

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: January 24, 2017

REGULAR X CONSENT _____ EFFECTIVE DATE _____ N/A _____

DATE: January 12, 2017

TO: Public Utility Commission

FROM: Lance Kaufman *LK*

THROUGH: Jason Eisdorfer and Marc Hellman *JE* *HA*

SUBJECT: PACIFICORP: (Docket No. UE 219)
Approval of Klamath River Renewal Corporation Funding Agreement and delegation of authority to disburse customer surcharge trust funds as necessary.

STAFF RECOMMENDATION:

That the Commission approve execution of the Funding Agreement with the Klamath River Renewal Corporation (KRRC) attached hereto and delegate authority to the Chief Operating Officer to implement the Funding Agreement, disbursing customer surcharge trust funds as necessary.

DISCUSSION:

Issues

1. Whether the Commission should approve execution of the Funding Agreement with the Klamath River Renewal Corporation as a mechanism for the disbursement of customer surcharge trust funds as necessary to pay the costs of removing the Klamath River dams pursuant to ORS 757.738(3).
2. Whether the Commission should delegate to the Chief Operating Officer the authority to implement the Funding Agreement, disbursing customer surcharge trust funds as necessary.

Applicable Law

Under ORS 757.736(2)(a), PacifiCorp was directed to file tariffs for two customer surcharges: one surcharge for the costs of removing the J.C. Boyle Dam on the Klamath River in Oregon and a second surcharge for the costs of removing the Copco 1 and 2 Dams and the Iron Gate Dam on the Klamath River in California. PacifiCorp filed Schedule 199 for this purpose in 2010. In Commission Order 10-364, Docket No. UE 219, the Commission determined that the KHSA surcharges in Schedule 199 are fair, just and reasonable. The Commission further adopted an annual review process to ensure the surcharges are correctly calculated to collect an amount that, with interest, will constitute Oregon's share of the \$200 million customer contribution for Klamath River dam removal by December 31, 2019, as required by ORS 757.736(7).

Under ORS 757.736(2), the customer surcharge is collected "for the purpose of paying the costs of removing Klamath River dams as described in [ORS 757.736(11)]." ORS 757.736(11) in turn states:

For the purposes of subsection (2) of this section, "the costs of removing Klamath River dams" includes costs of:

- (a) Physical removal of the dams;
- (b) Site remediation and restoration;
- (c) Avoiding downstream impacts of dam removal;
- (d) Downstream impacts of dam removal;
- (e) Permits that are required for the removal;
- (f) Removal and disposal of sediment, debris and other materials, if necessary;
and
- (g) Compliance with environmental laws.

ORS 757.736(8) provides that the amounts collected in customer surcharges are to be paid into a trust account established by the Commission under the parameters of ORS 757.738. If amounts collected are in excess of funds needed or allowed, the Commission must take appropriate action under ORS 757.736(9). The Commission has a responsibility to ensure that trust account moneys are disbursed for dam removal costs as necessary. The process for the Commission to disburse trust funds is established in ORS 757.738(3), which states:

Upon request of an agency of the United States, or upon request of the designee of an agency of the United States, the commission shall require the trustee of the appropriate trust account established under this section to transfer to the agency or designee the amounts that are necessary to

pay the costs of removing the Klamath River dams as described in ORS 757.736 (11).

Subject to the exemptions listed in subsection (2) of the statute, ORS 756.055(1) sets forth the authority of the Commission to delegate by order or rule to any commissioner or Commission employee the authority to exercise any of the Commission's duties and powers.

Background

PacifiCorp currently operates the Klamath Hydroelectric Project under a license issued by the Federal Energy Regulatory Commission (FERC), License No. 2082. The Klamath Hydroelectric Project includes four hydroelectric dams on the Klamath River known as the J.C. Boyle, Copco 1 and 2, and Iron Gate dams. PacifiCorp's project license expired in 2006, but FERC has, as standard practice, allowed the project to continue operating on an annual basis while the Company's application to relicense the project is pending.

KHSA, Effective 2010

Among other issues affecting the Klamath River Upper and Lower basins, the Klamath Hydroelectric Project blocks anadromous fish passage upstream. During settlement discussions in 2008 on the Company's application to relicense the Project with various parties concerned about the effects of the Project, PacifiCorp, the federal Department of the Interior, the states of Oregon and California reached an Agreement in Principle (AIP) for the removal of the dams. Other interested parties joined the discussions and the parties formalized the AIP in the Klamath Hydroelectric Settlement Agreement (KHSA), which took effect February 18, 2010. The KHSA establishes a process for the decommissioning and removal of the four hydro-electric dams on the Klamath River (Klamath River dam removal) in 2020. Under the KHSA, the Secretary of the Interior was to evaluate and develop a detailed plan for Klamath River dam removal. A dam removal entity (DRE) is to perform the work of dam removal.

A \$450 million state cost cap was established for funding dam removal activity, with an amount not to exceed \$200 million collected through a surcharge from PacifiCorp customers in Oregon (up to \$184 million) and California (up to \$16 million). The State of Oregon is providing 92 percent of the total customer contributions and the State of California is providing 8 percent of the total customer contributions. The State of California will contribute the remaining \$250 million of the state cost cap through a bond issue.

Senate Bill 76, Collection of Customer Contributions

In 2009, in anticipation of the execution of the KHSA, the State of Oregon enacted Senate Bill 76. Codified at ORS 757.732 to ORS 757.744, Senate Bill 76 prescribes various actions, with specific timeframes, that must be taken by PacifiCorp and the Commission to implement the KHSA. Pursuant to ORS 757.736(2), on March 18, 2010, PacifiCorp filed Schedule 199, Klamath Dam Removal Surcharges. The tariff rates went into effect on the day they were filed, as the tariff was filed subsequent to January 1, 2010. In any year, the surcharges collected cannot exceed \$19,061,680 per ORS 757.736(3). This value is two percent of PacifiCorp's revenue requirement as determined by the Commission in the most recent case concluded prior to January 1, 2010.

In Commission Order 10-364, Docket No. UE 219, the Commission determined that the KHSA surcharges in Schedule 199 are fair, just and reasonable. The Commission established an annual review process to ensure the surcharges are correctly calculated to collect Oregon's share of the customer contribution by December 31, 2019. Rates have since been reviewed on an annual basis, with interested parties meeting to reassess the surcharge revenues, interest rates, updated load forecasts, and fund balances and to discuss other issues related to the annual surcharge review. In June 2016, annual revisions to Schedule 199 that raise the surcharges to the statutory cap were approved in Order 16-218.

The Commission established a trust account in 2010 with Wells Fargo Bank serving as trustee, and entered a letter agreement with PacifiCorp regarding deposits of the customer contributions into trust. In 2011, ORS 757.738(1) was amended to allow the Commission to direct the funds to the Oregon State Treasury (OST) for the potential of earning higher rates of interest. The customer contributions collected to date are currently held in the Treasury's short term fund – OSTF – and the intermediate term fund – OITP. In May 2012, the Commission directed \$30 million of the surcharge fund monies to be deposited in the Oregon Intermediate Term Pool (OITP). The transfer took place in September 2012.

KHSA, 2016 Amendments

For the KHSA, Congressional authorization was needed to fully implement the terms of the agreement. When Congress did not act, the parties to the KHSA met to confer on moving forward without Congressional action. After an agreement in principal was reached, amendments to the KHSA took effect April 6, 2016. The KHSA continues to provide that each party shall support implementation of Oregon's SB 76. Under the

amended KHSA, the state cost cap and state funding mechanisms in Section 4 remain in place, with a reduced role in dam removal activity by the federal agencies involved.

To serve as the DRE, the Klamath River Renewal Corporation (KRRC) a domestic nonprofit public benefit corporation, was incorporated in California following amendment of the KHSA, and became a signatory to the KHSA. Under the April 2016 amendments to the KHSA, the Secretary of the Interior designated ODFW as the entity with authority under ORS 757.738(3) to request a transfer of Oregon's trust funds as necessary to pay for the cost of dam removal, hold the disbursed funds, and transfer the funds to the KRRC.

Accordingly, following the Commission's approval on August 30, 2016,¹ ODFW and the Commission executed an Interagency Agreement to govern the disbursement of trust funds to ODFW for purposes of providing funds to the KRRC. ODFW then executed a grant agreement with the KRRC in October 2016 to cover costs including professional services (legal, technical, interim staff assistance) for initial formation, funding arrangements and initial development of regulatory filings; travel; office expense and services and insurance (directors' and officers' liability, general liability). Pursuant to these two agreements, ODFW requested that the Commission direct disbursement of \$308,369.00 of the Customer Contribution, which ODFW then provided to the KRRC.

On November 30, 2016, the parties to the KHSA again amended the KHSA to modify the process for transferring trust funds to the KRRC. Under the amendment, the Secretary of the Interior designates the KRRC, in place of ODFW, as the entity with authority under ORS 757.738(3) to request transfer of funds held in trust accounts established under ORS 757.738 and to expend funds in the amounts necessary and as consistent with the KHSA and its Appendices to pay the costs of removing Klamath River dams, as described in ORS 757.736(11). Section 4.12.2 of the KHSA as amended November 30, 2016, now reads:

On or around June 15, 2016, and as is necessary at any time thereafter, the [KRRC] will enter into an agreement with the Oregon PUC pertaining to the use of funds from the Customer Contribution in a manner not inconsistent with the [KHSA] and ORS 757.738(3).

Regulatory Filings

As provided in Section 7 of the KHSA, KRRC was required to file a joint application with PacifiCorp to remove the four hydroelectric dams from the FERC license, re-designate the dams and associated facilities with a new project number under a license to be held

¹ Docket No. UE 219, Order No. 16-330.

by KRRC. KRRC was also required to file a concurrent application to surrender and remove the dam facilities, with the original target date of 2020. On September 23, 2016, KRRC and PacifiCorp filed with FERC a joint application for Amendment and Partial Transfer of License. Also on that date, KRRC filed an Application for Surrender of License. The FERC applications are pending at this time. Staff is monitoring this process.

A number of additional regulatory permits and approvals will be necessary for completion of facilities removal. KRRC has to date submitted applications for certification regarding decommissioning under Section 401 of the federal Clean Water Act with the California Water Resources Control Board and the Oregon Department of the Environmental Quality and will be consulting with those agencies and others.

Analysis

1. Staff Recommends Execution of the Funding Agreement.

As noted above, the Trustee has disbursed \$308,369.00 of the Oregon Customer Contribution, which ODFW provided to the KRRC to cover certain initial costs. Since that time, the KHSa has been amended to designate the KRRC, rather than ODFW, as the entity that may request that the Commission transfer Customer Contribution funds, and to authorize OPUC to enter into a funding agreement with the KRRC. To provide a new framework for continued disbursements, Staff has negotiated over several months with the KRRC to develop the attached Funding Agreement.

Staff finds the resulting Funding Agreement to be in customers' interests and consistent with the Commission's obligation to disburse trust funds at the request of KRRC under ORS 757.738(3). The funding mechanism and other significant aspects of the Agreement are described below.

Under the Funding Agreement, the remainder of the Customer Contribution funds may be disbursed to KRRC in one of three funding phases: Phase 1, which encompasses funding for the start-up costs of the KRRC, evaluation of risk mitigation such as insurance for the dam removal activities, certain regulatory actions and preparation work for the KRRC's Definite Plan, a requirement under the KHSa; Phase 2, which encompasses funding for the development of the Definite Plan, including preparation of procurement documents for final design, deconstruction and risk management and completion of regulatory actions; and Phase 3, which consists of funding for the Facilities Removal through deconstruction and restoration.

Disbursement Requests under the Funding Agreement

Per Section 7 of the Funding Agreement, KRRC may only apply Customer Contribution funds to Eligible Project Costs, a term defined in the Funding Agreement consistent with ORS 757.736(11):

“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; and (vii) compliance with environmental laws. Eligible Project Costs include the repayment of interim funding received from other sources and applied to Eligible Project Costs.

The categories of Eligible Project Costs for Phase 1 are described in Exhibit A1 to the Funding Agreement. Exhibit B1 contains the budget for Phase 1, detailing the project activities, estimated costs and the time period for completion of each activity. The Phase 1 budget for Eligible Project Costs is a total of \$4.3 million, of which \$308,369 has been disbursed from the Oregon Customer Contributions funds. Staff has reviewed the Phase 1 Exhibits and finds they contain all information required by the Funding Agreement.

Provisions for disbursements are set forth in Sections 6 and 7 of the Funding Agreement. KRRC may make a request to OPUC by submitting a request form (Exhibit E to the Agreement) with a certification that the request is for payment of Eligible Project Costs included in the budget and that the KRRC expects to incur for the Project activities to be completed within 210 days after the date of the request. Ongoing disbursement request may be made on a biannual basis.

Before disbursements may be made for Phase 2 or Phase 3 activities, KRRC must submit, at least 90 days prior to a disbursement request, an Exhibit A2 or A3 describing project activities and Exhibit B2 or B3. Similar certifications to a Phase 1 disbursement request must be included with Phase 2 and Phase 3 requests. In addition, for Phase 3, Facilities Removal, KRRC must include 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. Section 7.1.4 of the KHSA, currently in effect, is set forth here:

“Before the FERC license transfer to the [KRRC] will become effective, the [KRRC] must demonstrate to PacifiCorp’s and the States’ reasonable satisfaction that the [KRRC] has met the obligations in Appendix L and the following conditions:

- A. The [KRRC] has provided Notices required under Section 7.2.1B;
- B. The [KRRC] has met the requirements of Section 7.1.3 and Appendix L;
- C. PacifiCorp and the States agree that the [KRRC] has made sufficient and Timely progress in obtaining necessary permits and approvals to effectuate Facilities Removal;
- D. The [KRRC], the States, and PacifiCorp are assured that sufficient funding is available to carry out Facilities Removal;
- E. The [KRRC], the States, and PacifiCorp are each assured that their respective risks associated with Facilities Removal have been sufficiently mitigated consistent with Appendix L;
- F. The [KRRC], the States, and PacifiCorp agree that no order of a court or FERC is in effect that would prevent Facilities Removal;
- G. The [KRRC] and PacifiCorp have executed documents conveying the property and rights necessary to carry out Facilities Removal; and
- H. The [KRRC] accepts license transfer under the conditions specified by FERC in its order approving transfer.”

OPUC has no obligation under the Funding Agreement to disburse funds if sufficient funds are not currently deposited in the trust funds to fulfill a disbursement request. In addition, the Funding Agreement contains provisions in Section 7.b for the suspension of disbursements when the actual or foreseeable costs are estimated to exceed the State Cost Cap and sufficient additional funding is not available to carry out facilities removal.

KRRC is authorized under the Funding Agreement to make minor modifications to the budgets for Phases 1, 2 and 3, but modifications of an amount allocated to a category or Phase that is greater than 10 percent triggers reporting obligations for a major modification of budget under Section 7.e.

Management of Disbursed Funds under Funding Agreement

The Funding Agreement imposes a number of obligations on KRRC related to fiscal administration to ensure responsible management of disbursements. Section 4 requires, among other provisions, that KRRC provide organizational documents, internal

policies related to financial controls, governance and internal operations, adopt and maintain a standard of conduct addressing conflicts of interest and gifts, and specific requirements to maintain funds disbursed from Oregon trust funds in one or more interest-bearing demand deposit accounts in a financial institution of high credit quality, with minimal risk of loss to principal.

On an annual basis, per Section 12.c, KRRC must retain a third-party professional audit firm to conduct a financial audit of all expenditures of disbursements from Oregon trust funds. A copy of the final report will be provided to OPUC no later than 90 calendar days after the end of the calendar year.

Finally, Section 13 of the Funding Agreement requires KRRC adopt and maintain procurement standards and policies governing the award and administration of subagreements. The standards and policies must implement and be consistent with goals of optimizing cost, efficiency, timing, expertise and quality of work performed, effectively executing the KRRC's obligations under the KHSa and maintaining consistency with industry standards. A competitive process is required for primary subagreements for the design or execution of physical removal of facilities and associated site remediation activity, with KRRC to provide OPUC with solicitation materials prior to issuance. Indemnity and insurance provisions are included for KRRC and for subcontractors.

Access to Information and Reporting Under Funding Agreement

Records maintenance, retention and access by OPUC are provided for in Section 12 of the Funding Agreement. Staff notes that OPUC will have access to the books, documents and records of KRRC and certain contractors directly related to the Agreement and may perform site reviews as needed.

In addition to the third-party audit report discussed above, KRRC must provide a number of periodic and final reports. Under Section 4.a, KRRC must provide OPUC with periodic reports or summaries of the fiscal status of KRRC, and an audited annual financial statement including a balance sheet, and a statement of budgeted and actual income and expenditures. Following the first disbursement, per Section 7.i, with each semi-annual disbursement request, KRRC will submit an expenditure report, showing expenses incurred in the prior period. And a final reporting is required within six months of completion of facilities removal under Section 8.

Besides written reports, Section 4.b. requires KRRC to provide periodic updates to OPUC Staff at least semi-annually, and more frequently as needed. In addition, KRRC will make an annual presentation to the Commission that provides a review of the

project activities in the preceding year, relevant financial information and an overview of activities planned for the coming year.

Remedies and Protection of Customer Contributions Under Funding Agreement

The Funding Agreement, Section 16, identifies events of default, and provides for a dispute resolution process. If an event of default continues, and dispute resolution is not successful and timely, remedies available to OPUC include ceasing disbursements of funds, terminating the agreement, bringing an action at law or filing a claim, seeking equitable remedies, and pursuing any rights as a loss-payee on insurance or as a payee on a performance bond or letter of credit.

Other relevant sections under the Funding Agreement include: 1) Under Section 4, KRRC must promptly notify OPUC of a bankruptcy or receivership of a contractor or subcontractor engaged for the Project. 2) Section 7.j of the agreement provides for the recovery of unexpended funds disbursed to the KRRC. 3) Under Section 14, KRRC must include OPUC (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. Proceeds that are not eligible or expected to be applied to Eligible Project Costs by KRRC, if any, are to be paid to OPUC in trust for contributing PacifiCorp customers in proportion to any disbursement of Funds previously directed by OPUC and in proportion to other funding sources that are also loss-payees.

Coordination with Other Funding Sources

The KHSA, as amended, provides for other sources of funding for facilities removal. Specifically, pursuant to the KHSA, the California PUC has established a customer surcharge for PacifiCorp's customers, and the State of California has appropriated \$250 million in bond proceeds. The Funding Agreement acknowledges the other sources of funding and provides for coordination with other funding sources in Section 18.m. And, OPUC commits to manage the Oregon trust funds consistent with any account management and coordination agreement as may be jointly approved by the State of Oregon and State of California in Section 6.b.

Net Benefit of Dam Removal Project

In Commission Order 10-364, Docket No. UE 219, the Commission determined that the KHSA surcharges in Schedule 199 are fair, just and reasonable. Since Order 10-364 the KHSA was amended and the assumptions underlying the analysis of the dam removal project have changed. However, the dam removal project continues to be in

customer interests. According to PacifiCorp, the amended KHSAs retain the principle benefits for PacifiCorp and its customers as the original settlement:

- (1) the contribution to dam removal from PacifiCorp's Oregon and California customers remains capped at \$200 million;
- (2) a third party, rather than PacifiCorp, will conduct the dam removal;
- (3) PacifiCorp and its customers will be provided with liability and cost-overrun protections; and
- (4) PacifiCorp will continue to operate the facilities for the benefit of customers until dam removal is scheduled to begin.

Several assumptions underlying the original analysis of the dam removal project may have changed since Order No. 10-364. According to PacifiCorp, current market conditions, the Company's resource needs, and the FERC relicensing process support continued participation in the amended KHSAs. Staff will continue to monitor the net benefit of this project to PacifiCorp's Oregon customers.

2. Staff Recommends Delegation of Authority to Implement Funding Agreement.

Implementation of the Funding Agreement will require extensive review of KRRC submittals under the Agreement and related information. When a disbursement request is submitted in accord with the terms and conditions of the agreement, OPUC will be required to timely direct the Trustee to disburse funds to the KRRC to pay for Eligible Project Costs. To facilitate implementation of the Funding Agreement, Staff recommends that the Commission delegate to the Chief Operating Officer the authority to implement the Funding Agreement, disbursing customer surcharge trust funds as necessary.

Conclusion

Staff finds that the attached Funding Agreement establishes appropriate process for the OPUC to process disbursement requests from the KRRC under ORS 757.738(3). Appropriate documentation and certifications are required to support requests for disbursement. Appropriate standards for management of funds after disbursement are established. And the Funding Agreement contains adequate reporting and remedies to manage disbursements through three funding Phases. Staff recommends that the Commission approve execution of the Funding Agreement.

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Staff further recommends that the Commission delegate implementation of the agreement to the Chief Operating Officer to allow for disbursement of customer surcharge trust funds as necessary.

PROPOSED COMMISSION MOTION:

Approve execution of the Funding Agreement with the Klamath River Renewal Corporation and Delegate authority to the Chief Operating Officer to implement the Funding Agreement, disbursing Customer Contribution trust funds as necessary.

RA1 UE 219 Funding Agreement.docx

FUNDING AGREEMENT

This Agreement is made and entered into by and between the **Public Utility Commission of Oregon**, the “OPUC,” and the **Klamath River Renewal Corporation**, a California nonprofit public benefit corporation, hereinafter referred to as the “KRRC.”

RECITALS

WHEREAS, the States of Oregon and California, 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 OPUC and the California Public Utilities Commission (CPUC) have each established customer surcharges for PacifiCorp’s customers for the purposes of paying the costs of Facilities Removal; and

WHEREAS pursuant to Section 4.1.2.A of the KHSA the State of California has appropriated \$250 million 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 Oregon, ORS 757.732 to 757.744 authorized the “Customer Contribution[s]” and required PacifiCorp to file tariffs for the collection of two non-bypassable surcharges from its customers for the purpose of paying the costs of removing Klamath River dams. As specified in ORS 757.736(2) and 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. Facilities Removal costs include costs related to: (1) physical removal of the dams; (2) site remediation and restoration; (3) avoiding downstream impacts of dam removal; (4) downstream impacts of dam removal; (5) permits required for the removal; (6) removal and disposal of sediment, debris and other materials; and (7) compliance with environmental laws. ORS 757.736(8) provides that all amounts collected under the surcharges are to be remitted into the trust accounts created pursuant to ORS 757.738; and

WHEREAS, in accordance with ORS 757.736 and Section 4.1.1 of the KHSA, the OPUC 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 ORS 757.732 to 757.744; and

WHEREAS the U.S. Department of the Interior has designated the KRRC as the entity authorized to request transfer of the funds necessary to pay the costs of removing the Klamath River dams as described in ORS 757.736(11); and

WHEREAS, section 4.12 of the KHSA provides that the States of Oregon and California 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 Oregon and California will prepare draft trustee instructions for submission to the Oregon and California 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 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) and;

WHEREAS, the KRRC has already received \$308,369 of Phase One costs through the “Phase One A Grant Agreement” between Oregon Department of Fish and Wildlife and the KRRC dated October 5, 2016, and further that OPUC and ODFW entered into an Interagency Agreement dated August 25, 2016.

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.

“**Definite Plan**” means a plan and timetable for Facilities Removal submitted by the DRE 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; and (vii) compliance with environmental laws. Eligible Project Costs include the repayment of interim funding received from other sources and applied to Eligible Project Costs.

“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 Oregon Trust.

“Klamath Hydroelectric Settlement Agreement” or **“KHSA”** means the Klamath Hydroelectric Settlement Agreement, dated February 18, 2010, as it has been amended, 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.

“Oregon Trust” refers to the Customer Contribution established by the State of Oregon, acting by and through its Public Utility Commission, collected by PacifiCorp as a non-bypassable surcharge and held in segregated trust accounts.

“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.

“**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: Project Activities**
- Exhibit B1: Project Budget Form**
- Exhibit C: [RESERVED]**
- Exhibit D: ODFW-KRRC Grant Agreement**
- Exhibit E: 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 E; 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

OPUC 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 OPUC. KRRC shall provide to OPUC 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 OPUC 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 a 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 Oregon Trust. KRRC shall maintain funds disbursed to the KRRC from the Oregon Trust 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 OPUC 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 shall apply for registration as a foreign nonprofit corporation with the Oregon Secretary of State under ORS 65.707 and maintain such registration and file annual reports with the Secretary of State's office for so long as required by Oregon law.
- b. **Registry and status as a Charitable Organization.** KRRC shall register as a charitable organization with the Charitable Activities Section of the Oregon Department of Justice if such registration is required pursuant to the laws of Oregon. Further, KRRC shall immediately notify OPUC of any change in its status as a tax-exempt public benefit non-profit corporation.
- 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 OPUC 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 "Oregon Trust") established by the State of Oregon, acting by and through the OPUC. 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 OPUC, but which may not exceed more than two percent of PacifiCorp's annual revenue requirement as determined in PacifiCorp's last case under ORS 757.210 decided by the OPUC before January 1, 2010. The amount of each surcharge is based on a collection schedule that was designed to fund, by December 31, 2019, Oregon's share of the Customer Contribution of \$200 million.
- b. **Trust Account Management.** OPUC shall manage the Oregon 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 OPUC 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 OPUC will timely direct the Trustee to disburse funds from the Oregon 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 Grant Agreement between the KRRC and ODFW attached as Exhibit D. Exhibit B1 includes a budget for Phase 1.
- 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 OPUC an Exhibit A2 (Project Activities) and A3 (Project Activities), respectively, describing categories of Eligible Project Costs for Phases 2 and 3 and will also provide Exhibit B2 (Budget) and B3 (Budget), respectively providing a proposed budget for each phase. KRRC must submit, with either an Exhibit A3 or Exhibit B3 to OPUC, 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 and ORS 757.738(3) for the KRRC to enter into one or more additional contracts; and
- (C) Shall promptly notify OPUC it has initiated the meet and confer process, and keep OPUC Staff reasonable 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 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 OPUC and present a plan supporting continued disbursements. OPUC 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 OPUC 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 OPUC when it becomes aware of a need for a major modification of a budget and provide OPUC with a revised Exhibit B and a certification that such a major modification is necessary for Facilities Removal.
- f. Disbursement Requests.** The KRRC will make requests for disbursements to the OPUC on a semi-annual basis by submitting a disbursement request in the form and containing the information required on Exhibit E (Disbursement Request Form), and by submitting 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. The KRRC will, contemporaneously with its request to the OPUC, make a corresponding request to the CPUC.
- g. Proportional Disbursements.** The Parties understand and agree that 92% of the Customer Contribution funds for the Project will be disbursed from the Oregon Trust, except however, in no event will the total funding from the Oregon Trust and the California Trust exceed \$200 million. OPUC's direction to disburse funds from the Oregon Trust shall not be subject to a corresponding disbursement from the California 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.** Except as provided in Section 7.b, disbursement requests will be processed by the OPUC if the disbursement request includes all of the information required under Section 7.f.

i. **Expenditure Reports.** With each semi-annual disbursement request, the KRRC will submit an expenditure report, showing the expenses incurred during the prior semi-annual period.

j. **Recovery of Funds.** 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 OPUC 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 OPUC within 15 days after the earlier of expiration or termination of this Agreement, or upon the demand of the OPUC 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 KRRC will file a final report (the “Final Report”) with the OPUC. The Final Report must include a summary of all Project costs compared to the Project Budget, together with reasonable supporting documentation that evidences KRRC’s expenditure of the funds disbursed from the Oregon 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 CPUC and the California Natural Resources Agency.

9. **Conditions Precedent.**

a. **Conditions Precedent to State’s Obligations.** The OPUC’s obligations under this Agreement are subject to the receipt by the OPUC of the following item, all in form and substance satisfactory to the OPUC and its counsel:

(i) A copy of the resolution of the KRRC’s board of directors authorizing the execution and delivery of this Agreement and performance by KRRC of its obligations hereunder.

b. **Conditions to Disbursement.** OPUC’s obligation to disburse any of the Funds to KRRC is subject to the following conditions.

(i) **Disbursement Request.** The KRRC has filed a disbursement request with the OPUC, consistent with section 7.f, above.

(ii) **Availability of Funds.** Sufficient funds are currently deposited in the Oregon Trust to fulfill the OPUC’s obligation to disburse funds under this Agreement.

(iii) **No Default.** No event of default has occurred or is occurring.

- (iv) **Representations.** KRRC'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 OPUC.
 - (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 OPUC, 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 OPUC, 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 OPUC may reasonably require. The KRRC shall promptly respond to requests for information and provide an explanation regarding submissions to the OPUC upon its request.

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

- a. OPUC is a state agency validly created and existing under the laws of the State of Oregon.
- b. OPUC has all necessary right, power, authority, approvals and consents under its applicable enabling statutes, or other Oregon 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 OPUC, is executed by an authorized representative of OPUC, 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 OPUC.

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 OPUC and the KRRC's third party auditor to verify how the Funds were expended. KRRC shall ensure that each of its subrecipients, and subcontractors that is engaged by the KRRC following a competitive procurement complies with these requirements, provided that such subrecipients and subcontractors with whom KRRC has entered into a lump sum contract, under which KRRC agrees to pay a fixed price for specific services with the risk of cost overrun borne by the contractor, shall not be obligated to permit the audit of its books and records except in the event of a dispute or a claim for additional compensation or a reduction in work provided for the agreed amount paid. The State of Oregon, the OPUC 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, OPUC 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 OPUC 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 OPUC and Oregon 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 OPUC, 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 OPUC, 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 OPUC 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 OPUC with a substantially final form of the solicitation materials for each Major Subagreement sufficiently prior to issuance as to allow for OPUC 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 OPUC within ten (10) days of its being discovered by KRRC.
- d. **Indemnity.** KRRC's Major Subagreement(s) shall require the other party to such subagreement(s) to indemnify the OPUC on substantially the same terms as KRRC is indemnifying the OPUC as set forth in Section 14(a).
- e. **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 OPUC acknowledge and agree that the indemnity provided in Section 7.1.3 of the KHSAs 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 Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The OPUC 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. OPUC 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 OPUC within ten days following the effective date of this agreement and upon the execution of any additional insurance agreements. KRRC shall include OPUC (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, OPUC 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 OPUC in trust for contributing PacifiCorp customers in proportion to any disbursement of Funds previously directed by OPUC 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 OPUC 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 and ORS 659A.142; (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) prevailing wage rate requirements set forth in ORS 279C.800 through 279C.870 and the administrative rules promulgated thereunder (“Prevailing Wage Rate Law” or “PWR”), or, if applicable, 40 U.S.C. 3141 et seq. (“Davis-Bacon Act”), (B) the requirement that KRRC’s contractors and subcontractors to pay the applicable prevailing wage rate and comply with all other applicable Oregon Bureau of Labor and Industries (“BOLI”) requirements pursuant to the Prevailing Wage Rate Law, including on all contracts and subcontracts and in filing separate works bonds with the Construction Contractors Board, unless exempt under ORS 279C.836 and OAR 839-025-0015, (C) 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 and any applicable provisions of Oregon PWR. If the Project is or becomes subject to both PWR and the Davis-Bacon Act, all subject workers must be paid the higher of applicable state or federal prevailing wage rate. The applicable rates are those in effect on the Effective Date of this Agreement. PWR and Davis-Bacon Act prevailing wage rates may be accessed via:
http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx and
<http://www.wdol.gov>.

KRRC represents and warrants that it is not on the BOLI current List of Contractors Ineligible to Receive Public Works Contracts and that it will not contract with any contractor on this List. KRRC agrees to indemnify, hold harmless and reimburse the State and its officers, employees and agents for any liability, cost, expense, fine, fee or penalty payable to a person or private or governmental entity, including another agency of the State of Oregon (collectively “liability”) incurred to comply with, to obtain a determination under, or in any other way resulting from the Prevailing Wage Rate Law or 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 OPUC.** OPUC may terminate this Agreement effective upon delivery of written notice of termination to KRRC, or at such later date as may be established by OPUC 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 seeking 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 OPUC, 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 OPUC 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 OPUC; 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. Oregon Trust is Sole Source of Funding. The Oregon Trust is the sole source of funding for this Agreement, with respect to funding from Oregon, and KRRC shall have no recourse to, and the OPUC 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 OPUC 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 Oregon 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 approved by the Department of Justice as required by applicable law.
- c. **No Third Party Beneficiaries.** OPUC 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 OPUC 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 OPUC, such facsimile transmission must be confirmed by telephone notice to OPUC 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 Oregon (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 Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). 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 District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity, and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon 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.

- h. 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.
- i. 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.
- j. 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.
- k. 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.
- l. Non-Disclosure Agreements.** Nothing in this Agreement shall be construed as requiring KRRC to violate any confidentiality, non-disclosure agreement or similar agreement.
- m. Coordination with Other Funding Sources.** OPUC 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, OPUC 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

STATE OF OREGON, acting by and through its
Public Utility Commission of Oregon

By _____

By _____

Name _____
(printed)

Name: _____
(printed)

Title _____

Title: _____

Date _____

Date _____

APPROVED

(If required)

By _____

KRRC's Legal Counsel

Date _____

KRRC Contact:

Name: _____

Title: _____

Address: _____

Address: _____

Phone: _____

Email: _____

OPUC Contacts:

Name: David Poston

Title: Chief Financial Officer

Address: Public Utility Commission of Oregon

P O Box 1088

201 High Street SE

Salem, OR 97308-1088

Phone: 503-378-6661

Email: david.poston@state.or.us

Name: Michael Dougherty
Title: Chief Operating Officer
Address: Public Utility Commission of Oregon
P O Box 1088
201 High Street SE
Salem, OR 97308-1088
Phone: 503-373-1303
Email: michael.dougherty@state.or.us

**EXHIBIT A1
PHASE 1 ACTIVITIES**

EXHIBIT A
PHASE 1 PROGRAM ACTIVITIES

1. Start-up Costs of the KRRC -- Establish and administer personnel, office and budget

- A. KRRC will hire, as employees or independent contractors, personnel to perform the duties of its executive director and such other organizational functions as are necessary to operate and to perform its obligations under the amended KHSA and any other agreements to which KRRC is a party. Such personnel will include personnel with the expertise in the appropriate technical, legal, financial management and other disciplines.
- B. KRRC will continue to take such other measures as are reasonably necessary or convenient for the commencement of its operations and the performance of its obligations under the amended KHSA and otherwise in connection with the Project.

2. Risk Management & Insurance

- A. KRRC will obtain and maintain commercially reasonable insurance, including Directors' and Officers' liability insurance and such other insurance as is required of it by law or any agreements to which KRRC is a party.
- B. KRRC will work with a qualified insurance management company to assess and execute the necessary insurance products to minimize risks for the Project.

3. Undertake certain Regulatory Actions

- A. At the Federal Energy Regulatory Commission, monitor and provide information as requested on the Transfer and Surrender applications, filed on September 23, 2016.
- B. Work with the California Water Resources Control Board and the Oregon Department of the Environmental Quality to ensure timely consideration of and ultimate approval of the KRRC's application submitted under the provisions of the Section 401 of the federal Clean Water Act.
- C. Begin consultations with other governmental agencies that may have jurisdiction over KRRC's performance of its obligations under the amended KHSA, including environmental agencies, tribal nations and local and regional governmental authorities.

4. Undertake Preparation work for the Definite Plan

- A. Hire a firm to serve as the KRRC's Technical Representative to guide the preparation of the Definite Plan.
- B. Develop and begin the implementation of an integrated work plan to guide the legal, policy and technical aspects of the preparation of the Definite Plan and refine the KRRC's budget estimates accordingly.

**EXHIBIT B
PHASE 1 PROJECT BUDGET**

**EXHIBIT B
PHASE 1 PROJECT BUDGET**

Klamath River Renewal Corporation			
Phase 1	2016-17 Fiscal Year		Through June 30, 2017
	2017 Q1 Jan-Mar	2017 Q2 Apr-Jun	
Total Eligible Project Costs -- Phase 1			\$4,951,500
Balance of Oregon Phase 1 Funding (\$ 4,048,000 less \$ 308,369 already advanced)			\$ 3,739,000
California PUC Phase 1 funding			\$ 352,000
Advance of California Proposition 1 Funds			\$ 860,500
Expenses			
5000 Compensation & Benefits	\$ 50,000	\$ 175,000	
5500 Travel and Meetings	\$ 30,000	\$ 36,000	
5800 Agency Fees and Reimbursements	\$ 320,000	\$ 320,000	
6000 Professional Services Technical Representative, Legal, Financial Management, Accounting, Auditing, Recruitment, Program Implementation, & Ongoing Risk Management Analysis	\$ 1,155,000	\$ 2,180,000	
7000 Initial Insurance & Risk Management	\$ 8,500	\$ -	
7500 Information Technology	\$ 12,000	\$ 2,000	
8000 Office and Facilities	\$ 2,000	\$ 7,500	
8500 Taxes, Licenses, Fees	\$ 2,000	\$ 1,000	
Contingency & Miscellaneous (15%)	\$ 237,000.00	\$ 408,250.00	
Total Expenses	\$1,816,500.00	\$3,135,000.00	\$4,951,500

Klamath River Renewal Corporation Program Activities & Illustrative Timeline for Phase 1 Activities(1)

	Oregon's Share of Eligible Project Costs	2017 Q1			2017 Q2		
		January	February	March	April	May	June
1. Continue Start-Up Operations of the Corporation	\$ 1,510,000						
a. Recruitment of the General Manager							
b. Onboarding of FERC counsel		★					
d. Recruit/contract to carry out other staff and legal functions							
e. Undertake policy analyses necessary to fulfill the mission							
f. Manage Board Meetings & Board Process			★		★		★
g. Establish Financial Controls & Audit Procedures							
2. Risk Management & Insurance Activities	\$ 94,000						
a. Develop consulting arrangements for risk management advisory services		★					
b. Review and Assess other types of necessary insurance							
c. Review and Assess Additional D&O Insurance							
3. Undertake certain Regulatory Actions	\$ 1,240,000						
a. Continue to refine joint license transfer & surrender applications							
b. File informational update with FERC, per KHSA				★			
c. Monitor CA 401 application & environmental review							
d. Monitor OR 401 application & environmental review							
e. Begin Section 404 consultation process							
f. Carry out ESA & CZM consultations							
4. Undertake Preparation Work for the Definite Plan	\$ 895,000						
a. Recruit Technical Representative			★				
b. Recruit Construction Counsel			★				
c. Develop integrated workplan for the Definite Plan							
d. Background work necessary to undertake the Definite Plan							
Total Eligible Project Costs for Oregon Phase 1	\$ 3,739,000						

(1) This represents the best available estimate of the timing and magnitude of each program activity. These amounts may be modified in the future upon consultation with the Oregon PUC staff.

EXHIBIT C
[RESERVED]

EXHIBIT D
ODFW-KRRC GRANT AGREEMENT FOR PHASE 1A

KLAMATH DAM REMOVAL
PHASE 1A GRANT AGREEMENT

This Agreement is made and entered into by and between the **State of Oregon**, acting by and through its Department of Fish and Wildlife, hereinafter referred to as "State," and the **Klamath River Renewal Corporation**, a California nonprofit public benefit corporation, hereinafter referred to as "Recipient." State and Recipient are referred to individually without distinction as "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the States of Oregon and California, the United States, PacifiCorp, and other parties entered into the Klamath Hydroelectric Settlement Agreement, dated February 18, 2010 and amended April 6, 2016 (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 Recipient has been selected as the "Dam Removal Entity" contemplated by the KHSA to carry out the Project and has become a party to the KHSA by its signature to the KHSA on July 19, 2016; and

WHEREAS , pursuant to Section 4 of the KHSA, the States of Oregon and California have each agreed to provide funding from specified sources to Recipient for the purpose of carrying out the Project; and

WHEREAS in Oregon, SB 76 authorizes the "Customer Contribution[s]" and requires PacifiCorp to file tariffs for the collection of two nonbypassable surcharges from its customers for the purpose of paying the costs of removing Klamath River dams. As specified by the statute, 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. Removal costs may include costs related to: (1) physical removal of the dams; (2) site remediation and restoration; (3) avoiding downstream impacts of dam removal; (4) downstream impacts of dam removal; (5) permits required for the removal; (6) removal and disposal of sediment, debris and other materials; and (7) compliance with environmental laws. SB 76 provides that all amounts collected under the surcharges are to be remitted into specially created trust accounts; and

WHEREAS, in accordance with Section 4 of the KHSA the Oregon Public Utilities Commission ("OPUC") has been collecting non-bypassable customer surcharges for the purpose of "Facilities Removal" as defined in the KHSA; and

WHEREAS, the KHSA provides that the States of Oregon and California would enter into grant agreements with Recipient as the designated dam removal entity to include conditions not inconsistent with the KHSA pertaining to the use of the Customer Contribution moneys;

WHEREAS, the Facilities Removal is contemplated to take place pursuant to three funding phases, with Phase One expected to consist of the start-up of the Recipient, evaluating risk mitigation such as insurance for the Facilities Removal, certain regulatory actions and preparation work for the Definite Plan; Phase Two 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 to 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) and;

WHEREAS, this agreement will partially fund Oregon's portion of the Phase One costs with further disbursements anticipated under additional funding agreements, the form of which shall be negotiated without reference to the form of this Agreement, and, further that this agreement shall be called "Phase One A Grant Agreement".

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

AGREEMENT

- 1. Effective Date and Expiration.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law. Subject to the terms and conditions of this Agreement, Grant Funds (defined below) under this Agreement shall be available for Eligible Project Costs (defined below) incurred on or after the effective date of this Agreement except that the Recipient may be reimbursed for certain expenditures incurred before the effective date, as provided in Exhibit E. This Agreement shall expire upon the earlier of January 31, 2017 or the date the KHSA terminates (the "Expiration Date").
- 2. Agreement Documents.** This Agreement consists of the Grant Agreement through the signature page, together with the following Exhibits, all of which are attached hereto and incorporated herein by reference:

- Exhibit A: Project Activities**
- Exhibit B: Project Budget Form**
- Exhibit C: [RESERVED]**
- Exhibit D: [RESERVED]**
- Exhibit E: Reimbursable Expenditures**

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 E; Exhibit C; Exhibit D.

- 3. Defined Terms.** Capitalized terms used in this Agreement shall have the meanings ascribed to them in this Agreement or as ascribed in the KHSA.

- 4. Project Costs; Grant Funds.** In accordance with the terms and conditions of this Agreement, State shall provide Recipient an amount equal to \$308,369 the “Grant Funds”) for Eligible Project Costs as provided in this Agreement, and the eligible reimbursements as listed in Exhibit E. The Parties further understand and agree that the Customer Contributions that comprise the Grant Funds were collected pursuant to ORS 757.736 to be used for the purposes described in ORS 757.736(11) as further described in the KHSA. The Customer Contributions are held in segregated trust accounts (the “Trust”) established by the State of Oregon, acting by and through its Public Utilities Commission (“PUC”). The Wells Fargo Bank is trustee of the Grant Funds (“Trustee”) and releases funds from the Trust as instructed by the PUC consistent with the terms of the Interagency Agreement for KHSA Dam Removal Funding Phase 1A, a copy of which is attached to this Agreement.
- 5. Project.** Recipient shall use the Grant Funds, as more fully described in Exhibit A, to hire employees or independent contractors to carry out the administrative functions of Recipient, such as depositing, accounting for and disbursing the Grant Funds, to obtain Recipient’s Directors’ and Officers’ insurance; and other organizational and operating expenses of the Recipient. Additional elements of the Project are also described in Exhibit A. Recipient understands and agrees that it will only expend Grant Funds on project activities and Recipient represents that all such expenditures are necessary to pay costs relating to the Project
- 6. Disbursement; Recovery of Grant Funds.**

 - a. Project Budget/Disbursements.** Grant Funds may be used by Recipient only to pay the costs and expenses of the Project in accord with the Project Budget as described in Exhibits B & E, attached hereto and by this reference made a part of this Agreement. The State has reviewed and approved the attached Project Budget. Recipient may, in its reasonable discretion, modify the Project Budget, including but not limited to reallocating costs within the Project Budget; provided, however, if Recipient modifies a line item in the Project Budget or the total Project Budget by an amount that is greater than 10% then Recipient shall provide an updated budget to the State.
 - b. Proportional Disbursements.** The Parties understand and agree that the total project cost for Phase One is currently estimated by Recipient to be approximately \$4,400,000 and that Oregon’s contribution shall constitute 92 percent of the Phase One costs and that California’s contribution shall constitute 8 percent of the total Phase One. The Parties further understand and agree that the Grant Funds to be disbursed under this Agreement constitute a portion of Oregon’s contribution of the Phase One funding such that additional disbursements under one or more additional agreement(s) yet to be executed will be necessary to fulfill Oregon’s contribution to Phase One costs. The Parties acknowledge that the allocation of funding between the State and the State of California shall apply on a Project basis but shall not require that funds to be expended on any particular Project Costs on a prorate basis based on the allocation of funding for Phase One between the State and the State of California.
 - c. Frequency of Disbursements.** As soon as practicable after the execution of this Agreement, the State shall request the PUC to instruct the Trustee to disburse the full

amount set forth in Section 4 above to the State in accord with that certain Interagency Agreement executed with OPUC. Upon receipt of this disbursement, the State shall disburse the funds to Recipient.

d. Expenditure Reports. [RESERVED]

e. Definition of Eligible Project Costs. “Eligible Project Costs” are the Project costs incurred by Recipient in performance of the Project that are consistent with the Project Budget and reasonably necessary for leading to the removal of the Klamath River dams. In the event that Recipient has received interim funding from other sources (other than the State of California and applied such funding to Eligible Project Costs then Eligible Project Costs shall include repayment of such interim funding.

(i) State may request additional documentation or clarification of an expenditure from Recipient, to which Recipient shall promptly respond. If State reasonably determines that an expenditure by Recipient was made to cover a cost that is not an Eligible Project Cost State shall promptly issue a Notice of Concern to Recipient identifying the questioned expenditure or project activities. Recipient shall respond to a Notice of Concern within 30 days with any relevant information regarding the expenditure or project activity, and identifying any corrective action taken. If, following receipt of Recipient’s explanation and any supporting documentation, State finds that an expenditure was not an Eligible Project Cost, the State will consider the matter to constitute a “cost dispute.” Subsequent agreements with Recipient may be affected by Phase 1A cost disputes, and may include a corresponding reduction in subsequent funding by the State of Oregon or additional reporting requirements.

f. Recovery of Grant Funds. Any funds disbursed to Recipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement (“Misexpended Funds”) including disallowed expenditures under section 6.e.i. must be returned to State for return to the appropriate trust. Recipient shall return all Misexpended Funds to State for return to the appropriate trust within 15 days of the State’s written demand. Recipient shall apply any unexpended funds as provided in paragraph g. or return any unexpended funds to State within 15 days after the earlier of expiration or termination of this Agreement.

g. Unexpended Grant Funds. Any funds disbursed to Recipient under this Agreement that have not be expended on Eligible Project Costs prior to the termination of this Agreement may be retained by Recipient for future expenditure on costs incurred to carry out the Phase One activities described in the Recitals of this Agreement. Recipient shall report the expenditure of such funds in, as applicable, its Final Report or any expenditure reports it is required to submit under future funding agreements related to Phase One of the Project.

7. Reports. Within 30 days after the Expiration Date, Recipient shall file with State a final report (the “Final Report”) and provide the PUC with a copy of the Final Report. The Final Report must include a summary of all Project costs compared to the Project Budget, together

with reasonable supporting documentation that evidences Recipient's expenditure of the Grant Funds. 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 California for Phase One. The final report shall also include a summary of the Project as completed. The Final Report must be timely submitted to the State Contact and PUC Contact listed below the signature blocks.

8. Conditions Precedent.

a. Conditions Precedent to State's Obligations. State's obligations under this Agreement are subject to the receipt by State of the following items, all in form and substance satisfactory to State and its counsel:

(i) A copy of the resolution of the Recipient's board of directors authorizing the execution and delivery of this Agreement and performance by Recipient of its obligations hereunder.

b. Conditions to Disbursement. State's obligation to disburse any of the Grant Funds to Recipient is subject to the following conditions.

(i) **Expenditure Authority.** Sufficient funds are currently deposited in the Trust Account to fulfill the State's obligation to disburse the Grant Funds under this Agreement. The Trust Account is the sole source of funding for this Agreement and Recipient shall have no recourse to, and the State 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 State 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 Trust Account.

(iii) **No Default.** Recipient is in compliance with the terms of this Agreement.

(iv) **Representations.** Recipient's representations and warranties set forth in Section 9 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.

(v) **Release of Funds.** The PUC has instructed the Trustee to release in accordance with the IAA, and the Trustee has released from the Trust, an amount sufficient to fund the disbursement, provided that State shall promptly notify Recipient of any failure or delay by the PUC or the Trustee in carrying out any of the foregoing.

9. Representations, Warranties and Covenants of Recipient.

a. Recipient Representations, Warranties. Recipient makes the following representations and warranties to the State. The warranties set forth in this section are in addition to, and

not in lieu of, any other warranties set forth in this Agreement, the KHSA or implied by law.

- (i) **Organization and Authority.** Recipient is a duly organized and validly existing nonprofit public benefit corporation under the California Corporations Code and is eligible to receive the Grant Funds. Recipient 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 Recipient of this Agreement (1) have been duly authorized by all necessary action of Recipient, (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 Recipient'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 Recipient is a party or by which Recipient 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 Recipient of this Agreement.
- (ii) **Binding Obligation.** This Agreement has been duly executed and delivered by Recipient and, when executed and delivered by State, constitutes a legal, valid and binding obligation of Recipient, 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. **Recipient's Inspections; Information.** During the term of this Agreement, Recipient shall permit the State, 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 Grant Funds, if any, and any other matters related to the use of Grant Funds or the Project. The Recipient shall supply related reports and information relating to the Project as the State may reasonably require.

10. **Records Maintenance and Access; Audit Requirements.**

- a. **Records Maintenance and Access.** Recipient shall make and retain proper and complete books of record, and account and maintain all fiscal records related to this Agreement, the Grant Funds, and the Project in accordance with all applicable generally accepted accounting principles. Recipient shall create and maintain all expenditure records in sufficient detail in such a manner as to clearly document Recipient's performance and to permit State to verify how the Grant Funds were expended. Recipient shall ensure that each of its subrecipients, and subcontractors complies with these requirements. State, the Public Utility Commission of Oregon and the Secretary of State of the State of Oregon ("Secretary of State") and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Agreement, the funds provided hereunder, or the Project for the purpose of making audits and examinations. In addition, State and the Secretary of State and their duly authorized representatives may make and retain

excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Recipient shall permit authorized representatives of State and the Secretary of State to perform site reviews of the Project as needed to determine compliance with the terms of this Agreement.

- b. Retention of Records.** Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant 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, Recipient shall retain the records until the disputes or questions are resolved.
- c. Audit Requirements.** Recipient shall save, protect and hold harmless State from the cost and expenses of any audits or special investigations performed by the Secretary of State or the federal government with respect to the expenditure by Recipient of Grant Funds disbursed under this Agreement. Recipient acknowledges and agrees that any costs and expenses incurred by Recipient as a result of proven allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Recipient and State.

11. Recipient Subagreements.

- a. Subagreements.** Recipient may enter into agreements with sub-recipients, contractors or subcontractors (collectively, "subagreements") for performance of the Project, including an agreement for the position of executive director. Any material breach of a term or condition of a subagreement relating to use of the Grant Funds must be reported by Recipient to State within ten (10) days of its being discovered. Use of a subagreement does not relieve Recipient of its responsibilities under this Agreement.
- b. Indemnity.** Recipient's subagreement(s) shall require the other party to such subagreements(s) to indemnify State on substantially the same terms as Recipient is indemnifying State as set forth in Section 12(a).
- c. Insurance.** Recipient shall cause the other party, or parties, to each of its subagreements to obtain and maintain insurance of the types and in the amounts as set forth in Section 12(b).

12. Indemnity; Insurance.

- a. Indemnity.** Recipient and State acknowledge and agree that the indemnity provided in Section 7.1.3 of the KHSA shall be applicable to this Agreement.

Neither Recipient, nor any attorney engaged by Recipient shall defend any Claim in the name of the State or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election,

assume its own defense and settlement in the event that it determines that Recipient is prohibited from defending State or that Recipient 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. State reserves all rights to pursue claims it may have against Recipient if State elects to assume its own defense.

- b. **Insurance.** Recipient shall maintain, or cause to be maintained, insurance policies with responsible insurers or self-insurance programs, insuring against directors' and officers' liability. Recipient shall provide a summary of any insurance coverage to State within ten days following the effective date of this agreement and upon the execution of any additional insurance agreements.

13. Compliance with Laws.

- a. **Compliance with Laws.** Recipient shall comply with all Applicable Laws, as that term is defined in the KHSA Section 1.4 and if not included with the Applicable Laws, all other laws, rules, regulations and orders of any court or governmental authority that relate to this Agreement and the Project, including without limitation, to the extent otherwise applicable:

- (i) To the extent applicable, the prevailing wage rate requirements set forth in ORS 279C.800 through 279C.870 and the administrative rules promulgated thereunder ("Prevailing Wage Rate Law" or "PWR"), or, if applicable, 40 U.S.C. 3141 et seq. ("Davis-Bacon Act"). Recipient shall require its contractors and subcontractors to pay the applicable prevailing wage rate and to comply with all other applicable Oregon Bureau of Labor and Industries ("BOLI") requirements pursuant to the Prevailing Wage Rate Law, including on all contracts and subcontracts and in filing separate works bonds with the Construction Contractors Board, unless exempt under ORS 279C.836 and OAR 839-025-0015. If the Project is subject to the Davis-Bacon Act, Recipient shall comply with and require its contractors and subcontractors to comply with the Davis-Bacon Act and any applicable provisions of Oregon PWR. If the Project is or becomes subject to both PWR and the Davis-Bacon Act, all subject workers must be paid the higher of applicable state or federal prevailing wage rate. The applicable rates are those in effect on the Effective Date of this Agreement. PWR and Davis-Bacon Act prevailing wage rates may be accessed via: http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx and <http://www.wdol.gov>.

Recipient represents and warrants that it is not on the BOLI current List of Contractors Ineligible to Receive Public Works Contracts and that it will not contract with any contractor on this list at the time it enters into such contract. Recipient agrees to indemnify, hold harmless and reimburse the State and its officers, employees and agents for any liability, cost, expense, fine, fee or penalty payable to a person or private or governmental entity, including another agency of the State of Oregon (collectively "liability") incurred to comply with, to obtain a

determination under, or in any other way related to the Prevailing Wage Rate Law or Davis-Bacon Act.

- (ii) Other applicable law and local contracting procedures including but not limited to: procurement, site acquisition, site development, construction, equipping and implementation of the Project. In particular, and without limiting the foregoing, Recipient shall comply, and require its subrecipients, and contractors to comply, with all applicable procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C. These laws, rules, regulations and orders are incorporated by reference in this Agreement to the extent required by law.
 - (iii) Without limiting the generality of the foregoing, Recipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- b. Recipient 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 Recipient may enter which are funded wholly or in part with the Grant Funds must be subcontractual in nature, with the other party engaged in the role of a subcontractor. Recipient 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.

14. Termination; Default

- a. **Termination by State.** State may terminate this Agreement effective upon delivery of written notice of termination to Recipient, or at such later date as may be established by State in such written notice, only if:
 - (i) State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
 - (ii) Federal or state laws, rules, regulations or guidelines are modified or interpreted in a non-stayed or otherwise effective judgment binding on the State by a court of competent jurisdiction in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement;
 - (iii) The occurrence of an Event of Default listed below; or

- (iv) If PUC fails for any reason to direct the Trustee to release Grant Funds in response to a request from State to effect a disbursement under Section 6.a. of this Agreement, or indicates to the State that it is unwilling to disburse the Grant Funds, provided that, in such case, the State shall immediately notify the Recipient of such occurrence. The State will not terminate this Agreement under this provision until at least thirty (30) days after the date of its notice to Recipient.
- b. Event of Default.** The occurrence of any of the following listed events shall constitute an Event of Default under this Agreement:
- (i) Any materially false or misleading representation is made by Recipient in this Agreement or in any document provided by or on behalf of Recipient related to this Agreement or the Project; or
 - (ii) A petition, proceeding or case is filed by or against Recipient, or a construction manager or Successor Entity described in Section 7.b of this Agreement (for purposes of this section, each a “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 seeking 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) Recipient 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 Recipient by State, except with respect to any shorter period expressly provided in this Agreement, provided that so long as Recipient is diligently seeking to cure such failure to perform such 30 day period shall be extended.
- c. Remedies.** Upon the occurrence of an Event of Default the State, may, at its option, pursue any or all of the remedies available under this Agreement and at law or in equity, including but not limited to:
- (i) Ceasing disbursement of Grant Funds under any grant agreement between the Parties, whether this Agreement or a grant agreement executed after the effective date of this Agreement;
 - (ii) Terminating this Agreement with Recipient;
 - (iii) bringing an action at law to recover damages incurred as a result of the Event of Default, in

order to recover all Grant Funds disbursed to the Recipient hereunder, with interest thereon; and

(iv) seeking any equitable remedies, including specific performance, which may be available to the State.

d. **No Termination by Recipient.** Recipient may not terminate this Agreement.

15. 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 approved by the Department of Justice as required by applicable law.

c. **No Third Party Beneficiaries.** State and Recipient 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 Recipient Contact or State 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 15.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 State, such facsimile transmission must be confirmed by telephone notice to State 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 Oregon (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 Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). 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 District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity, and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon 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 6.e.i, 6.f and g; 7, 10, 12, 13, 14.c, 15.a., e., f., h. and any other section or provision that by its terms is intended to survive.
- h. 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.
- i. 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.
- j. 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.
- k. 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.

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

STATE OF OREGON, acting by and through its
Department of Fish and Wildlife

By Michael Carrier
Name Michael Carrier
(printed)
Title President, Board of Directors
Date October 5, 2016

By William Herber
Name: William Herber
(printed)
Title: Deputy Director for Administration
Date October 7, 2016

APPROVED
(If required)

APPROVAL RECOMMENDED

By _____
Recipient's Legal Counsel

By _____

Date _____

Date _____

By _____

Recipient Contact:

Name: Kirk Marckwald
Title: Principal, California Environmental Associates
Address: 423 Washington St, 3rd Floor
Address: San Francisco, CA 94111
Phone: 415-820-4412
Email: kirk@ceaconsulting.com

Date _____

APPROVED AS TO LEGAL SUFFICIENCY
(For funding over \$150,000)

By _____
Assistant Attorney General

Name _____
(printed)

State Contact:

Name: _____
Title: _____
Address: _____
Salem OR 973 ____
Phone: 503- _____
Email: _____

Date _____

PUC Contact:

Name: _____

Title: _____

Address: _____

Salem OR 973 ____

Phone: 503- _____

Email: _____

EXHIBIT A
THE PROJECT ACTIVITIES

1. Establish and administer personnel, office and budget

A. Recipient shall hire as an employee or contract for the services of an independent contractor to perform the duties of its executive director.

B. Recipient shall open an account in a financial institution for the deposit of Grant Funds.

C. Recipient shall take such other measures as are reasonably necessary or convenient for the commencement of its operations and the performance of its obligations under the KHSA.

2. Insurance

A. Recipient shall maintain Directors' and Officers' liability insurance in commercially reasonable amounts and will cover all present and future officers and directors.

3. FERC Informational Filing

Recipient shall submit to the State a copy of the FERC license transfer application as described in the KHSA section 7.1.2.C

EXHIBIT C

[RESERVED]

EXHIBIT D
[RESERVED]

**EXHIBIT E
AUTHORIZED KRRC EXPENSE REIMBURSEMENTS**

	April-July 2016	August	Total
Expenses			
Compensation of officers, directors, and trustees	\$ -	\$ -	
Salaries and Benefits	\$ -	\$ -	
Occupancy	\$ -	\$ -	
Professional Services			
Legal	\$ 16,000	\$ 30,000	
Technical	\$ 1,000	\$ 4,000	
Interim Staff Assistance	\$ 34,000	\$ 46,000	
Other Expenses		\$ -	
Travel	\$ 2,326	\$ 3,000	
Office Expense and Services	\$ 2,000	\$ 3,000	
Insurance (Directors and Officers, General Liability)	\$ 9,543		
Total Expenses	\$ 64,869	\$ 86,000	\$ 150,869
State Funding to Date			
California			\$ 20,000
Oregon			\$ 22,500
Advanced to Pacific Cascade	\$ 7,906		
Balance of Oregon Funding	\$ 14,594		
Total Initial State Funding Available			\$ 42,500
Needed to Cover Expenditures to Date & Ongoing Obligations			\$ 108,369



CONFIRMATION OF INSURANCE

July 22, 2016

Willis of Illinois, Inc. - Chicago
Charina L. Almeyda
233 South Wacker Drive Suite 2000
Chicago, IL 60606

FROM: John Delaplane for Jonathan Reiner

I am pleased to confirm that your Directors & Officers/EPL Package insurance has been bound pursuant to your request. The attached Confirmation of Insurance will serve as evidence of coverage until the insurance carrier issues the policy. This insurance document summarizes the policy referenced above and is not intended to reflect all the terms and conditions or exclusions of the referenced policy. In the event of a claim, coverage will be determined by the referenced policy, subject to all the terms, exclusions and conditions of such. Moreover, the information contained in this document reflects bound coverage as of the effective date of the referenced policy and does not include subsequent changes by the insurer or changes in the applicable rates for taxes or governmental fees.

NAMED INSURED:	Klamath River Renewal Corporation 600 Wilshire Blvd. Suite 980 Los Angeles, CA 90014	
PRIMARY RISK ZIP CODE:	90014	
COVERAGE:	Directors & Officers/EPL Package	
INSURER:	Underwriters at Lloyds (Non-Admitted) - Non-Admitted	
POLICY NUMBER:	ANV109585A	
POLICY TERM:	7/21/2016 - 1/31/2017	
POLICY PREMIUM:	\$5,000.00	
TRIA:	MEP	
FEES:	TOTAL FEES:	
SURPLUS LINES TAX:	Surplus Lines Tax	\$150.00
	Stamping Office Fee	\$10.00
	TOTAL TAXES:	\$160.00
TOTAL:	\$5,160.00	
AGENT COMMISSION:	11%	



SUBJECTIVIES DUE PRIOR TO POLICY ISSUANCE:

- **Complete signed & dated ANV Application**
- **Most recent audited financials with notes**

SPECIAL CONDITIONS / OTHER COVERAGES:

- NO FLAT CANCELLATIONS
- ALL FEES ARE FULLY EARNED AT INCEPTION

For R-T Specialty to file the surplus lines taxes on your behalf, please complete the surplus lines tax document and return with your request to bind. Due to state regulations, R-T Specialty requires tax document to be completed within 24 to 48 hours of binding. Please be diligent returning tax forms.

A handwritten signature in black ink, appearing to be "Ryan Turner", written over a horizontal line.

Authorized Representative

HOME STATE FOR NON-ADMITTED RISKS

Taxes and governmental fees are estimates and subject to change based upon current rates of the Home State and risk information available at the date of binding. The Home State of the Insured for a non-admitted risk shall be determined in accordance with the Non-admitted and Reinsurance Act of 2010, 15. U.S.C §8201, etc. ("NRRA"). Some states require the producing broker to submit a written verification of the insured's Home State for our records. The applicable law of the Home State governing cancellation or non-renewal of insurance shall apply to this Policy.

Any amendments to coverage must be specifically requested in writing or by submitting a policy change request form and then approved by the Insurer. Coverage cannot be affected, amended, extended or altered through the issuance of certificates of insurance. Underlying Insurers must be rated A- VII or better by A.M. Best.



PREMIUM FINANCE If the insured and the Insurer agree to bind coverage and the premium will be financed, we will need the following information and, upon binding, please instruct the premium finance company to send documents to our attention. Premium Finance funds should always be paid to R-T Specialty, LLC:

Name of Premium Finance Company:	
Premium Finance Account Number:	

In order to place the insurance requested we may charge a reasonable fee for additional services that may include performing a risk analysis, comparing policies, processing submissions, communication expenses, inspections, working with underwriters on the coverage proposal, issuing policies or servicing the policy after issuance. We have extensive insurance experience and will represent you honestly and competently in rendering services. Third-party inspection or other fees may be separately itemized upon request. If the insured recommends an inspection company we will endeavor to determine if it is approved by the Insurer. To the extent the insured paid us a fee for services, we represent the insured in performing those services. Our fees are fully earned and nonrefundable, except when required by applicable law. Our fees are applied to new policies, renewal policies, endorsements and certificates. Fees applicable to each renewal, endorsement and certificate will be explained in the quotes. In the event that the premium is adjustable upwards, our fees are adjustable as well and will be collected against any additional premium. The fee charged by us does not obligate the insured to purchase the proposed insurance or the Insurer to bind the proposed insurance. Our fee is not imposed by state law or the Insurer. This fee authorization shall remain operative until terminated by written notice. Depending upon the Insurer involved with your placement, we may also receive a commission from the Insurer.

We may also have an agreement with the Insurer that we are proposing for your insurance that may pay us future additional compensation. This type of compensation is in addition to any fees and/or commissions that we have agreed to accept for servicing your insurance. This compensation could be based on formulas that consider the volume of business placed with the company, the profitability of that business, how much of the business is retained for the company's account each year, and other factors. The agreements frequently consider total eligible premium from all clients placed during a calendar year and any profit-sharing payment is usually received after the end of the following calendar year. Because of variables in these programs, we have no accurate way at this time to determine the amount of any additional compensation that might be attributable to your insurance.

Insurers may choose to delegate their authority for some classes of business to underwriting managers. Some affiliates of Ryan Specialty Group, LLC (RSG) have been delegated authority for underwriting or other services on behalf of Insurers. An underwriting manager (UM) is a segregated business unit separate from the brokering, sales and service teams within RSG. If you need additional information about the compensation arrangements for RSG affiliated UM's or producers please contact your RSG representative.

R-T Specialty, LLC (RT), a subsidiary of Ryan Specialty Group, LLC, provides wholesale brokerage and other services to agents and brokers. RT is a Delaware limited liability company based in Illinois. As a wholesale broker, RT does not solicit insurance from the public. Some products may only be available in certain states, and some products may only be available from surplus lines Insurers. In California: R-T Specialty Insurance Services, LLC License #0G97516.

© 2014 Ryan Specialty Group, LLC



INSURANCE BINDER

Policy Number: ANV109585A

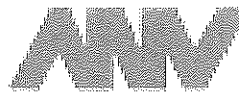
Named Insured: Klamath River Renewal Corporation

CERTIFICATES OF INSURANCE

The Company will not review, accept or retain copies of any certificates of insurance or additional insured endorsements prepared by anyone. Moreover, the Company will not be responsible for any liability resulting from the issuance of any unauthorized endorsement or the issuance of an endorsement which has been authorized by the Company but where the authorized wording is amended or revised in any way, without the prior written approval of the Company. The Company will not be responsible for any liability resulting from the issuance of any certificate of insurance. In no event does anyone have the authority to issue certificates of insurance which include any addition and/or modification of the policy terms and conditions, additional named insureds, waivers of subrogation or any special additional coverages unless expressly approved in writing by the Company.

Copies of all certificates of insurance and any endorsement sent with those certificates must be retained by the issuer for the time period required by state law or regulation in the state in which the certificate of insurance is issued, but in no event less than five years from the date indicated on the certificate.

Unless this policy is physically endorsed, the issuance of a certificate of insurance does not amend, extend, or alter the coverage provided by this policy or change the person(s) or entities to whom such coverage is afforded under this policy. No one without the express written authority of the Company has the authority to issue certificates of insurance or endorsements of any kind including without limitation additional insured endorsements, which include any addition and/or modification of this policy's terms and conditions, or purport to add any additional insured(s) and/or change any term, condition, or provision of this policy unless such policy changes or modifications are first approved by the Company and a policy endorsement is issued by the Company and signed by an officer of the Company.



ANV GLOBAL SERVICES INC
ON BEHALF OF
ANV SYNDICATE 1801 AT LLOYD'S - 50%
RENAISSANCE RE SYNDICATE 1458 AT LLOYD'S - 50%
LMR: B007515A22T5001

ANV109585A



INSURANCE BINDER

Policy Number: ANV109585A

Klamath River Renewal Corporation
600 Wilshire Blvd Suite 980
Los Angeles, CA 90014

Policy Period: From **July 21, 2016 to January 31, 2017** at 12:01 A.M. Standard Time at your mailing address shown above.

COVERAGES

Not For Profit Individual and Organization Management Liability Insurance Liability Insurance Policy CLAIMS MADE

LIMITS OF LIABILITY*	Shared Limit	Separate Limit	Aggregate Limit
Aggregate Limit for all Loss under all Coverages combined			\$1,000,000
Limit for all Loss for all Claims other than Employment Practices Claims	\$1,000,000	N/A	
Limit for all Loss for all Claims for Employment Practices Wrongful Acts	Not Covered	Not Covered	
Limit for all Loss for all Claims for Third Party Discrimination	Not Covered		
SUBLIMITS OF LIABILITY*			
Sublimit for all Excess Benefit Transaction Excise Taxes	\$125,000		
Sublimit for all Loss for all Crisis Management Expenses	Not Covered		

**Includes Costs of Defense*



RETENTION*	
COVERAGE PART	RETENTION
Each Claim	\$15,000
Each Claim alleging an Employment Practices Wrongful Act	Not Covered
Each Claim alleging Third Party Discrimination	Not Covered

**Applies to Costs of Defense*

PRIOR AND PENDING LITIGATION DATE	
COVERAGE PART	DATE
Employment Practices Claims:	Not Covered
All other Claims:	July 21, 2016

PREMIUM: \$5,000

All premiums applicable to additional coverage(s) as required during the policy period will be invoiced separately and will not apply toward the estimated policy premiums. **The collection and filing of all surplus lines taxes and fees as well as any other applicable surcharges shall be the sole responsibility of the Excess and Surplus Lines Broker and not included as part of the premiums set forth above.**

SUBJECTIVITIES

Please be advised that coverage has been bound conditional upon receipt, review, verification and approval of the following items within 30 days of binding coverage:

- Complete signed & dated ANV Application
- Most recent audited financials with notes

In order to complete the underwriting process, we require that you send us the subjectivities requested above. We are not required to bind coverage prior to our receipt, review and underwriting approval of the above information. However, if we do bind coverage prior to such approval, it shall be for a temporary period of not more than 30 days. Such temporary binding of coverage shall be void ab initio ("from the beginning") if we have not received, reviewed and approved in writing such material within 30 days from the effective date of the temporary binder.

Failure to provide ANV with any of the above listed items, within the specified time frame, can result in the automatic issuance of a Notice of Cancellation.



ENDORSEMENTS:

ENDORSEMENT #	ENDORSEMENT NAME
ANV CA 0100	California Policyholders Notice
ANV NP 0001	ANV Not for Profit Organization Management Liability Policy
ANV PL 0047	Exclusion of Certified Acts of Terrorism
ANV PL 0102	U.S. Treasury Department OFAC Advisory Notice
ANV NP 0012	Accreditation and Related Activities Exclusion
ANV PL 1000	General Change Endorsement: Any Claim brought by Doug LaMalf and/or Hoopa Valley Tribe will be subject to a \$25,000 retention
ANV PL 0010	Absolute Bodily Injury And Property Damage Exclusion
ANV PL 0147	Deceptive Business Practices Exclusion
ANV PL 0026	Broadcasting, Advertising & Publishing Liability Exclusion
ANV CA 0101	Amended Service Of Suit Clause - California

**MINUTES OF THE BOARD OF DIRECTORS MEETING OF
KLAMATH RIVER RENEWAL CORPORATION**

August 17, 2016

1. Time and Place. The Board of Directors (“Board”) of Klamath River Renewal Corporation (the “Corporation”) held its organizational meeting on August 17, 2016 at Oregon Department of Environmental Quality, Northwest Regional Office, 700 NE Multnomah Street, Suite 600, Conference Room #610 Portland, OR 97232 at 10:00 a.m. Pacific time.

2. Attendance. The following Directors of the Corporation were present:

Board Member	Appointing Authority
Lester Snow	State of California
Wendy George	Karuk Tribe
Thomas Jensen	Institute for Fisheries Resources and Pacific Coast Federation of Fishermen’s Associations
Theodore Kulongoski	State of Oregon
Richard Roos-Collins	American Rivers, California Trout, Klamath Riverkeeper, Northern California Council Federation of Fly Fishers, Salmon River Restoration Council, Sustainable Northwest, Trout Unlimited
Scott Williams	Yurok Tribe

The following Directors of the Corporation were absent:

Board Member	Appointing Authority
Michael Carrier	State of Oregon
James Root	State of Oregon

The following guests were also present by invitation of the Board:

Name	Title and Affiliation
Glen Spain (Board alternate)	Northwest Regional Director, Pacific Coast Federation of Fishermen's Associations and the Institute for Fisheries Resources
Joshua Adrian	Partner, Duncan, Weinberg, Genzer & Pembroke; California Natural Resources Agency Counsel
Charlton Bonham	Director, California Department of Fish and Wildlife
Jennifer Frozena	Attorney, United States Department of Interior
Kurt Burkholder	Technical Consultant, Klamath River Renewal Corporation
Thomas Gibson	Deputy Secretary and General Counsel, California Natural Resources Agency
Bob Gravely	Manager of Communications and Public Affairs, PacifiCorp
Sarah Kamman	Vice President General Counsel, Pacific Power

Lloyd Lowy (via phone)	Partner, Hawkins, Delafield, and Wood LLP
Dennis Lynch	Associate Regional Director, Northwest Region, United States Geological Survey
Olivia Mahony	Associate, California Environmental Associates
Kirk Marckwald	Principal, California Environmental Associates
Anika Marriott	Assistant Attorney General, Oregon Department of Justice
Peter Okurowski	Director, California Environmental Associates
Eric Petersen (via phone)	Partner, Hawkins, Delafield, and Wood LLP
Dustin Till	Senior Counsel, Pacific Power
Craig Tucker (via phone)	Natural Resources Policy Advocate, Karuk Tribe
Darcy Wheelles (via phone)	Director, California Environmental Associates
Richard Whitman	Natural Resources Policy Director, State of Oregon

3. Call to Order. Mr. Snow called the meeting to order and acted as Chair thereof, and Ms. Mahony acted as Recording Secretary of the meeting. Mr. Snow announced that a quorum of the Directors was present, and that the meeting, having been duly convened, was ready to proceed with its business.
4. Approval of Agenda. Mr. Snow asked for any changes and reordering of agenda. With no suggested changes from the Board, the agenda was approved.
5. Approval of Minutes. Mr. Snow presented to the Board the minutes of the July 19, 2016 meeting of the Board for approval, whereupon motion duly made by Mr. Roos-Collins, seconded by Mr. Spain and unanimously carried, the minutes were approved as presented.

10:17 a.m. Thomas Jensen joined the meeting.

10:20 a.m. Eric Petersen and Lloyd Lowy joined the meeting.

6. Resolutions. Upon motion duly made by Mr. Roos-Collins, seconded by Mr. Williams and unanimously carried, the following resolutions to amend the Bylaws of the Corporation were adopted, as amended:

WHEREAS, the Board of Directors of the Klamath River Renewal Corporation deems it to be in the best interests of the organization that the following actions be taken by the Directors of this corporation pursuant to this Resolution;

NOW, THEREFORE, BE IT RESOLVED that Section 4.6 of Article IV of the Bylaws of this corporation be amended as shown on the black-lined version of this section.

Section 4.6. Fees and Compensation. Non-Directors who are appointed to Board Committees may receive reasonable compensation of up to an

amount to be determined by the Board. Reimbursement for expenses incurred in performance of duties may be fixed or determined by the Board.

BE IT FURTHER RESOLVED that the citation in the last sentence of Section 3.2(b) of Article III be corrected from “Part B of Exhibit 2” to “Part B of Exhibit 1.”

BE IT FURTHER RESOLVED that all other provisions of the Bylaws as adopted shall remain in effect and the foregoing amendment shall be incorporated into the standing Bylaws of the Klamath River Renewal Corporation.

7. FERC. Mr. Whitman, along with Mr. Burkholder, Mr. Gibson, and Mr. Bonham, provided an update to the Board on the August 10, 2016 introductory meeting between the Corporation, PacifiCorp, and the Federal Energy Regulatory Commission (“FERC”). Mr. Adrian then presented on the status of the License Transfer and License Surrender Applications. There was discussion regarding the timing of and next steps with regard to the filing of the Applications with FERC, as well as the Corporation’s communications strategy surrounding the filing.

Upon motion duly made by Mr. Jensen, seconded by Mr. Williams, and unanimously carried, the Board authorized the Executive Committee of the Board to send correspondence to FERC in tandem with PacifiCorp to notify FERC of the intention to file the License Transfer and License Surrender Applications by September 23, 2016. Ms. George abstained from the vote.

8. Status Updates. Mr. Snow updated the Board on the acquiring of Directors and Officers Insurance, the Expense Reimbursement Policy, and introduced the Board to Mr. Burkholder, KRRC Technical Consultant.

11:45 p.m. Darcy Wheeles left the meeting.

11:55 p.m. Eric Petersen and Lloyd Lowy left the meeting.

12:00 p.m. Dennis Lynch, Jennifer Frozena, Sarah Kamman, Dustin Till, and Bob Gravely joined the meeting.

12:32 p.m. Darcy Wheeles rejoined the meeting.

9. PacifiCorp Presentation. Ms. Kamman, Mr. Till, and Mr. Gravely provided an overview of PacifiCorp’s organizational structure and history. There was discussion about the coordinating efforts between PacifiCorp and the Corporation with regard to the filing of the License Transfer and License Surrender Applications to FERC, including scheduling additional meetings with FERC staff and commissioners and a joint communications strategy.

12:54 p.m. Craig Tucker joined the meeting.

1:48 p.m. Sarah Kamman, Dustin Till, Bob Gravely, Anika Marriott, Thomas Gibson, and Joshua Adrian left the meeting.

10. USGS Presentation. Mr. Lynch presented on the federal science process, plans, and technical findings on the Klamath River dam removal, including a summary of the Detailed Plan of dam removal and costs, reservoir sediment studies, technical findings, environmental compliance, and the next steps for the United States Geological Survey (“USGS”) and Department of Interior.

2:15 p.m. Eric Petersen and Thomas Gibson rejoined the meeting.

2:22 p.m. Chuck Bonham left the meeting.

2:45 p.m. Chuck Bonham rejoined the meeting.

2:50 p.m. Lloyd Lowy rejoined the meeting.

2:52 p.m. Anika Marriott and Joshua Adrian rejoined the meeting.

2:58 p.m. Dennis Lynch, Jennifer Frozena, and Thomas Gibson left the meeting.

11. Review of Operations. Mr. Whitman presented on the status of the Oregon Funding Agreement and Mr. Bonham and Mr. Gibson presented on the status of the California Funding Agreement. There was discussion about the next steps of the Funding Agreements. Upon motion duly made by Mr. Roos-Collins, seconded by Mr. Williams, and unanimously passed, the Board approved the Executive Committee of the Board to sign Funding Agreements in between Board meetings, with the assistance of legal and technical counsel.

Mr. Snow presented on the potential staffing needs of the Corporation. There was discussion of the timeline of tasks moving forward and various skill sets desired in potential hires for the Corporation.

12. New Business. Upon motion duly made by Mr. Roos-Collins, seconded by Mr. Williams, and unanimously carried, the KRRC logo was approved for use by the Corporation.
13. Potential Next Meeting Date(s) and Location. After discussion of dates, the Board approved the next meeting in Sacramento, CA on October 27, 2016. It was decided that the Board would have an interim update meeting the week of September 19, 2016 before the License Transfer and License Surrender Applications are filed with FERC.

Upon motion duly made by Mr. Williams, seconded by Mr. Roos-Collins, and unanimously passed, the Board authorized the Executive Committee of the Board to file the California and Oregon 401 Certification Applications in between Board meetings, with the assistance of legal and technical counsel.

3:18 p.m. Chuck Bonham left the meeting.

3:38 p.m. Thomas Gibson rejoined the meeting.

3:39 p.m. Eric Petersen and Lloyd Lowy left the meeting.

14. Adjourn. There being no further business to come before the Board, the meeting was adjourned at 3:51 p.m. Pacific time.

DRAFT

Respectfully submitted,

Olivia Mahony, Recording Secretary

Lester Snow, Vice President of the Corporation

DRAFT

EXHIBIT E

Disbursement Request Form

Date: _____

Attn: _____

Address: _____

Phone: _____

Email: _____

Re: Disbursement for Klamath Dam Removal Funding Agreement Phase _____

The Klamath River Renewal Corporation requests the Public Utility Commission to submit a request for disbursement from the Customer Contribution Trust Accounts under ORS 757.738(3) in the amount of \$ _____

as outlined below:

Note: Disbursements are made through wire transfers only.

Recipient Name: _____

Wire Transfer Acct. #: _____

Bank Name: _____

ABA # _____

For Benefit of: _____

FBO Acct #: _____

Attn: _____

Phone #: _____

KLAMATH RIVER RENEWAL CORPORATION

By: _____

Signature

Name & Title (print): _____