

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

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

RECITALS

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

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

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

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

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

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

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

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

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

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

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

AGREEMENT

1. Defined Terms.

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

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

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

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

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

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

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

“FERC” refers to the Federal Energy Regulatory Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Trustee” means the Wells Fargo Bank.

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

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

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

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

4. KRRC Fiscal Administration.

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

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

(ii) KRRC Bylaws;

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

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

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

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

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

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

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

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

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

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

5. Business Status.

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

6. Disbursements for Eligible Project Costs.

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

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

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

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

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

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

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

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

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

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

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

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

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

h. Action on Disbursement Requests.

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

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

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

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

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

i. Recovery of Funds.

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

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

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

9. Conditions Precedent.

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

10. Representations, Warranties and Covenants of KRRC.

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

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

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

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

12. Records Maintenance and Access; Audit Requirements.

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

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

13. KRRC Subagreements.

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

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

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

14. Indemnity; Insurance.

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

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

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

15. Compliance with Laws.

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

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

16. Termination; Default

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

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

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

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

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

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

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

18. General Provisions.

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

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

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

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

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

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

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

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

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

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

SIGNATURE PAGE TO FOLLOW

Klamath River Renewal Corporation

California Public Utilities Commission

By _____

By _____

Name: _____
(printed)

Name: _____
(printed)

Title: _____

Title _____

Date _____

Date _____

APPROVED

(If required)

By _____
KRRC's Legal Counsel

Date _____

KRRC Contact:

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

CPUC Contacts:

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

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

**EXHIBIT A1
PHASE 1 ACTIVITIES**

EXHIBIT B
PHASE 1 PROJECT BUDGET

**EXHIBIT C
[RESERVED]**

EXHIBIT D
Disbursement Request Form

Date: _____

Attn: _____

Address: _____

Phone: _____

Email: _____

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

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

Phase	Project Activity		Eligible Project Costs	Amount Requested

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

Disbursement shall be made through wire transfers to the following:

Recipient Name: _____

Wire Transfer Acct. #: _____

Bank Name: _____

ABA #: _____

For Benefit of: _____

FBO Acct #: _____

Attn: _____

Phone #: _____

KLAMATH RIVER RENEWAL CORPORATION

By: _____
Signature

Name & Title (print): _____

(End of Attachment A)