed by the parties on September 20, 2017. A copy of the executed O & M Agreement is attached as Exhibit D.

PacifiCorp initiated a relicensing proceeding before entering into the 2010 KHSA and the 2016 Amended KHSA. As the Commission noted in its "Order Holding Relicensing Proceeding In Abeyance" (June 16, 2016), requiring the parties, other stakeholders, and Commission staff to "simultaneously proceed with both a relicensing proceeding and a transfer and surrender proceeding would be burdensome and an inefficient use of resources." That continues to be the case. KRRC does not intend to relicense this project or operate it any longer than is necessary to achieve a surrender of the license under 16 U.S.C. § 799. If the Commission does not approve the surrender application by December 31, 2019, KRRC will continue to pursue the application as provided in the KHSA section 7.3. Should the Commission disapprove the surrender application, then any issues regarding decommissioning or continuing operations would be addressed through renewed negotiations with KHSA parties pursuant to § 8.7 of the KHSA. FERC would continue to have jurisdiction over the Project in the pending proceeding, and discretion to take such further action as FERC might deem appropriate, subject to applicable law.

KRRC will supplement this response, if appropriate, after the conveyance agreement with PacifiCorp under KHSA section 7.6.4.D has been executed.

13. Under the California Grant Agreement, funding for deconstruction and decommissioning is only available through June 30, 2021. However, the Detailed Plan states that restoration monitoring activities could occur for 5 years after dam removal, which under the Amended KHSA is intended to be completed by December 31, 2020. Therefore, restoration monitoring activities could continue until December 31, 2025, and any funding after June 30, 2021, would have to come from the Oregon and California Customer Surcharges. Please provide a breakdown showing the funding that will be available during the following phases: (1) dam removal; (2) restoration; and (3) post-dam removal monitoring. The breakdown should state when the Renewal Corporation anticipates spending the funding and whether the funding will come from the Grant Agreement or the Oregon and California Customer Surcharges. Also, please provide a copy of the California Customer Surcharge Agreement when it is available.

Response: Under the terms of KRRC's agreements with its three current funding sources—the Public Utility Commission of Oregon ("OPUC"), the California Public Utilities Commission ("CPUC") and the California Natural Resources Agency ("CNRA") there is no pre-established limitation or allocation of the funds available for any specific phase of the Project. Similarly, except as noted below, there is no time limit within which the available funds must be spent. As a result, KRRC expects that the funds from all three of its funding sources will be available for all phases of the project.

Under the terms of KRRC's Funding Agreement with OPUC, a copy of which was previously provided to FERC, as well as KRRC's Funding Agreement with CPUC, the form of which is attached as Exhibit A, the availability of funding for a particular phase of the project is determined by KRRC in its submission of project activity descriptions and budgets before each phase, not by any particular schedule or time frame. (See Section 7 of the respective agreements.) Both the OPUC and the CPUC funding agreements have stated outside expiration dates of January 31, 2022, which is consistent with the project timeline envisioned by the KHSA. Both agreements also require that unexpended funds are to be returned following the expiration

of the agreement. However, this refund obligation excludes funds set aside for ongoing monitoring following facilities removal or other similar activities as may be required under the Definite Plan or as a condition of a license or permit required for the project.

It should be noted as well that both California and Oregon are parties to the KHSA and, in approving their respective customer surcharges, both OPUC and CPUC have determined that the settlement is in the best interest of PacifiCorp's customers. In addition, both agreements require regular progress reports to the respective utility commissions. As a result, if extension of the funding period becomes necessary, the CPUC and OPUC will have been apprised in advance and KRRC would timely seek an extension of the respective agreement expiration dates. Finally, we note that the KHSA contemplates generally that customer funds will be the primary initial source of funds for the project. As a result it is likely that by 2022 these funds will have been fully spent, eliminating the need for an extension from the PUCs..

The terms of the Grant Agreement with CNRA for the California Proposition 1 bond proceeds, a copy of which was provided to FERC in the KRRC's March 1, 2017 informational filing, also provide for phased funding and also allow KRRC to establish through its budget submissions the level of funding to be provided at each phase of the project. There are, however, outside time limitations on KRRC's access to these funds as well. Here too, however, KRRC does not believe that, as a practical matter, these limitations are likely to affect KRRC's ability apply the California bond funds to the project for the reasons discussed below.

Under applicable law, the Proposition 1 bond proceeds, while currently appropriated to the project and encumbered by the Grant Agreement, must be disbursed by June 30, 2021 (or the reversion date under any subsequent re-appropriation of the funds). After that date, any undisbursed funds held by CNRA will revert to the State of California. (Cal. Gov. Code §16304.1.) As discussed in KRRC's June 23, 2017 response to FERC's April 24, 2017 AIR, however, if unanticipated events delay project "completion" beyond June 30, 2021 (or the reversion date of any re-appropriation of the funds), it would be KRRC's intention to work with the State of California, which is also a signatory to, and supportive of, the KHSA, for an extension of the appropriation or such other means of retaining the funds for the project as may be available.

And if necessary, CNRA indicated it would be willing to seek an extension of the bond funding appropriation so that funds are available after June 30, 2021. By letter dated June 22, 2017, (included with KRRC's June 23, 2017 response to FERC's April 24, 2017 AIR as Exhibit A, Attachment G) CNRA indicated that it is "willing and available to assist the KRRC as it progresses through the process to implement the KHSA." CNRA further stated: "In the event it becomes necessary, that assistance could include securing an extension of the bond funding appropriation." KRRC is therefore of the view that, while theoretically possible, it will not lose its Proposition 1 bond funding through a reversion of undisbursed funds.

Even if the KRRC and the CNRA did not execute an extension of the bond funding appropriation so that funds are available for "completion" after June 30, 2021, the CNRA Grant Agreement does provide a funding source for the type of post-completion work that is the subject of FERC's inquiry. The CNRA Grant Agreement requires that the dam removal project is to be completed in accordance with the schedule provided for in the Definite Plan, subject to force majeure and to extensions granted under the agreement. As FERC correctly notes, the agreement specifies that extensions may not extend the deadline for "completion" beyond June 30, 2021 (or the

reversion date of any re-appropriation), consistent with applicable law. Nevertheless, the definition of “completion” under the Grant Agreement expressly excludes post-removal monitoring, operations, maintenance and similar matters. Therefore, under the express terms of the Grant Agreement, funding to be used for any post-removal monitoring activities that extend beyond June 30, 2021 can be disbursed for that purpose before June 30, 2021.

KRRC notes that the Grant Agreement expressly provides for the disbursement of funds in advance so long as KRRC fully expends, and documents the appropriate use of, prior disbursements. Moreover, the Grant Agreement expressly contemplates disbursement of funds into an escrow or other set aside for “... on-going ‘post-completion’ monitoring, operations, maintenance or similar matters ...” (Grant Agreement–General Provisions Section A.3.) Such funds are, under the Agreement, “deemed to have been spent.” (Grant Agreement–General Provisions Section D.2.) As a result, the Grant Agreement contemplates that funds for post-removal monitoring are expected be disbursed to KRRC before reversion and held in escrow until needed for post-removal costs so long as KRRC fully expends and document the appropriate use of prior disbursements. As a result, KRRC would not need to rely solely on Oregon or California customer surcharges for “post-dam removal monitoring.”

In summary, the funding agreements with CPUC and OPUC include no phase-specific limitations within which the funding must be expended and no time limitations other than the January, 31, 2022 expiration date of the agreements. Funding under the CNRA Grant Agreement is available for “completion” of dam removal through June 30, 2021. KRRC anticipates that dam removal can be “completed” within both of those time frames. If the timeframe for dam removal extends beyond June 30, 2021, KRRC believes that, working with CNRA, an extension can be obtained for “completion” activities, and that if necessary, it can extend its agreements with CPUC and OPUC. Even without extensions, however, post-completion activities can be funded under the express terms of each of its funding agreements. Such activities, including those that are the subject of FERC’s inquiry, would be funded by disbursements into escrow before the respective June 30, 2021 and January 31, 2022 deadlines.

As requested, KRRC breaks down the funding agreements as follows

Funding Agreement	Phase 1 Amount Available	Phase 2 Amount Available	Phase 3 Amount Available	Time period within which funds must be spent
OPUC Funding Agreement (\$184,000,000)	As requested by KRRC in Forms A1 and B1	As requested by KRRC in Forms A2 and B2	As requested by KRRC in Forms A3 and B3	January 31, 2022, subject to set asides for post-removal activities
CPUC Funding Agreement (\$16,000,000)	As requested by KRRC in Forms A1 and B1	As requested by KRRC in Forms A2 and B2	As requested by KRRC in Forms A3 and B3	January 31, 2022, subject to set asides for post-removal activities
CNRA Grant Agreement (\$249,500,000)	As provided for in KRRC's Phase I Budget	As provided for in KRRC's Phase II Budget	Not applicable—the CNRA Grant Agreement contemplates two phases Phase I (Planning) and Phase II (Deconstruction /Decommissioning)	Must be disbursed by CNRA before reversion date; may be disbursed before actual expenditure by KRRC; post-completion monitoring costs may be escrowed in advance; CNRA willing to seek extension of appropriation if necessary

14. On page of 18 the September 23, 2016 Transfer Application, you ask that the Commission act on the transfer application by December 31, 2017. However, Exhibit 4 of the Amended KHSA (which was filed in your May 6, 2016 request for stay; September 23, 2016 transfer and surrender applications; and June 23, 2017 response to staff's additional information request) indicates a target date for Commission action on both the transfer and the surrender application by December 31, 2019. Please explain why you request Commission action on the transfer application by December 31, 2017.

Response: Joint applicants established a target date of December 31, 2017, for Commission approval of the proposed transfer to afford the Commission two years to examine and consider the surrender application. It is now clear that a December 31, 2017 decision date for the transfer application is unlikely. The KRRC is committed to implementing the KHSA in accordance with its terms and conditions and with FERC directives and policies. These efforts will be facilitated by timely FERC action on both the transfer application and the surrender application.

Exhibit A: California Funding Agreement

Exhibit B: Pro forma schedule of project-specific insurance submissions

Exhibit C: Bond form AIA Form 312

**Exhibit D: Agreement for the Operation and Maintenance of the Lower Klamath Project
between Klamath River Renewal Corporation and PacifiCorp**

Exhibit A

California Funding Agreement

**FILED**10-30-17
01:48 PM**ATTACHMENT A****FUNDING AGREEMENT**

This Agreement is made and entered into by and between the **California Public Utilities Commission**, the "CPUC," and the **Klamath River Renewal Corporation**, a California nonprofit public benefit corporation, hereinafter referred to as the "KRRC."

RECITALS

WHEREAS, the States of California and Oregon, the United States, PacifiCorp, and other parties entered into the Klamath Hydroelectric Settlement Agreement, dated February 18, 2010, as subsequently amended (as amended, the "KHSA") to establish a process for the removal of four hydropower facilities within the jurisdictional boundary of FERC Project no. 2082 located on the Klamath River: Iron Gate Dam, Copco No. 1 Dam, Copco No. 2 Dam, J.C. Boyle Dam, and appurtenant works currently licensed to PacifiCorp (the "Project") and for the operation of the Klamath Hydroelectric Project until the completion of the Project; and

WHEREAS, pursuant to Section 4.1.1 of the KHSA, the CPUC and the Public Utility Commission of Oregon (OPUC) have each established customer surcharges for PacifiCorp's customers for the purposes of paying the costs of Facilities Removal; and

WHEREAS, pursuant to Section 4.1.1 of the KHSA, the total amount of funds to be collected pursuant to the customer surcharges shall not exceed \$200,000,000, with the maximum amount of \$16,000,000 to be collected from California customers.

WHEREAS pursuant to Section 4.1.2.A of the KHSA the State of California has appropriated \$250,000,000 of the proceeds of the bonds authorized by California Proposition 1 for the purposes of paying the costs of Facilities Removal, to the extent that the costs of Facilities Removal exceed the Customer Contributions; and

WHEREAS in Decision (D.)11-05-002, as amended by D.12-10-028, the CPUC approved a request by PacifiCorp for a surcharge of \$13.76 million, collected over less than 8 years for the purpose of paying the costs of removing Klamath River dams. As specified in in Section 4.4.4(d) of the KHSA, one surcharge is designed to collect removal costs for the J.C. Boyle Dam and the other surcharge collects removal costs for the other three dams. Pursuant to D.11-05-002, Ordering Paragraph 9, the Commission has established two interest bearing trust accounts in which the customer surcharges are to be held and administered – the California Copco I and II/Iron Gate Dams Trust Account and the California J.C. Boyle Trust Account. Pursuant to D.11-05-002, Ordering Paragraph 5, the customer surcharge together with accrued interest must be used only for the benefit of ratepayers; and

WHEREAS, in accordance with D.11-05-002, as amended by D.12-10-028, and Section 4.1.1 of the KHSA, the CPUC has been collecting non-bypassable customer surcharges for the purpose of Facilities Removal and has a responsibility to ensure those funds are used in a manner consistent with D.11-05-002; and

WHEREAS, section 4.12 of the KHSa provides that the States of California and Oregon will enter into funding agreements with the KRRC for the purpose of specifying how the Customer Contributions and the California Bond Funding will be released to pay for the costs of Facilities Removal; and

WHEREAS, section 4.2.4 of the KHSa provides that California and Oregon will prepare draft trustee instructions for submission to the California and Oregon PUCs concerning: (1) when funds will be disbursed from the trust accounts; (2) the methodology used to determine which accounts will be drawn from; (3) coordination with use of the California Bond Funds; (4) a protocol for reallocating funds between the trust accounts to pay for the costs of the removal of specific facilities (if necessary); and (5) a means for the return of Customer Contributions to PacifiCorp customers in the event that there are remaining funds in the trust accounts following completion of Facilities Removal; and

WHEREAS, the Facilities Removal is contemplated to take place pursuant to three funding phases, with Phase One, which has already commenced, expected to consist of the start-up of the KRRC, evaluating risk mitigation such as insurance for the Project, certain regulatory actions and preparation work for the Definite Plan; Phase Two is expected to consist of development of the Definite Plan, including preparation of procurement documents for final design, deconstruction and risk management and completion of regulatory actions; and Phase Three will consist of the Facilities Removal through deconstruction and restoration; and

WHEREAS, it is contemplated that up to \$4.4 million will be necessary to fund Phase One activities with Oregon funding 92% of the Phase One costs (\$4,048,000) and California funding 8% of the Phase One costs (\$352,000).

NOW THEREFORE, the parties enter into this Agreement as provided below.

AGREEMENT

1. Defined Terms.

“Applicable Law” means general law that (1) exists outside of the KHSa including, but not limited to a Constitution, statute, regulation, court decision, or common law, and (2) applies to obligations or activities of Parties contemplated by this Agreement. The use of this term is not intended to create a contractual obligation to comply with any law that would not otherwise apply.

“California Public Utilities Commission” or **“CPUC”** means the public utilities commission for the State of California. References to actions or approvals by CPUC shall mean action or approval delegated to the Energy Division Director of CPUC or its designee by the Commission pursuant to this Agreement or otherwise, and not a vote of the Commissioners of the CPUC unless otherwise expressly stated.

“California Trust” refers to the two separate interest bearing trust accounts – the California Copco I and II/Iron Gate Dams Trust Account and the California J.C. Boyle Trust Account –

established pursuant to CPUC Decision 11-05-002, Ordering Paragraph 9, for the collection of the customer surcharges by PacifiCorp.

“Definite Plan” means a plan and timetable for Facilities Removal submitted by KRRC or any of its contractors or assigns under Section 7.2.1 of the KHSA.

“Detailed Plan” means the plan dated July 2012 that includes elements described in Section 7.2.2 of the KHSA.

“Eligible Project Costs” include the costs necessary for: (i) physical removal of the dams, (ii) site remediation and restoration; (iii) avoiding downstream impacts of dam removal; (iv) downstream impacts of dam removal; (v) permits that are required for the removal; (vi) removal and disposal of sediment, debris and other materials, if necessary; (vii) compliance with environmental laws; and (viii) matters otherwise in furtherance of the Project. Eligible Project Costs include costs of the foregoing items that have been incurred prior to the date of this Agreement and the repayment of amounts received from other sources and applied to Eligible Project Costs prior to the date of this Agreement.

“FERC” refers to the Federal Energy Regulatory Commission.

“FERC Project” refers to the Klamath Hydroelectric Project as licensed by FERC under Project No. 2082.

“Funds” refers to funds disbursed to the KRRC from the California Trust.

“Klamath Hydroelectric Settlement Agreement” or **“KHSA”** means the Klamath Hydroelectric Settlement Agreement, dated February 18, 2010, as amended on April 6, 2016 and November 11, 2016, and as may be amended in the future.

“Klamath River Dams” refers to the J.C. Boyle Dam, the Copco 1 Dam, the Copco 2 Dam and the Iron Gate Dam.

“KRRC” refers to the Klamath River Renewal Corporation, a California nonprofit public benefit corporation.

“Material” as applicable to an action or representation means an action or representation that would delay the Project, result in a budget overrun greater than ten percent, result in the misapplication or misexpenditure of Funds, or otherwise prevent the KRRC from performing duties under this Agreement.

“Non-bypassable surcharge” means a monetary surcharge authorized by the appropriate state utility commission through a tariff schedule that applies to all retail customers who rely on PacifiCorp’s transmission and distribution system for the delivery of electricity.

“Notice” means a written notice directed to the appropriate party that reasonably apprises that party of the intended action that may follow such notice.

“ODFW” means the Oregon Department of Fish and Wildlife.

“Parties” or “Party” means the signatories of this Agreement.

“Phase 1” refers to the funding phase under this Agreement for which the budget is expected to consist of the start-up costs of the KRRC, evaluating risk mitigation such as insurance for the Project, certain regulatory actions and preparation work for the Definite Plan.

“Phase 2” refers to the funding phase under this Agreement for which the budget is expected to consist of development of the Definite Plan, including preparation of procurement documents for final design, deconstruction and risk management and completion of regulatory actions.

“Phase 3” refers to the funding phase under this Agreement for which the budget is expected to consist of the Facilities Removal through deconstruction and restoration.

“Project” refers to the responsibilities of the KRRC under the KHSa.

“Public Utility Commission of Oregon” or “OPUC” means the public utility commission for the State of Oregon.

“Ratepayer Benefit” means, for purposes of this Agreement, the execution of the Project. For the avoidance of doubt, Funds disbursed for Eligible Project Costs shall be deemed to be used for Ratepayer Benefit.

“State Cost Cap” means the collective maximum monetary contribution from the states of California and Oregon as described in Section 4.1.3 of the KHSa.

“States” refers to the State of Oregon or the State of California.

“Trustee” means the Wells Fargo Bank.

2. Effective Date and Expiration. This Agreement shall become effective on the date this Agreement is fully executed. This Agreement shall expire upon the earlier of January 31, 2022, or the date the KHSa terminates (the “Expiration Date”).

3. Agreement Documents. This Agreement consists of the Agreement through the signature page, together with the following Exhibits, all of which are attached hereto and incorporated herein by reference:

Exhibit A1:	Phase 1 Project Activities
Exhibit B1:	Phase 1 Project Budget Form
Exhibit C:	[RESERVED]
Exhibit D:	Disbursement Request Form

In the event of a conflict between portions of this Agreement, the following order of precedence, listed from highest precedence to lowest precedence, will prevail: this Agreement without Exhibits; Exhibit A; Exhibit B; Exhibit D; Exhibit C.

4. KRRC Fiscal Administration.

a. Administrative Practices. As soon as practicable after execution of this Agreement and thereafter upon preparation of each of the following, the KRRC shall provide to the CPUC copies of the following documents and any amendments that may be made thereto:

(i) Agenda and Minutes of KRRC's regular and special meetings, in each case to the extent made publicly available;

(ii) KRRC Bylaws;

(iii) KRRC internal policies addressing financial controls, governance and internal operations;

(iv) Periodic reports or summaries of the fiscal status of the KRRC; and

(v) An audited annual financial statement for the KRRC that must include a balance sheet showing all funds, a statement of budgeted and actual income and expenditures, indicating thereon any changes in fund balances, and any appropriate notes of explanation or disclosure.

b. Status Updates to CPUC. KRRC shall provide to CPUC Staff periodic updates on at least a semi-annual basis, and more frequently if necessary, regarding the KRRC and the Project, which may be either oral or in writing. KRRC shall make an annual presentation before the CPUC that includes a review of Project activities in the preceding year, relevant financial information, and an overview of Project activities planned for the coming year.

c. Conflicts of Interest and Gifts. KRRC shall adopt and maintain a written standard of conduct under which an employee, officer, or agent of the KRRC shall not participate in the selection, award, or administration of a contract if a real or apparent conflict of interest would be involved, unless otherwise consistent with Applicable Law.

Further, KRRC shall adopt and maintain a written standard of conduct under which the officers, employees, and agents of the KRRC shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or subcontractors. KRRC may set a different standard for situations in which the gift is an unsolicited item of nominal value.

Finally, KRRC certifies that it has and will maintain and enforce a standard of conduct requiring compliance with the conflict of interest standards set forth above and that provides for disciplinary action to be applied for violations.

d. Management of Disbursements from California Trust Accounts. KRRC shall maintain funds disbursed to the KRRC from the California Trust Accounts in one

or more interest-bearing demand deposit accounts in a financial institution of high credit quality, with minimal risk of loss to principal at all times, prior to expenditure on Eligible Project Costs as provided in this Agreement.

- e. **Notice of Bankruptcy or Receivership.** KRRC shall promptly notify CPUC and provide a copy of any notice or other knowledge the KRRC receives of a bankruptcy or receivership of a contractor or subcontractor engaged for the Project.

5. Business Status.

- a. **Registry.** KRRC has registered as a nonprofit corporation with the California Secretary of State.
- b. **Registry and status as a Charitable Organization.** KRRC has registered as a charitable organization.
- c. **Corporate Dissolution.** KRRC shall take the necessary steps to ensure that when the KRRC is dissolved or its legal existence terminated, either voluntarily or involuntarily, or upon final liquidation of the KRRC, none of its assets shall inure to the benefit of any private individual, and all of its assets remaining after payment of all of its liabilities shall be distributed to one or more organizations which the KRRC Board of Directors then determines is qualified both as an exempt organization under Internal Revenue Code Section 501(c)(3), and as an organization engaged in activities substantially similar to those of the KRRC or return to CPUC as may be required by Section 7.f.

6. Disbursements for Eligible Project Costs.

- a. **Trust Accounts.** The Customer Contributions, as they are collected, are held in segregated trust accounts (the "California Trust") established by the CPUC. The Wells Fargo Bank is the current trustee of the Trust. The Customer Contributions derive from surcharges currently being collected by PacifiCorp at rates approved by CPUC, but which may not exceed more than \$13,760,000, as authorized in D.11-05-002. Pursuant to D.12-10-028, this surcharge is to be collected over a period of less than 8 years, starting in 2011.
- b. **Trust Account Management.** CPUC shall manage the California Trust consistent with any account management and coordination agreement as may be jointly approved by the State of Oregon and the State of California. If the CPUC is a party to any such agreement, it shall provide to the KRRC an opportunity to review and comment on any draft account management and coordination agreement before it is finalized.
- c. **Trust Disbursement Directions.** In accordance with the terms and conditions of this Agreement, the CPUC will timely direct the Trustee to disburse funds from the California Trust to the KRRC to pay for Eligible Project Costs.

7. Use of Funds. KRRC shall use the Funds for Eligible Project Costs.

- a. Phase 1 Costs.** The categories of Eligible Project Costs for Phase 1 are described in Exhibit A1. The total Eligible Project Costs for Phase 1 are estimated to be \$4.4 million, of which \$308,369 has already been disbursed to the KRRC under the “Phase 1A Grant Agreement” between the KRRC and ODFW. Exhibit B1 includes a budget for Phase 1, of which \$3,739,000¹ has been advanced by OPUC as of July 21, 2017.
- b. Phase 2 and Phase 3 Costs.** Ninety days prior to making an initial semi-annual request for disbursements for Phases 2 and 3, KRRC will submit to the CPUC an Exhibit A2 (Phase 2 Project Activities) and A3 (Phase 3 Project Activities), respectively, describing categories of Eligible Project Costs for Phases 2 and 3 and will also provide Exhibit B2 (Phase 2 Budget) and B3 (Phase 3 Budget), respectively providing a proposed budget for each phase. KRRC must submit, with either an Exhibit A3 or Exhibit B3 to CPUC, a certification that all of the conditions in Section 7.1.4 of the KHSa have been met or, to the extent any such conditions have not been met as of the date of such certification, an explanation of how the conditions in Section 7.1.4 of the KHSa are expected to be met in a timeframe consistent with continued progress on the Project and with appropriate documentation.

 - (i) In the event that at any time actual or foreseeable costs associated with physical performance of Facilities Removal or the combined Project budget for all three Phases is estimated to exceed the State Cost Cap and sufficient additional funding is not available to carry out Facilities Removal, the KRRC:

 - (A) Shall promptly initiate the meet and confer process with the parties to the KHSa under Section 7.2.1(5) of the KHSa and diligently pursue resolution of that process;
 - (B) Shall not enter any new contractual obligations until the process of meeting and conferring under Section 7.2.1(5) of the KHSa is resolved, unless the Parties agree that it is reasonable, necessary and consistent with the KHSa for the KRRC to enter into one or more additional contracts; and
 - (C) Shall promptly notify CPUC it has initiated the meet and confer process, and keep CPUC Staff reasonably apprised of the progress of the KHSa parties towards a resolution.
 - (ii) Upon finding that actual or foreseeable costs associated with physical performance of Facilities Removal or the combined Project budget for all three Phases is estimated to exceed the State Cost Cap and sufficient

¹ Amounts advanced by OPUC to be updated at time of execution.

funding is not available to carry out Facilities Removal, KRRC may thereafter, in the regular course, submit one disbursement request under Section 7.f while it is engaged in the process of meeting and conferring with the parties to the KHSa. Before submitting any further disbursement requests while the process of meeting and conferring under Section 7.2.1(5) of the KHSa remains unresolved, KRRC shall meet with the CPUC and present a plan supporting continued disbursements. CPUC may, in its discretion, suspend further disbursements until the meet and confer process is resolved.

- c. **Budget forms.** Exhibit budget forms for each Phase shall identify the projected Project activities for such Phase and how each activity will be completed in Exhibit A, and set forth, in Exhibit B, the estimated Eligible Project Costs associated with each program activity identified in Exhibit A for such Phase, and the originating source of funds to be applied to the aggregate costs, and include or be accompanied by an estimate of the time period within such Phase in which each Exhibit A activity will be conducted. Exhibit budget forms A1 and B1 for Phase 1 are attached to this Agreement.
- d. **Minor Modifications of Budget.** The KRRC may, in its reasonable discretion, make minor modifications to the budgets for Phases 1 through 3, including but not limited to reallocating costs within categories in each budget; provided, however, if the KRRC modifies the amount of funds allocated to a category or Phase by an amount that is greater than ten percent then the KRRC will provide an updated Exhibit to the CPUC for its review as specified in the following paragraph (e).
- e. **Major Modifications of Budget.** A major modification of the budget is: (a) any increase in the amount being requested for a particular Phase of more than ten percent, or (b) an increase in the amount being requested for a particular category of expenses of more than fifteen percent. The KRRC shall notify the CPUC when it becomes aware of a need for a major modification of a budget and provide CPUC with a revised Exhibit B and a certification that such a major modification is necessary for Facilities Removal.
- f. **Disbursement Requests.**
 - (i) The KRRC will make requests for disbursements to the CPUC on a semi-annual basis by submitting a disbursement request (in both hard and electronic formats) in the form and containing the information required on Exhibit D (Disbursement Request Form). The Disbursement Request Form shall be submitted to the CPUC Executive Director and Energy Division Director. The following supporting documentation shall be submitted along with the Disbursement Request Form:
 - (A) the projected Project activities to be performed and the estimated Eligible Project Costs associated with each activity;

(B) an expenditure report, showing the expenses incurred during the prior semi-annual period;

(C) a certification from the KRRC that the request is for payment of Eligible Project Costs included in the budget that the KRRC expects to incur for the Project activities to be completed by the KRRC or under subagreement during the period within 210 days after the date of the request. The certification shall also certify that no material authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the Project activities to be completed by the KRRC or under subagreement during the period within 210 days after the request. If the KRRC cannot make such a certification, KRRC shall explain how any outstanding material authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority not yet obtained or given, as applicable, that is required for the Project activities is expected to be met in a timeframe consistent with Project activities to be conducted within 210 days and provide appropriate documentation.

(D) a certification that all expenditures will only be used for Ratepayer Benefit.

(ii) The KRRC will, contemporaneously with its request to the CPUC, make a corresponding request to the OPUC, to the extent appropriate.

g. Proportional Disbursements. The Parties understand and agree that 8% of the Customer Contribution funds for the Project will be disbursed from the California Trust, except however, in no event will the total funding from the California Trust and the Oregon Trust exceed \$200 million. CPUC's direction to disburse funds from the California Trust shall not be subject to a corresponding disbursement from the Oregon Trust, unless expressly required by any account management and coordination agreement as may be jointly approved by the State of Oregon and the State of California.

h. Action on Disbursement Requests.

(i) Except as provided in Section 7.b, disbursement requests will be processed by the CPUC within 14 working days after receipt of the disbursement request if the disbursement request includes all of the information required under Section 7.f.

(ii) The Energy Division Director, or his/her designee, shall review all Disbursement Request Forms for the purpose of confirming that:

(A) the disbursement request is to fund Project activities identified in the applicable Exhibit A for the applicable Project Phase;

(B) the Funds requested, in combination with Funds already disbursed for the identified Phase, do not exceed the budgeted amount for a particular Phase by more than ten percent.

(iii) Upon determination that the requirements of clause (ii) above are met, the Energy Division Director, or his/her designee, shall promptly notify the Executive Director that the funds may be released. In the event that the Energy Division Director, or his/her designee, has reasonably determined that the foregoing requirements have not been met with respect to any portion of the Funds requested, then the Energy Division Director, or his/her designee, shall promptly notify KRRC in writing and in reasonable detail of the reason for such determination. In the event KRRC disagrees with such determination it shall provide such further information as it may elect, it being the intent that the Parties shall thereafter reasonably and promptly cooperate with each other to resolve any such disagreement, at which point the Executive Director shall direct the release of the applicable Funds.

i. Recovery of Funds.

- (i) KRRC shall provide annually its audited financial statements by a third party in accordance with Section 12.c. of this Agreement. These statements shall include a balance sheet showing all funds, a statement of budgeted and actual income and expenditures, indicating thereon any changes in fund balances, and any appropriate notes of explanation or disclosure. The Executive Director, or his/her designee, shall have 60 days to review the audited financial statements and notify the KRRC in writing, of all concerns regarding the disbursement of funds in the prior year. KRRC shall address these concerns/proposed adjustments in writing to the Executive Director or his/her designee within 30 days or such longer period of time as may be necessary, with reasonable diligence, to do so. The Executive Director or his/her designee shall notify the KRRC in writing within 10 days after receipt of KRRC's response of any remaining concerns and whether any proposed adjustments should be made. The Executive Director and KRRC shall thereafter reasonably cooperate to address any remaining concerns of the Executive Director. In the event that notwithstanding such cooperation all matters have not been resolved within 30 days after the Executive Director's notice then the Executive Director shall notify the KRRC in writing of its final determination regarding its concerns. A copy of this communication shall be sent to the Energy Division Director or his/her designee and the service list of Application 10-03-015.
- (ii) Any funds disbursed to KRRC that remain unexpended on the earlier of the completion of Facilities Removal, termination or expiration of this Agreement ("Unexpended Funds") or that remain unexpended due to the suspension of disbursement requests under Section 7.b of this Agreement

for a period of two years or longer must be returned to the CPUC upon its request. Unexpended Funds shall not include funds set aside for ongoing monitoring following facilities removal or other similar activities as may be required under the Definite Plan or as a condition of a license or permit required for the Project. Recipient shall return all Unexpended Funds and associated interest to the CPUC within 15 days after the earlier of expiration or termination of this Agreement, or upon the demand of the CPUC following the suspension of disbursement requests for a period of two years or longer, consistent with this Section.

8. Final Reporting. Within six months of the completion of Facilities Removal, the KRRRC will file a final report (the “Final Report”) with the CPUC. The Final Report must include a summary of all Project costs compared to the Project Budget, together with reasonable supporting documentation that evidences KRRRC’s expenditure of the funds disbursed from the California Trust. The Final Report shall include a summary of the Project as completed as well as an explanation for any Project cost variances that are greater than 10 percent from the Project Budget. The Final Report shall also document the amount of funding received from OPUC and the California Natural Resources Agency.

9. Conditions Precedent.

- a. Conditions Precedent to the CPUC’s Obligations.** The CPUC’s obligations under this Agreement are subject to the receipt by the CPUC of the following item, all in form and substance satisfactory to the CPUC and its counsel:
- (i) A copy of the resolution of the KRRRC’s board of directors authorizing the execution and delivery of this Agreement and performance by KRRRC of its obligations hereunder.
- b. Conditions to Disbursement.** CPUC’s obligation to disburse any of the Funds to KRRRC is subject to the following conditions.
- (i) **Disbursement Request.** The KRRRC has filed a disbursement request with the CPUC, consistent with section 7.f, above.
 - (ii) **Availability of Funds.** Sufficient funds are currently deposited in the California Trust to fulfill the CPUC’s obligation to disburse funds under this Agreement.
 - (iii) **No Default.** No event of default has occurred or is occurring.
 - (iv) **Representations.** KRRRC’s representations and warranties set forth in Section 10 hereof are true and correct in all material respects on the date of disbursement with the same effect as though made on the date of disbursement.

10. Representations, Warranties and Covenants of KRRC.

- a. KRRC Representations, Warranties.** KRRC makes the following representations and warranties to the CPUC.
- (i) **Organization and Authority.** KRRC is a duly organized and validly existing nonprofit public benefit corporation under the California Corporations Code. KRRC has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder; and the making and performance by KRRC of this Agreement (1) have been duly authorized by all necessary action of KRRC, (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of KRRC's organizational documents, and (3) do not and will not result in the breach of, or constitute a default or require any consent under, any other agreement or instrument to which KRRC is a party or by which KRRC or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by KRRC of this Agreement. Certain additional authorizations, consents, licenses, approvals of, filings or registrations with or notifications to a governmental body or regulatory or supervisory authority shall be required for certain Project activities.
- (ii) **Binding Obligation.** This Agreement has been duly executed and delivered by KRRC and, when executed and delivered by the CPUC, constitutes a legal, valid and binding obligation of KRRC, enforceable in accordance with its terms, subject to the application of bankruptcy, insolvency or similar laws relating to the rights of creditors generally and general principles of equity.
- b. KRRC's Inspections; Information.** During the term of this Agreement, KRRC shall permit the CPUC, at any reasonable time and with reasonable notice, to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investment of Funds, if any, and any other matters related to the use of Funds or the Project. The KRRC shall supply related reports and information relating to the Project as the CPUC may reasonably require. The KRRC shall promptly respond to requests for information and provide an explanation regarding submissions to the CPUC upon its request.

11. Representations, Warranties and Covenants of CPUC. CPUC makes the following representations and warranties to the KRRC.

- a.** CPUC is a constitutional agency of the State of California.

- b. CPUC has all necessary right, power, authority, approvals and consents under its applicable enabling statutes, or other California law to (a) execute and deliver this Agreement, and (b) incur and perform its obligations under this Agreement.
- c. This Agreement has been duly authorized by a vote, resolution or other act of the Commissioners of the CPUC, is executed by an authorized representative of CPUC, and is legal, valid and binding, and enforceable in accordance with its terms without the need for any further vote, resolution or act of the CPUC or its Commissioners.

12. Records Maintenance and Access; Audit Requirements.

- a. **Records Maintenance and Access.** KRRC shall make and retain proper and complete books of record, and account and maintain all fiscal records related to this Agreement, the Funds, and the Project in accordance with all applicable generally accepted accounting principles. KRRC shall create and maintain all expenditure records in sufficient detail in such a manner as to clearly document KRRC's performance and to permit the CPUC and the KRRC's third party auditor to verify how the Funds were expended. The State of California, the CPUC and their duly authorized representatives shall have access to the books, documents, papers and records of KRRC that are directly related to this Agreement, the funds provided hereunder, or the Project for the purpose of making audits and examinations. In addition, CPUC and its duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. KRRC shall permit authorized representatives of the CPUC to perform site reviews of the Project as needed to determine compliance with the terms of this Agreement.
- b. **Retention of Records.** KRRC shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Funds, or the Project for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the termination of this Agreement. If there are unresolved disputes or audit questions at the end of the retention period, KRRC shall retain the records until the disputes or questions are resolved. These records will be made available, without restriction, to both the CPUC and California Secretary of State.
- c. **Audit Requirements.** KRRC must retain the services of a professional third-party audit firm to conduct a financial audit of all expenditures of the Funds made by KRRC on an annual basis and provide to the CPUC, not later than 90 calendar days after the end of each calendar year, beginning in 2017, a true and correct copy of the auditor's final report. Each audit must apply Generally Accepted Accounting Principles. KRRC shall cooperate with all requests from the auditor for data and other related requests from the auditor. Disputed points not resolved between KRRC and the auditor, and any exceptions from, qualifications of, or exclusions from the audit must be noted in the final audit

report. KRRC shall include third-party audit expenses as appropriate in expense and budget forms submitted under Sections 7.a. and 7.b.

13. KRRC Subagreements.

- a. Subagreements.** KRRC may enter into agreements with sub-recipients, contractors, subcontractors, consultants, advisors, agents, representatives and other providers of services or materials (collectively, “subagreements”) reasonably necessary or desirable for performance of the Project, including agreements with an executive director and other staff or employees of KRRC. Notwithstanding the foregoing, the use of a subagreement shall not relieve KRRC of its responsibilities under this Agreement.
- b. Procurement standards and policies.** KRRC shall adopt, maintain, provide to CPUC, and comply with written standards of conduct and appropriate policies governing the performance of its employees, agents, consultants, directors, officers or contractors engaged in the award and administration of subagreements.

 - (i) All such standards and policies shall implement and be consistent with the following goals:

 - (A) optimizing the cost, efficiency, timing, expertise and quality of work performed under subagreements;
 - (B) effectively executing the Project; and
 - (C) maintaining consistency with industry standards.
 - (ii) Such standards and policies shall include a competitive process for all primary subagreements for the design or execution of physical removal of facilities and associated site remediation activity under the Project (“Major Subagreements”). Upon selection of a competitive process to be used to award a Major Subagreement, KRRC shall notify CPUC of the subject matter, selected process, and provide an explanation as to how the selected process meets the goals listed in Section 13.b.i of this Agreement. KRRC shall provide CPUC with a substantially final form of the solicitation materials for each Major Subagreement sufficiently prior to issuance as to allow for CPUC review, in no event less than 15 business days.
- c.** Any breach of a term or condition of a Major Subagreement relating material misapplication, misexpenditure or loss of Funds must be reported by KRRC to CPUC within ten (10) days of its being discovered by KRRC.
- d. Insurance.** KRRC shall cause the other party, or parties, to each of its Major Subagreements to obtain and maintain insurance of the types set forth in Section 14(b) and in commercially reasonable amounts.

14. Indemnity; Insurance.

- a. Indemnity.** KRRC and CPUC acknowledge and agree that the indemnity provided in Section 7.1.3 of the KHSa shall be applicable to this Agreement.

Neither KRRC, nor any attorney engaged by KRRC shall defend any Claim in the name of the State or any agency of the State of California, nor purport to act as legal representative of the State of California or any of its agencies, without the prior written consent of the California Attorney General. The CPUC may, at any time at its election, assume its own defense and settlement in the event that it determines that KRRC is prohibited from defending State or that KRRC is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. CPUC reserves all rights to pursue claims it may have against KRRC if State elects to assume its own defense.

- b. Insurance.** KRRC shall maintain, or cause to be maintained, insurance policies with responsible insurers or self-insurance programs, insuring against directors' and officers' liability and sufficient to insure the Project. KRRC shall provide a summary of any insurance coverage to the CPUC within ten days following the effective date of this agreement and upon the execution of any additional insurance agreements. KRRC shall include CPUC (i) as an additional insured on its liability insurance coverages and (ii) as a loss-payee on its property insurance and on any performance bonds, or letters of credit taken out to insure performance of the Project, provided, however, that for so long as this Agreement is in effect and no Event of Default exists, CPUC shall have no claim to any proceeds of property insurance, performance bonds or letters of credit that are recovered in respect of Eligible Project Costs and that KRRC applies or intends to apply toward Eligible Project Costs in connection with the completion or restoration following any casualty of the Project. Proceeds of any of the foregoing that are not eligible or expected to be applied to Eligible Project Costs by KRRC, if any, shall be paid to CPUC in trust for contributing PacifiCorp customers in proportion to any disbursement of Funds previously directed by CPUC and in proportion to other funding sources that are also loss-payees.
- c. Survival.** Following any termination of this Agreement, for so long as KRRC has an ownership interest in the Project site, KRRC shall maintain, or cause to be maintained commercially reasonable insurance that will name CPUC as additional insured or loss-payee as its interests may appear.

15. Compliance with Laws.

- a. Compliance with Laws.** KRRC shall comply with all Applicable Law, including, to the extent such laws are applicable without being a requirement of this agreement:

- (i) (A) Title VI of Civil Rights Act of 1964; (B) Title V and Section 504 of the Rehabilitation Act of 1973; (C) the Americans with Disabilities Act of 1990; (D) all regulations and administrative rules established pursuant to the foregoing laws; and (E) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
 - (ii) (A) if applicable, prevailing wage rate requirements set forth in 40 U.S.C. 3141 et seq. ("Davis-Bacon Act"), and (B) if the Project is subject to the Davis-Bacon Act, the requirement that require its contractors and subcontractors to comply with the Davis-Bacon Act.
- b. KRRC agrees to contract with, and require any subrecipients to contract with, competent, properly licensed and bonded contractors and professionals for the performance of the Project.
- c. All subagreements that KRRC may enter which are funded wholly or in part with the Funds must be subcontractual in nature, with the other party engaged in the role of a subcontractor. KRRC will administer all contracts with its subcontractors to ensure compliance by any subcontractors with the terms of this Agreement with respect to requirements that flow through to subcontractors.

16. Termination; Default

- a. **Termination by CPUC.** CPUC may terminate this Agreement effective upon delivery of written notice of termination to KRRC, or at such later date as may be established by CPUC in such written notice, only if:
 - (i) A change in law makes performance or completion of Facilities Removal in compliance with the KHSA no longer possible; or
 - (ii) The occurrence and continuance of an Event of Default as provided below.
- b. **Event of Default.** The occurrence of any of the following listed events shall constitute an Event of Default under this Agreement:
 - (i) Any material representation is made by KRRC in this Agreement or in any document provided by or on behalf of KRRC related to this Agreement or the Project that is false or misleading in any material respect when made; or
 - (ii) A petition, proceeding or case is filed by or against KRRC (for purposes of this section, "Debtor") under any federal or state bankruptcy or insolvency law, and in the case of a petition filed against the Debtor, the Debtor acquiesces to such petition or such petition is not dismissed within 90 calendar days after such filing; Debtor files a petition seeing to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, dissolution, winding-up or composition or

adjustment of debts; Debtor admits in writing its inability to pay its debts as they become due, or makes an assignment for the benefit of its creditors; Debtor applies for or consents to the appointment of, or taking of possession by, a custodian (including, without limitation, a receiver, liquidator or trustee) of Debtor or any substantial portion of its property; or Debtor takes any action for the purpose of effecting any of the above; or

- (iii) KRRC fails to perform any material obligation required under this Agreement and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to KRRC by CPUC, except with respect to any shorter period expressly provided in this Agreement, provided that so long as KRRC is diligently seeking to cure such failure to perform such 30-day period shall be extended.

c. **Remedies.** Upon the occurrence and continuance of an Event of Default, and dispute resolution under section 18.a is not successful in a timely manner, the CPUC may, at its option, pursue any or all of the following remedies:

- (i) Ceasing disbursement of Funds under this Agreement until the Event of Default has been cured or the Agreement is terminated;
- (ii) Terminating this Agreement with KRRC;
- (iii) Bringing an action at law or filing a claim in a court with jurisdiction to recover damages incurred as a result of the Event of Default, in order to recover Funds disbursed to the KRRC hereunder, with interest thereon, that have not been expended on Eligible Project Costs prior to an event of default or that were misexpended;
- (iv) Seeking any equitable remedies, including specific performance, which may be available to the CPUC; and
- (v) Pursuing any rights as loss payee on insurance or as payee on a performance bond, letter of credit or any similar performance or payment guarantor, if any.

d. **No Termination by KRRC.** KRRC may not terminate this Agreement unless the KHSA has been terminated or the Project has been abandoned, terminated, or is otherwise unable to proceed.

17. California Trust is Sole Source of Funding. The California Trust is the sole source of funding for this Agreement, with respect to funding from California, and KRRC shall have no recourse to, and the CPUC shall have no obligation to pay, any amounts under this Agreement from moneys deposited in the State Treasury, including but not limited to the General Fund; nor will the CPUC have any obligation to seek an appropriation or other expenditure authority from the Oregon Legislative Assembly in the event there are insufficient moneys in the California Trust.

18. General Provisions.

- a. Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
- b. Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and, in the case of amendments relating to the amount or application of the Funds, approved by a vote of the Commissioners of the CPUC. For the avoidance of doubt, a vote of the Commissioners shall not be required for extensions of time, contract administration matters, or to waive any provision of this Agreement.
- c. No Third Party Beneficiaries.** CPUC and KRRC are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.
- d. Notices.** Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, email, or mailing the same, postage prepaid, to KRRC Contact or CPUC Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section 18.d. Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against CPUC, such facsimile transmission must be confirmed by telephone notice to CPUC Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received.

e. Choice of Law; Designation of Forum; Federal Forum.

- (i) The laws of the State of California (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.
- (ii) Any Party bringing a legal action or proceeding against any other Party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of California for the County of San Francisco. Each Party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- (iii) Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the Northern District of California. This paragraph applies to a claim brought against the State of California only to the extent Congress has appropriately abrogated the State of California's sovereign immunity, and is not consent by the State of California to be sued in federal court. This paragraph is also not a waiver by the State of California of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

f. Survival. The following sections or subsections of this Agreement shall survive the Expiration Date and any earlier termination of this Agreement: Sections 7.b, 7.h, 7.i, 7.j, 8, 12, 14.a, 16.c, 18.a, 18.d, 18.e, 18.f, 18.h and 18.l and any other section or provision that by its terms is stated to survive.

g. Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

h. Counterparts. This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.

i. Integration and Waiver. This Agreement and the KHSa, as they may be amended from time to time, including all Exhibits, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either Party to enforce any provision of this

Agreement shall not constitute a waiver by that Party of that or any other provision.

- j. KHSa.** This Agreement is intended to facilitate the implementation of the KHSa. Nothing in this Agreement shall be construed in a way that is inconsistent with or conflicts with the terms of the KHSa. In the event of any such conflict or inconsistency the applicable terms shall be deemed waived or modified to the extent necessary to comply with the requirements of the KHSa insofar as the KHSa's requirements are consistent with law.
- k. Non-Disclosure Agreements.** Nothing in this Agreement shall be construed as requiring KRRC to violate any confidentiality, non-disclosure agreement or similar agreement.
- l. Coordination with Other Funding Sources.** CPUC acknowledges that pursuant to the KHSa, the Project will have several sources of funds and agrees to reasonably cooperate with the other Project funding sources as reasonably requested by KRRC. In the event conflicting positions or interpretations with respect to any matter or Approval among the Project's funding sources, CPUC agrees to meet and confer with such other funding sources and to make good faith efforts to promptly resolve any such disputes or conflicts. The pendency of any such dispute or conflict and any resulting delay or other impact on the Project shall be deemed to be beyond KRRC's control and shall not be a breach of this Agreement or give rise to an Event of Default.

THE PARTIES, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

SIGNATURE PAGE TO FOLLOW

Klamath River Renewal Corporation

California Public Utilities Commission

By _____

By _____

Name: _____
(printed)

Name: _____
(printed)

Title: _____

Title _____

Date _____

Date _____

APPROVED

(If required)

By _____
KRRC's Legal Counsel

Date _____

KRRC Contact:

Name: Mark Bransom
Title: Executive Director
Address: 423 Washington St. 3rd Floor
Address: San Francisco, CA 94111
Phone: 510 914-4199
Email: mark@klamathrenewal.org

CPUC Contacts:

Name: Timothy Sullivan
Title: Executive Director
Address: California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: 415-703-_____
Email: timothy.sullivan@cpuc.ca.gov

Name: Edward Randolph
Title: Director, Energy Division
Address: California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: 415-703-_____
Email: edward.randolph@cpuc.ca.gov

**EXHIBIT A1
PHASE 1 ACTIVITIES**

EXHIBIT B
PHASE 1 PROJECT BUDGET

**EXHIBIT C
[RESERVED]**

EXHIBIT D
Disbursement Request Form

Date: _____

Attn: _____

Address: _____

Phone: _____

Email: _____

Re: Disbursement for Klamath Dam Removal Funding Agreement (the “Agreement”) Phase _____

The Klamath River Renewal Corporation requests the Public Utility Commission to submit a request for disbursement from the Customer Contribution Trust Accounts pursuant to D.17-XX-XXX in the amount of \$ _____ as outlined below:

Phase	Project Activity		Eligible Project Costs	Amount Requested

Attached to this Disbursement Request Form are the supporting documents for this request as required by Section 7(f) of the Agreement.

Disbursement shall be made through wire transfers to the following:

Recipient Name: _____

Wire Transfer Acct. #: _____

Bank Name: _____

ABA #: _____

For Benefit of: _____

FBO Acct #: _____

Attn: _____

Phone #: _____

KLAMATH RIVER RENEWAL CORPORATION

By: _____
Signature

Name & Title (print): _____

(End of Attachment A)

Exhibit B

Pro forma schedule of project-specific insurance submissions

Klamath River Renewal Corporation - Proposed Insurance Schedule

[illegible]

Exhibit C

Bond form AIA Form 312



AIA[®] Document A312[™] – 2010

Performance Bond

CONTRACTOR:

(Name, legal status and address)

SURETY:

(Name, legal status and principal place of business)

OWNER:

(Name, legal status and address)

CONSTRUCTION CONTRACT

Date:

Amount: \$

Description:

(Name and location)

Uninterruptible Power Supply (UPS)

BOND

Date:

(Not earlier than Construction Contract Date)

Amount: \$

Modifications to this Bond: ☐ None ☐ See Section 16

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

SURETY

Company: (Corporate Seal)

Signature: _____

Name and

Title:

(Any additional signatures appear on the last page of this Performance Bond.)

Signature: _____

Name and

Title:

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____
(Corporate Seal)

Signature: _____
Name and Title: _____
Address: _____

SURETY

Company: _____
(Corporate Seal)

Signature: _____
Name and Title: _____
Address: _____

Init.

Additions and Deletions Report for ***AIA[®] Document A312[™] – 2010***

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:25:48 on 01/10/2013.

PAGE 1

Uninterruptible Power Supply (UPS)

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:25:48 on 01/10/2013 under Order No. 6871475021_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A312™ – 2010, Performance Bond, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

Exhibit D

**Agreement for the Operation and Maintenance of the Lower Klamath Project between
Klamath River Renewal Corporation and PacifiCorp**

AGREEMENT

for the

OPERATION AND MAINTENANCE

of the

LOWER KLAMATH PROJECT

between

KLAMATH RIVER RENEWAL CORPORATION

and

PACIFICORP

Consistent with the Amended Klamath Hydroelectric Settlement Agreement (KHSA), the Klamath River Renewal Corporation (KRRC), a California non-profit corporation, and PacifiCorp, an Oregon corporation, entered into this Agreement for the Operation and Maintenance of the Lower Klamath Project (the Agreement) on September 20, 2017. KRRC and PacifiCorp are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

1. RECITALS: This Agreement is made with reference to the following facts, among others:

1.1 PacifiCorp is engaged in the generation, transmission, and distribution of electric power and energy as an electric utility in Oregon, California, Idaho, Utah, Washington, and Wyoming. PacifiCorp has been the Federal Energy Regulatory Commission (FERC) licensee for the Klamath Hydroelectric Project – a series of eight generating and non-generating developments on the Klamath River and its tributaries in Klamath County, Oregon and Siskiyou County, California (the Project). On April 6, 2016, PacifiCorp entered into the KHSA with, among others, the State of California, the State of Oregon, the United States Department of the Interior, the Yurok Tribe, the Karuk Tribe, and the National Marine Fisheries Service.

1.2 The KRRC is a California non-profit corporation incorporated on February 29, 2016, pursuant to the KHSA for the sole purpose of becoming the “Dam Removal Entity” under that agreement. The KRRC became a party to the KHSA on August 30, 2016.

1.3 Pursuant to the KHSA, on September 23, 2016, PacifiCorp and KRRC filed a joint application to FERC asking it to remove J.C. Boyle, Copco No. 1, Copco No. 2, and Iron

Gate from the Project license and designate them as a new project – the Lower Klamath Project – and to transfer the FERC license for the new Lower Klamath Project from PacifiCorp to KRRC.

1.4 Concurrently with the joint license transfer application, KRRC filed an application with FERC to surrender the FERC license for the Lower Klamath Project for purposes of Facilities Removal, as defined in the KHSA. As of the date the Parties entered into this Agreement, FERC has not yet approved the Parties' joint license transfer application or KRRC's license surrender application.

1.5 The KHSA provides that after the license for the Lower Klamath Project is transferred to the KRRC, PacifiCorp will continue to operate the Facilities for the benefit of its customers and retain all rights to the power from the Facilities until each Facility is Decommissioned. The KHSA also provides that Parties will enter into an operations and maintenance agreement under which PacifiCorp will pay all costs associated with operating and maintaining the Facilities between the time of license transfer and Decommissioning, and indemnify, defend, and hold KRRC harmless with respect to those operations.

1.6 Accordingly, PacifiCorp and KRRC desire to enter into this Agreement for the purpose of establishing the respective obligations of the parties with respect to the interim operation and maintenance of the Lower Klamath Project.

2. AGREEMENT:

In consideration of the mutual covenants below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, PacifiCorp and

KRRC agree with respect to the operation and maintenance of the Lower Klamath Project as set forth in this Agreement.

3. TERM:

3.1 The Effective Date of this Agreement is the date on which KRRC shall have executed a Signed Acceptance of Transfer of License for the Lower Klamath Project from PacifiCorp.

3.2 This Agreement will terminate as to each Facility on the applicable Facility Termination Date or as otherwise provided for in this Agreement.

4. DEFINITIONS; CONSTRUCTION:

4.1 The capitalized terms set forth below, when used in this Agreement, will have the respective meanings specified below. Capitalized terms used in this Agreement but not defined below will have the respective meanings ascribed to such terms in the KHSa.

(a) **Copco No. 1:** means the Copco No. 1 hydroelectric development and associated lands located in Siskiyou County, California, which generally consists of a concrete dam, reservoir and powerhouse (20 megawatt [MW]) located at River Mile (RM) 198.6.

(b) **Copco No. 2:** means the Copco No. 2 hydroelectric development and associated lands located in Siskiyou County, California, which generally consists of a dam located at RM 198.3, a water conveyance system, a powerhouse (28 MW) located at RM 196.8, and a substation adjacent to the powerhouse.

(c) **Decommissioning:** has the meaning ascribed in Section 1.4 of the KHSA.

(d) **Effective Date:** has the meaning set forth in Section 3.1.

(e) **Facility and Facilities:** individually or collectively Copco No. 1, Copco No. 2, Iron Gate or J.C. Boyle, as the context requires. For purposes of this Agreement each Facility shall be deemed to include all associated real property interests transferred to KRRC, consistent with Section 7.6.4 of the KHSA, whether or not such interests are included by FERC in the applicable boundaries of the Lower Klamath Project.

(f) **Facility Termination Date:** means, as to each Facility, the date on which KRRC intends to commence substantial physical Facilities Removal activities and as to which KRRC has requested that PacifiCorp discontinue operation of such Facility, provided that, except as may be otherwise agreed by the Parties, such date shall be consistent with Section 7.3 of the KHSA and shall have been set forth in a notice from KRRC to PacifiCorp not less than 90 days before the proposed Facility Termination Date, and provided further that PacifiCorp shall have complied with its obligations under Section 11 with respect to turning over the Facility to KRRC.

(g) **FERC:** means the Federal Energy Regulatory Commission.

(h) **Iron Gate:** means the Iron Gate hydroelectric development and associated lands located in Siskiyou County, California, which generally consists of a reservoir, an earth embankment dam, and a powerhouse located at RM 190.1. The Iron Gate development does not include the Iron Gate Fish Hatchery, which is a facility owned by PacifiCorp and operated by the California Department of Fish and Wildlife.

(i) **J.C. Boyle:** means the J.C. Boyle hydroelectric development and associated lands located in Klamath County, Oregon, which generally consists of a reservoir, a combination embankment and concrete dam located at RM 224.7, a water conveyance system, a powerhouse (98 MW) on the Klamath River at RM 220.4, and a substation adjacent to the powerhouse.

(j) **KHSA:** means the Klamath Hydroelectric Settlement Agreement, originally entered into on February 18, 2010, as heretofore amended, a copy of which is attached to this Agreement as Exhibit A, and as it may hereafter be amended.

(k) **Lower Klamath Project:** means the four hydroelectric generating developments (J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate) and associated lands to be transferred from PacifiCorp to KRRC under the KHSA, including lands referred to in the KHSA as Parcel B lands.

(l) **Operating Expenses:** means those expenses set forth in Section 6.

(m) **Project:** means the Klamath Hydroelectric Project licensed by FERC under project license number P-2082. The Project is located in Klamath County, Oregon and Siskiyou County California, and includes seven generating facilities (East Side, West Side, J.C. Boyle, Copco No. 1, Copco No. 2, Fall Creek, and Iron Gate) and associated lands, and one non-generating dam (Keno) and associated lands.

4.2 Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Agreement:

(a) Words importing the singular number shall include the plural number and vice versa.

(b) All references herein to particular articles or sections without reference to a specific document are references to articles or sections of this Agreement.

(c) The word “including” and words of similar import mean “including but not limited to.”

(d) All references herein to any other document, agreement or instrument shall mean such document, agreement or instrument as it may be amended, modified, supplemented or restated.

(e) All references to any law, regulation, directive, order, license, permit, approval or other legal or regulatory requirement shall refer to same as in effect at the time of reference.

5. PROJECT OPERATION:

5.1 From and after the Effective Date, PacifiCorp will, at its sole cost and expense, operate and maintain the Lower Klamath Project in accordance with the terms, conditions, and covenants contained in this Agreement.

5.2 PacifiCorp will operate and maintain the Lower Klamath Project in a prudent, efficient, and skillful manner, consistent with its manner of operation and maintenance before the Effective Date and in accordance with the standards and requirements of the KHSRA and the standards prevailing in the utility industry for hydroelectric projects of a similar size and nature.

5.3 PacifiCorp will comply with the requirements and conditions of all federal, state and local laws, regulations and requirements (including any final orders or regulations of regulatory or other agencies having jurisdiction) applicable to the operation or maintenance of the Lower Klamath Project, including the requirements and conditions of the FERC license and applicable directives, protocols, plans or procedures issued or required by FERC with respect to the Lower Klamath Project.

5.4 PacifiCorp acknowledges that it will at all times be acting as an independent contractor and that neither its employees nor the employees of any of its contractors will be considered to be servants, employees or agents of KRRC and that it will be responsible for all employment matters relating to its employees, including but not limited to workplace conditions and reporting and notification obligations.

5.5 PacifiCorp will pay promptly all sums due its employees or due any governmental or other agency on its employees' behalf, and will not permit any labor claims to become a liability of KRRC or a lien against the Lower Klamath Project.

5.6 PacifiCorp will promptly notify KRRC of any emergency affecting the Lower Klamath Project. Consistent with the standards prevailing in the utility industry for hydroelectric projects of a similar size and nature, PacifiCorp will take all necessary action to prevent or mitigate any emergency affecting the Lower Klamath Project.

5.7 PacifiCorp will keep and maintain the Lower Klamath Project in a safe and orderly condition, and will not cause or permit the existence of a public or private nuisance or commit or permit waste.

5.8 PacifiCorp will not do any thing or fail to take any act that would impair the coverage of or increase the premium for any policy of insurance maintained by KRRC, and no provision of this Agreement will be construed as authorizing any such result.

5.9 For purposes of this Agreement operation and maintenance means activities, services and functions necessary or otherwise performed in connection with the Lower Klamath Project, including, without limitation, their operation, maintenance, repair, replacement, refurbishment, restoration, security, safety, engineering, testing, staffing, and inspection, and any measures necessary to comply with applicable contracts, agreements, laws, regulations, requirements, permits, approvals, consents, certificates, authorizations or reporting obligations or to comply with “operation and maintenance” standards or practices prevailing in the utility industry for hydroelectric projects of a similar size and nature. Operation and maintenance shall include Decommissioning of a Facility but shall not include (a) capital improvements or alterations unless required to be undertaken as part of the foregoing or (b) Facilities Removal activities by KRRC.

5.10 PacifiCorp shall accept its responsibilities under this Agreement without regard to the condition of the Lower Klamath Project on the Effective Date, which PacifiCorp shall be deemed to have accepted in its AS IS condition, and PacifiCorp’s operations and maintenance obligations shall not be limited or impaired by any condition, circumstance or occurrence in existence as of the Effective Date, provided that nothing in this Section 5.10 shall be construed to impair PacifiCorp’s rights under Section 7.1.3 of the KHSA.

5.11 KRRC shall notify and consult with PacifiCorp regarding any proposed amendments or modifications to the FERC license or other license, permit, authorization, or approval applicable to the Lower Klamath Project. KRRC shall not initiate or voluntarily participate in a process to amend or modify any license, permit, authorization, or approval applicable to the Lower Klamath Project that would materially increase Operating Expenses without prior consultation and approval with PacifiCorp.

6. EXPENSE OF OPERATION, MAINTENANCE, REPAIRS AND REPLACEMENTS:

6.1 PacifiCorp will be solely responsible for all Operating Expenses, including costs of repairs, replacements, restoration, operations, maintenance, engineering, administrative, accounting and general expenses, in each instance arising in connection with the operation or maintenance of the Lower Klamath Project.

6.2 “Operating Expenses” include:

(a) The cost of all PacifiCorp activities, functions and services arising in connection with the operation or maintenance of the Lower Klamath Project.

(b) All employee costs, including related employee benefit costs such as Social Security taxes, unemployment insurance expense, group life insurance, group hospitalization and medical insurance, pension funding expense, workmen's compensation, long-term disability and other insurance and paid leave.

(c) Materials and supplies including related purchasing and handling costs.

(d) Royalties.

- (e) Fuel costs
- (f) Equipment rental or replacement.
- (g) Traveling expense including use of PacifiCorp transportation equipment.
- (h) All federal, state or local taxes and fees associated with operating and maintaining the Lower Klamath Project and payments in lieu of such taxes, and all real estate taxes, assessments or similar charges imposed upon the Lower Klamath Project.
- (i) Costs associated with implementation of the Interim Measures described in the KHSa.
- (j) Premiums for all insurance required to be obtained by PacifiCorp under this agreement
- (k) Costs associated with regulatory or permit requirements imposed after the Effective Date of this Agreement, including but not limited to alterations to or modifications of any Facility, environmental compliance, costs associated with dam safety, new infrastructure, changed operations, regulatory compliance actions, or mitigation requirements regardless of whether resulting from new, renewed, or extended permits, authorizations, or license terms or changes in applicable requirements.
- (l) Other miscellaneous costs

6.3 Notwithstanding Section 6.2, Operating Expenses do not include:

(a) Costs incurred by KRRC in connection with its Facilities Removal activities.

(b) Costs relating to the Facilities that would not have been incurred but for KRRC's Facilities Removal activities, other than immaterial costs such as costs relating to administrative functions or assistance in connection with KRRC's Facilities Removal planning activities.

6.4 PacifiCorp will keep and maintain the Lower Klamath Project free from all liens or other encumbrances except for real estate taxes not yet due or encumbrances arising as a direct result of KRRC's Facilities Removal activities.

6.5 KRRC shall not be responsible for any fee or other compensation to PacifiCorp in respect of its operation and maintenance activities.

7. ACCESS; SECURITY:

7.1 KRRC will grant PacifiCorp, and PacifiCorp's contractors and subcontractors, such access to the Lower Klamath Project as is necessary for PacifiCorp to operate and maintain the Facilities in accordance with this Agreement.

7.2 PacifiCorp shall secure, and shall have the right to grant third party access to, the Lower Klamath Project consistent with applicable regulatory requirements and procedures, including the procedures PacifiCorp used before the Effective Date. Such procedures will provide for any necessary access by federal, state, or local regulatory agencies or entities

involved in the necessary regulation, supervision, permitting, or oversight of activities related to operation and maintenance of the Lower Klamath Project.

7.3 PacifiCorp will keep KRRC apprised of requests for access by third parties and will seek KRRC approval of any requested third party access that is not legally required or directly related to the operation or maintenance of the applicable Facility.

7.4 KRRC retains the right to: (i) enter upon the Lower Klamath Project from time to time, with persons and equipment, to ensure compliance with the FERC license and regulations and orders of FERC and to take such steps with respect to the Lower Klamath Project as KRRC deems reasonably necessary in order to maintain its status as a FERC licensee under the FERC license; (ii) perform, or to obtain PacifiCorp's timely performance of, any and all acts required by an order of FERC or its successor regarding the Lower Klamath Project without the prior approval of PacifiCorp or any other person; and (iii) enter upon the Lower Klamath Project to conduct studies or other activities related to Facilities Removal or other purposes. KRRC will endeavor to provide reasonable prior notice to PacifiCorp of any intended access by KRRC or its contractors or consultants that could reasonably be expected to have any material impact on the operation of any Facilities. The Parties will cooperate and coordinate in order to minimize any interference with each others' activities on or about the Lower Klamath Project.

8. OPERATION, SCHEDULING, HYDROELECTRIC OUTPUT:

8.1 PacifiCorp will operate the Lower Klamath Project for the benefit of its customers consistent with applicable license requirements, biological opinions, permits, and federal, state, and local law. Subject to the requirements of this Agreement, PacifiCorp will have the right and

discretion to schedule and direct river flows, reservoir elevations, and electric output from the Lower Klamath Project's facilities. Unless required to comply with applicable license requirements, biological opinions, permits, and federal, state, and local law, in no event will PacifiCorp take any such actions in a manner that could reasonably be expected to materially adversely affect KRRC's Facilities Removal activities, including the planning, study or permitting aspects of such activities.

8.2 PacifiCorp will exclusively own all electric output, renewable energy credits, and other energy and environmental attributes associated with generation produced by each Facility as provided for in the KHSA.

9. OPERATIONS AND MAINTENANCE, REPLACEMENTS, REPAIR PROJECTS:

9.1 PacifiCorp will perform all of the operation and maintenance functions with respect to the Lower Klamath Project that it would have performed, in its sole discretion, if it were the owner of the Lower Klamath Project and the holder of the FERC license. Operations and maintenance functions include making all replacements, repairs and refurbishments necessary to operate and maintain the Facilities in a safe and orderly condition and to maintain the existing capabilities of Lower Klamath Project developments, during operations prior to the commencement of Facilities Removal activities, in order to: (1) pass flows through and/or over dams and spillways and comply with applicable flow and ramp rate limitations; (2) provide for the monitoring of flows and flowrates through existing measurement devices on penstocks, spillgates, canals, and in the Klamath River; (3) comply with dam safety monitoring requirements; (4) comply with applicable environmental or water quality monitoring

requirements, (5) comply with FERC directives related to the operation and maintenance of the Lower Klamath Project, and (6) generate hydroelectricity for the benefit of PacifiCorp's customers.

9.2 PacifiCorp shall keep KRRC reasonably apprised of its operations and maintenance activities, including any alterations or other construction activities. PacifiCorp shall notify KRRC prior to undertaking any material modification or alteration to the Facilities and, unless required by FERC or other governmental authority with jurisdiction, shall not undertake any alteration or modification that will materially adversely affect KRRC's Facilities Removal activities.

9.3 Except as may arise under Section 6.3, KRRC shall not be responsible for the cost of any capital improvements or alterations to the Facilities unless it has agreed in writing, in its sole discretion, to be so responsible prior to the commencement of such improvement or alteration.

10. FACILITIES TURNOVER:

10.1 Upon receipt of a notice from KRRC setting forth a Facilities Termination Date, PacifiCorp will, before the proposed Facilities Termination Date, commence and complete Decommissioning of such Facility and, except as may be otherwise directed by KRRC, terminate any and all agreements with third parties relating to such Facility and pay all amounts due in respect of any such agreement.

10.2 Upon the Facilities Termination Date of a particular Facility, PacifiCorp will withdraw all of its employees from the applicable Facility and deliver it to KRRC in a safe

condition free of all liens and encumbrances not permitted under this Agreement and otherwise in the condition required by this Agreement, including any applicable requirements or conditions of the FERC license or FERC's approval of the license surrender. In addition, to the extent requested by KRRC, PacifiCorp will turn over copies of applicable records. The parties will confirm the occurrence of a Facilities Termination Date in a written instrument.

10.3 The Parties shall, in all events, reasonably coordinate and cooperate with each other in connection with Decommissioning and the turnover of each Facility.

11. RECORDS:

In addition to delivering FERC license documents to KRRC as required by FERC regulations, consistent with its current document retention policies, PacifiCorp will maintain copies of all records and reports related to the Lower Klamath Project that were created before this Agreement's Effective Date, including records and reports required by the FERC License, and continue its record keeping and reporting activities related to the Lower Klamath Project that existed before this Agreement's Effective Date. Records maintained by PacifiCorp will include, but not be limited to, records necessary to reflect the efficiency of Lower Klamath Project operation and maintenance programs, records of generation of power, dam safety, and other records as required by regulatory authorities. Further, PacifiCorp will maintain current versions of all drawings, specifications, and other materials related to the Lower Klamath Project as it would have done had it remained the Licensee of the Lower Klamath Project. Upon request, PacifiCorp will provide the KRRC with copies of any relevant records, drawings, specifications, and other materials related to the Lower Klamath Project that were created before the Effective

Date. KRRC shall have access to all such records, reports, drawings, specifications and other materials relating to the Lower Klamath Project at any time.

12. INSURANCE:

12.1 PacifiCorp will maintain in effect at all times during the term of this Agreement, insurance for the operation and maintenance of the Lower Klamath Project in such amounts as is commercially reasonable for utility industry projects of similar size and nature. Such insurance will be maintained with responsible insurers and will name KRRC as an additional insured and with losses payable to the respective parties for their benefit as their respective interests may appear to protect and insure against: (i) Workmen's Compensation and Employer's Liability, (ii) public liability for bodily injury and property damage, (iii) all risks of physical damage to property or equipment, including transportation and installation perils, and (iv) such other insurance as the parties deem necessary, with reasonable limits and subject to appropriate exclusions and deductibles. Upon request, PacifiCorp will provide KRRC with copies of the applicable policies, insurance binders or other evidence reasonably acceptable to KRRC that such insurance is in effect at all times.

12.2 The premium costs for such insurance coverages will be an Operating Expense of the Lower Klamath Project.

13. LICENSES AND PERMITS:

13.1 Upon the expiration of any licenses or permits required for the Operation and Maintenance of the Lower Klamath Project, or should any additional or further licenses or permits for operations and maintenance activities be required, the Parties will cooperate to cause

timely applications for a new or further license or permit to be filed. PacifiCorp's cost of preparation and submission of such applications will be an Operating Expense of the Lower Klamath Project.

13.2 In the event that compliance with any federal or state license or permit necessary for the operation of the Lower Klamath Project, or with any order or directive issued pursuant to or in connection with any such license or permit, requires the submission of materials to a state or federal regulatory agency, PacifiCorp will prepare and submit such materials on behalf of the KRRC, provided that PacifiCorp shall furnish the foregoing to KRRC for its review and approval reasonably prior to submission thereof. The preparation and submission of the materials will be an Operating Expense of the Lower Klamath Project.

13.3 Notwithstanding the prior Section 13.2, the KRRC, with technical support from PacifiCorp, will be solely responsible for the preparation and submission of any materials necessary to obtain state or federal regulatory agency approval of Facilities Removal.

14. INDEMNIFICATION:

PacifiCorp will indemnify, hold harmless, and defend KRRC for, from, and against any loss, expense, cost, liability, damage, claim, fine or penalty resulting from or otherwise related to the operation, maintenance, replacement, restoration or repair of the Lower Klamath Project or any failure by PacifiCorp to observe and comply with the terms and conditions of this Agreement. This Section 15 will survive termination of this Agreement.

15. UNCONTROLLABLE FORCES:

No Party will be considered to be in default in the performance of any of the obligations hereunder, other than obligations of the parties to pay costs and expenses, if failure of performance will be due to uncontrollable forces. The term “uncontrollable forces” will mean any cause beyond the control of the Party affected and which, by the exercise of reasonable diligence, the Party is unable to overcome, and will include, but not be limited to an act of God, fire, flood, explosion, strike, sabotage, an act of the public enemy, civil or military authority, including court orders, injunctions, and orders of government agencies with proper jurisdiction prohibiting acts necessary to performance hereunder or permitting any such act only subject to unreasonable conditions, insurrection or riot, an act of the elements, or inability to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers. Nothing contained herein will be construed so as to require a Party to settle any strike or labor dispute in which it may be involved. A Party rendered unable to fulfill any obligation by reason of uncontrollable forces will promptly notify the other party of the occurrence and nature of the uncontrollable forces and shall exercise due diligence to remove such inability with all reasonable dispatch.

16. TRANSFER AND ASSIGNMENTS; SECURED INTERESTS:

16.1 Subject to the prior written consent of the other Party, which may be granted or withheld in the sole discretion of such party, a Party may assign its obligations under this Agreement as follows but not otherwise:

(a) To any corporation or other entity acquiring all or substantially all the property of the Party making the transfer.

(b) To any corporation or entity into which or with which the Party making the transfer may be merged or consolidated.

(c) To any corporation or entity, the stock or ownership of which is wholly owned by the Party making the transfer.

(d) To any other person.

16.2 No assignment or transfer of this Agreement or any obligations hereunder shall be effective until the assignee or transferee shall expressly assume the obligations of the assigning Party's obligations under this Agreement, provided that no transfers or assignment will relieve a Party of any obligation hereunder, notwithstanding the other party's consent except to the extent expressly agreed in writing by the other Party.

17. OBLIGATIONS ARE SEVERAL:

The duties, obligations and liabilities of the Parties hereunder are intended to be several and not joint or collective and neither of the Parties will be jointly or severally liable for the acts, omissions or obligations of the other. Nothing herein contained will be construed to create an association, joint venture, partnership, or impose a partnership duty, fiduciary relationship, obligation or liability, on or with regard to either of the Parties. No Party will have the right or power to bind the other Party without its express, written consent, except as expressly provided in this Agreement.

18. SUCCESSORS AND ASSIGNS:

Subject to the restrictions on transfer and assignment herein provided, all of the respective covenants and obligations of each of the Parties will be and become the respective obligations of the successors and assigns of each such Party and will be obligations running with the respective party's rights, titles and interests in the Lower Klamath Project. It is the specific intention of this provision that all such covenants and obligations will be binding upon any party which acquires any of the right, title and interest of either of the Parties in the Lower Klamath Project or under this Agreement.

19. REPRESENTATIONS AND WARRANTIES:

19.1 KRRC represents and warrants to PacifiCorp as of the date hereof and as of the Effective Date that:

- (a) it is a validly existing California not-for-profit corporation;
- (b) it has the legal power and authority to enter into and perform this Agreement;
- (c) all necessary corporate action has been taken to authorize the execution, delivery and performance of this Agreement by KRRC;
- (d) this Agreement constitutes a legal, valid, and binding obligation of KRRC, enforceable in accordance with its terms except as such enforceability may be limited by bankruptcy, insolvency or similar laws respecting the rights of creditors or the application of general principles of equity;

(e) the individual signing this Agreement on behalf of KRRC is authorized and empowered to execute and deliver this Agreement on behalf of KRRC and to thereby bind KRRC.

19.2 PacifiCorp represents and warrants to KRRC as of the date hereof and as of the Effective Date that:

- (a) it is a validly existing Oregon corporation;
- (b) it has the legal power and authority to enter into and perform this Agreement;
- (c) all necessary corporate action has been taken to authorize the execution, delivery and performance of this Agreement by PacifiCorp;
- (d) this Agreement constitutes a legal, valid, and binding obligation of PacifiCorp, enforceable in accordance with its terms except as such enforceability may be limited by bankruptcy, insolvency or similar laws respecting the rights of creditors or the application of general principles of equity;
- (e) the individual signing this Agreement on behalf of PacifiCorp is authorized and empowered to execute and deliver this Agreement on behalf of PacifiCorp and to thereby bind PacifiCorp.

20. JURY WAIVER:

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 TO 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 OR HAS NOT BEEN WAIVED.

21. APPLICABLE LAWS AND REGULATIONS:

The Parties in their performance of their obligations hereunder will conform to all applicable laws, rules and regulations and, to the extent that their operations may be subject to the jurisdiction of state or federal regulatory agencies, subject to the terms of valid and applicable orders of any such agencies. This Agreement will be subject to the laws of the State of Oregon.

22. INTERPRETATION:

22.1 The Parties have participated jointly in the negotiation and drafting of this Agreement with the assistance of counsel and other advisors. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as jointly drafted by the Parties, and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

22.2 In the event of any conflict between this Agreement and the KHSa (or any portion thereof), the terms of this Agreement will prevail.

23. NOTICES:

Any notice, demand, or request provided for in this Agreement served, given, or made in connection therewith will be deemed properly served, given, or made if sent by registered or certified mail, postage prepaid, addressed to the Party at its principal place of business as set out below:

PacifiCorp

President or Chief Executive Officer
825 Northeast Multnomah Street
Suite 2000
Portland, OR 97232

Klamath River Renewal Corporation

President or Executive Director
423 Washington Street, 3rd Floor
San Francisco, CA 94111

A party may at any time, and from time to time, change its designation of the person to whom notice will be given by written notice to the other Party as hereinabove provided.

24. ADDITIONAL DOCUMENTS:

Each party, upon request by the other Party, will make, execute and deliver any and all documents reasonably required to implement the terms of this Agreement, provided that such documents are in a form reasonably acceptable to such Party and does not increase such Party's obligations or reduce its rights or benefits under this Agreement.

25. EFFECTIVENESS OF THIS AGREEMENT:

The Parties' respective executory rights and obligations hereunder will become effective, if at all, on the Effective Date. For the avoidance of doubt, no aspect of this Agreement, other than this Section 25, will have any effect unless and until the Effective Date occurs, provided that the foregoing is not intended to impair the binding contractual nature of this Agreement prior to the Effective Date. If the KHSA is terminated before the Effective Date then this Agreement, including this Section 25, will terminate ninety (90) days after the termination of the KHSA unless the Parties have agreed otherwise in writing..

26. MODIFICATION; WAIVERS:

This Agreement may be supplemented, amended, or modified only by a written instrument signed by the Parties. No failure or delay by either Party in asserting or enforcing any provision of this Agreement will constitute a waiver thereof unless such waiver is expressly set forth in a written instrument signed by such Party. No waiver of any provision of this Agreement by either Party in any particular instance shall impair such Party's right to thereafter enforce such provision in any other instance.

27. ENTIRE AGREEMENT:

This Agreement is entered into pursuant to the KHSA and is intended to supplement and facilitate implementation of the KHSA. This Agreement, together with Exhibits hereto, along with the KHSA embody the entire agreement and understanding of the Parties in respect to the subject matter hereof. This Agreement supersedes all prior agreements and understandings between the Parties with respect to the subject matter hereof.

28. DEFAULTS AND REMEDIES:

28.1 In the event either party breaches its obligations under this Agreement and such breach persists more than thirty (30) days after written notice, the non-breaching party shall have such rights and remedies as may be available at law or in equity, including a right to damages, injunction or specific performance, subject to Section 29. In addition, subject to Section 29, the non-defaulting party shall thereafter have the right to terminate this Agreement on not less than thirty (30) days' notice.

28.2 In addition to the remedies provided for in Section 28.1, in the event of a default beyond notice and cure on the part of PacifiCorp KRRC shall have the right, where practical, to cause the default to be cured at PacifiCorp's cost and expense using such qualified personnel or contractors as KRRC may select.

28.3 Notwithstanding the foregoing, in no event shall either party be entitled to consequential, indirect, punitive or special damages, and each party waives and covenants not to assert any claim for such damages.

29. DISPUTES:

The dispute resolution provisions in Section 8.6.4 of the KHSA will govern any dispute arising under or relating to this Agreement. In the event of a dispute under or relating to this Agreement, either Party may initiate dispute resolution consistent with Section 8.6.4 of the KHSA.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in several counterparts.

Klamath River Renewal Corporation

By: Michael Carrier

Date: 9-20-17

Name: Michael Carrier

Title: President

PacifiCorp

By: Sarah K. Link

Date: 9-20-17

Name: Sarah K. Link

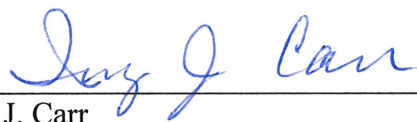
Title: VP + General Counsel

**Lower Klamath Project
Operations and Maintenance Agreement**

**Exhibit A
Amended KHSA**

CERTIFICATE OF SERVICE

I hereby certify that, on this 4th day of December, 2017, I have served the public filing of the Responses to October 5, 2017 AIR upon each person designated on the official service list compiled by the Secretary in this proceeding.



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