

**LAKE SISKIYOU HYDROELECTRIC PROJECT
OPERATION AND MAINTENANCE AGREEMENT**

This Operation and Maintenance Agreement ("AGREEMENT") is made and entered into this _____ day of _____ 2021, by and between the Siskiyou Power Authority ("AUTHORITY") and Northbrook Power Management, LLC, an Illinois limited liability company headquartered in Scottsdale, Arizona, (OPERATOR") for itself and its successors and assigns.

RECITALS:

WHEREAS, AUTHORITY is a public entity duly created pursuant to the Joint Exercise of Powers Act, Government Code § 6500, et seq.; and

WHEREAS, AUTHORITY is empowered by law to acquire, operate, lease and control plants for the generation, transmission, distribution, sale and lease of electric power, and may make any necessary contracts or leases to carry out the purposes of the AUTHORITY; and

WHEREAS, AUTHORITY owns a 5 MW hydroelectric generation facility located at Box Canyon Dam on the Sacramento River, near the City of Mt. Shasta (hereinafter the "Project"); and

WHEREAS, AUTHORITY has entered into a Power Purchase Agreement ("ORIGINAL PACIFIC AGREEMENT") with the Pacific Power of Portland, Oregon (hereinafter referred to as "PACIFIC") for the sale of electricity generated at the Project that will terminate on December 31, 2020; and

WHEREAS, AUTHORITY intends to amend and extend the term of the ORIGINAL PACIFIC AGREEMENT effective January 2021, with the goal of entering into a new Power Purchase Agreement ("PACIFIC AGREEMENT") with PACIFIC; and

WHEREAS, AUTHORITY requires a qualified, competent and experienced OPERATOR to operate, maintain, and manage the Project; and

WHEREAS, AUTHORITY has determined it is in its best interests and in furtherance of the purposes for which the AUTHORITY was formed to enter into a contract for the operation and maintenance of the Project; and

WHEREAS, OPERATOR provides operation, maintenance and management services for hydroelectric generation facilities and has represented to the AUTHORITY that OPERATOR is qualified and competent to operate and maintain the Project; and

WHEREAS, OPERATOR has agreed to provide Services for the Project on the terms and conditions set forth in this Agreement,

NOW THEREFORE, in consideration of the mutual covenants, undertakings and conditions set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1

REPRESENTATIONS:

Section 1.1 Representations of the Parties.

(A) AUTHORITY hereby represents and warrants to OPERATOR that it has been duly formed and validly exists.

(B) OPERATOR represents and warrants to AUTHORITY that it is a validly existing company authorized to do business in California and that the execution and delivery of and performance by it of this Agreement has been authorized by all requisite company actions and does not violate internal company agreements of OPERATOR, federal, state or local law or any contractual restriction binding upon OPERATOR or its properties.

ARTICLE 2

DEFINITIONS

Section 2.1. Definitions.

- (a) "Agreement" means this Agreement.
- (b) "Contract Year" means: (i) for the first Contract Year, that period from the date of this Agreement to and including December 31 of such year; and (ii) for each Contract Year thereafter, the calendar year.
- (c) "Emergency" means an unforeseen circumstance or the resulting state that requires immediate action to protect or preserve the Project, personnel, or public health and safety.
- (d) "Fiscal Year" means the twelve-month (12) period from July 1 to June 30 of the subsequent year.
- (e) "Force Majeure Event" means an event, condition or circumstance beyond the reasonable control of, and not due to the fault or negligence of, the party affected, and which could not have been avoided by due diligence and use of reasonable efforts, which prevents the performance by such affected party of its obligations hereunder; provided that a "Force Majeure Event" shall not be

deemed to have occurred unless the party claiming Force Majeure complies with the requirements of Section 12.3. Subject to the foregoing, "Force Majeure Event" shall include, as to either party, acts of God, explosion and fire, civil disturbance, war, insurrection or riot, terrorism or sabotage, actions or failures to act by governmental entities or officials, action or restraint by court order to public or governmental authority, failure to obtain governmental permits or approvals (only if timely application is made therefore and due diligence has been exercised in pursuit thereof) and changes in laws, rules, regulations, orders or ordinances affecting operation of the Project, which events were not pending on the date of this Agreement.

- (f) "Minor Materials" means those supplies incidental to the routine operation and maintenance of the Project, such as cleaning supplies, make-up oil, grease, small nuts, bolts and other hardware, o-rings, sealants, gloves and paper, which in aggregate do not exceed ___{\$1,200}__.
- (g) "Prudent Operating Practice" means (i) any of the practices, methods, and acts performed in a manner consistent with industry standards, or (ii) practices, methods and acts that, in the exercise of reasonable judgment on the facts known (or that reasonably should have been known) at the time a decision was made, could have been expected to accomplish the desired result at a reasonable cost consist with good business practices, reliability, safety and expedition.

ARTICLE 3

SERVICES:

Section 3.1 Scope of Services. OPERATOR shall (i) operate, maintain and manage the Project on behalf of AUTHORITY. OPERATOR shall perform the specific duties set forth in this Agreement, if they are not otherwise required by the standards defined in Section 3.3.

Section 3.2. Services. OPERATOR shall provide operation and maintenance services ("Services") to AUTHORITY with regard to the Project as set forth in this Agreement and as required for the operation of the Project upon the terms and conditions set forth herein in accordance with Prudent Operating Practice. Services provided by OPERATOR shall include routine, day-to-day operations and maintenance of the Project, with associated supervision and support. The Services provided by OPERATOR shall include, but not be limited to, the tasks set forth below.

- A. OPERATOR shall employ and supervise qualified plant operators (s) ("Plant Operator"), pursuant to Section 3.4. The Plant Operator shall make a personal site visit each day of the year under normal operating conditions and read meters,

conduct a safety inspection, make any necessary adjustments, and perform any operating and maintenance services as may be necessary or appropriate under Prudent Operating Practice as that term is defined in Section 3.3. Visits shall be documented with the date and time of arrival, name of operator, name of any other personnel accompanying the operator, work performed, comments and log out time. A log book will consist of permanent pages, consecutively numbered. Data entered into the log book shall not be removed, but may be lined out if changes to the original entry are needed. It is anticipated that the Plant Operator shall spend a minimum of 4 hours per day, every day on site not including responding to alarms or other call outs.

B. OPERATOR shall submit plans and reports pursuant to Article 6.

C. OPERATOR shall respond to all alarms, faults, and shutdowns associated with the Project as expediently as possible, and at minimum within sixty (60) minutes of notice of each alarm, fault, and/or shutdown. OPERATOR shall provide this response on a twenty-four (24) hour per day basis, each day of the year, including all weekends and holidays.

D. OPERATOR shall administer on behalf of AUTHORITY all matters with the Federal Energy Regulatory Commission and state and federal resource agencies regarding the Project, including, but not limited to, dam safety and permit compliance.

E. OPERATOR shall perform normal and routine operation and maintenance of the powerhouse, waterways, turbines, generators, auxiliary electrical and mechanical equipment, elevator / tram, maintenance equipment, switchyard and associated equipment, and the transmission line from the power house to the switch yard interface with Pacific Power and Light. Where applicable the operator shall perform said operation and maintenance in accordance with the Operation and Maintenance Manuals for the Lake Siskiyou Hydroelectric Project, Volumes I through VI.

F. OPERATOR shall perform all required lubrication, including grease and oil of all equipment requiring such maintenance.

G. OPERATOR shall maintain all packing glands and seals.

H. OPERATOR shall maintain all control equipment including governors, relays and PLC/micro processor systems.

I. OPERATOR shall develop and implement a security protocol for its operators in order to maintain the security of the Project and the surrounding area in accordance

with Prudent Operating Practice. AUTHORITY acknowledges OPERATOR is not a guarantor of the security of the Project.

J. OPERATOR shall, at AUTHORITY's sole cost and expense, maintain an adequate supply of spare parts, to be stored at the Project, for items that are not readily available ("Spare Parts"). OPERATOR and AUTHORITY shall jointly select said parts and develop a schedule of parts to be updated on a monthly basis.

K. OPERATOR shall oversee maintenance of electrical equipment, including but not limited to switchgear, power cables, bus work and interconnection facilities.

L. OPERATOR shall oversee maintenance and testing of the transformer, including but not limited to oil, gas, and dielectric testing.

M. OPERATOR shall oversee annual inspection, maintenance and calibration of instrumentation and controls.

N. OPERATOR shall provide supervision of the Plant Operator, consultants, contractors, and agents, including backup Operators, and shall be responsible for their respective training and instruction in the operation of the Project.

O. OPERATOR shall prepare a proposed Annual Budget and Project Operating Plan pursuant to Article 6.

P. OPERATOR shall work with AUTHORITY to prepare cost proposals as necessary for all non-routine repairs, replacements and upgrade projects in accordance with Section 4.1.

Q. OPERATOR shall maintain compliance with all permits and licenses, including the filing of routine reports, including, but not limited to reports requested by any federal or state regulatory agency, but excluding payment of fees and third-party costs. AUTHORITY will allow OPERATOR the benefits of all permits and licenses related to the Project as necessary. To the extent legally required for operation of the Project, AUTHORITY will assign such permits and licenses to the OPERATOR for the term of this Agreement.

R. OPERATOR shall conduct periodic inspections of the turbines, generators and governors in accordance with the Annual Budget and Project Operating Plan.

S. OPERATOR shall pay for all Minor Materials, labor, training, supervision, inspection and other accessory services necessary to the routine operation and maintenance of the Project.

T. OPERATOR shall develop a safety program and a safety training program for all operational aspects of the Project. Said programs shall be developed and conducted in accordance with applicable requirements of the State of California Division of Occupational Safety and Health ("Cal OSHA").

U. OPERATOR shall submit to AUTHORITY for its review and approval proposed Standard Operating Procedures for the Project.

V. OPERATOR shall be responsible for the operation and maintenance of future improvements to the Project that may be accomplished during the term of this Agreement.

Section 3.3. Standards for Performance of Services. OPERATOR shall perform the Services required under this Agreement in a prudent, reasonable, safe, and efficient manner and (a) in accordance with all applicable regulatory requirements and applicable laws; (b) in accordance with all operating, maintenance and administrative manuals and procedures at the Project, including equipment manuals; (c) in accordance with the requirements of all Project related insurance policies; (d) in accordance with all warranties applicable to the Project and Project equipment; (e) in accordance with the applicable Annual Project Operating Plan and Annual Budget; (f) in accordance with the provisions of this Agreement; and (g) in accordance with Prudent Operating Practice.

OPERATOR shall use all reasonable efforts to optimize and maximize the useful life of the Project and to minimize reimbursable costs and Project outages or other unavailability. OPERATOR acknowledges and agrees that it is desirable to keep the facility operating at all times to the greatest extent possible so as to maximize the electrical output and availability of the Project consistent with Prudent Operating Practice.

OPERATOR shall be responsible for investigation of, and thorough familiarity with, conditions at the Project.

Section 3.4. Operator's Personnel Standards. OPERATOR shall provide as reasonably necessary all labor and professional, supervisory and managerial personnel as are required to perform the Services. Such personnel shall be qualified to perform the duties to which they are assigned. All individuals employed by OPERATOR to perform the Services shall be employees of OPERATOR and their working hours, rates of compensation and all other matters relating to their employment shall be determined solely by OPERATOR. With respect to labor matters, hiring personnel, and employment policies, OPERATOR shall comply with all applicable Laws. OPERATOR also shall act in a reasonable manner that is consistent with the intent and purpose of

this Agreement and with OPERATOR's acknowledgment that OPERATOR has no authority to enter into any contracts with respect to labor matters that purport to bind or otherwise obligate AUTHORITY.

OPERATOR shall be solely responsible for all matters relating to the payment of any of its employees, vendors or subcontractors including, without limitation, compliance with social security, withholding and similar matters, including those specifically set forth below.

OPERATOR shall consult and confer with AUTHORITY and reasonably cooperate to address any concerns raised by AUTHORITY with respect to any individual rendering Services on behalf of OPERATOR. If any person employed by OPERATOR appears to the AUTHORITY to be incompetent or to act in a disorderly or improper manner, then upon written request of AUTHORITY, OPERATOR shall promptly, but in accordance with OPERATOR's standard employment practices and policies, undertake appropriate discipline for said person.

Section 3.5. Independent Contractor. It is the express intention of the parties that OPERATOR is an independent contractor and not an employee, agent, joint venturer or partner of AUTHORITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between AUTHORITY and OPERATOR or any employee or agent of OPERATOR. Both parties acknowledge that OPERATOR is not an employee for state or federal tax purposes. OPERATOR shall retain the right to perform services for others during the term of this Agreement. OPERATOR shall provide AUTHORITY with notice of intent to engage any non-employees to work on the Project in any capacity. Said notice shall be given to AUTHORITY prior to any work commencing by the non-employee.

Section 3.6. Withholding for Non-Resident Contractor. Pursuant to California Revenue and Taxation Code Section 18662, payments made to nonresident independent contractors, including corporations and partnerships that do not have a permanent place of business in this state, are subject to seven percent (7%) state income tax withholding. Withholding is required if the total yearly payments made under this Agreement exceed \$1,500.00.

Unless the Franchise Tax Board has authorized a reduced rate or waiver of withholding and AUTHORITY is provided evidence of such reduction/waiver, all nonresident contractors will be subject to the withholding. It is the responsibility of the OPERATOR to submit the Waiver Request (Form 588) to the Franchise Tax Board as soon as possible in order to allow time for the Franchise Tax Board to review the request.

Section 3.7. Compliance with Child, Family and Spousal Support Reporting Obligations. OPERATOR's failure to comply with state and federal child, family and spousal support reporting requirements regarding OPERATOR's employees or failure to

implement lawfully served wage and earnings assignment orders or notices of assignment relating to child, family and spousal support obligations shall constitute a default under this Agreement. OPERATOR's failure to cure such default within ninety (90) days of notice by AUTHORITY shall be grounds for termination of this Contract.

Section 3.8. Public Employees Retirement System (CalPERS). In the event that OPERATOR or any employee, agent, or subcontractor of OPERATOR providing services under this Agreement is determined by a court of competent jurisdiction or the Public Employees Retirement System (CalPERS) to be eligible for enrollment in CalPERS as an employee of the AUTHORITY, OPERATOR shall indemnify, defend, and hold harmless AUTHORITY for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of OPERATOR or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of AUTHORITY. OPERATOR understands and agrees that its personnel are not, and will not be, eligible for membership in, or any benefits from, any AUTHORITY group plan for hospital, surgical or medical insurance, or for membership in any AUTHORITY retirement program, or for paid vacation, paid sick leave, or other leave, with or without pay, or for any other benefit which accrues to an AUTHORITY employee.

Section 3.9. IRS/FTB Indemnity Assignment. OPERATOR shall defend, indemnify, and hold harmless the AUTHORITY, its members, officers, agents, and employees, from and against any adverse determination made by the Internal Revenue Service of the State Franchise Tax Board with respect to OPERATOR's "independent contractor" status that would establish a liability for failure to make social security and income tax withholding payments.

Section 3.10. Compliance. OPERATOR shall comply with all laws, agreements, and authorizations applicable to the performance of the Services. OPERATOR represents that, to the extent Prudent Operating Practice requires, it has reviewed, and is familiar with, all such applicable laws, authorizations, and agreements provided to OPERATOR by AUTHORITY.

OPERATOR shall file such reports, notices and other communications as may, to its knowledge, be required by any government agency regarding the Project within the scope of its services.

Section 3.11. Operator Records and Reports. OPERATOR shall maintain, at the Project and its office in Scottsdale, Arizona, the Project operating logs, records, and reports that document the operation and maintenance of the Project. OPERATOR shall provide AUTHORITY all reasonably necessary assistance in connection with AUTHORITY's compliance with reporting requirements. Such assistance shall include providing reports, records, logs and other information that AUTHORITY may reasonably request as to the Project or its operation and shall include all necessary assistance for

AUTHORITY's timely preparation of the Annual Instrumentation Report, Safety and Surveillance Report, Part 12 Report, Emergency Action Plan, and Annual Inspection Reports.

Section 3.12. No Liens or Encumbrances. OPERATOR shall maintain the Project free and clear of all liens and encumbrances resulting from any action of OPERATOR or work done at the request of OPERATOR or AUTHORITY. AUTHORITY is responsible for the payment of obligations undertaken by AUTHORITY under this Agreement.

Section 3.13. Emergency Action. If an Emergency endangering the safety or protection of persons, the Project, or property located near or downstream of the Project occurs, OPERATOR shall promptly notify AUTHORITY and shall activate the Emergency Action Plan, Box Canyon Hydro Project, FERC Project No. 2796-CA. OPERATOR shall make reasonable efforts to minimize any cost associated with remedial action in case of such an emergency. Within three (3) calendar days of such an emergency OPERATOR shall provide AUTHORITY with a preliminary report on the incident, the actions taken by OPERATOR and the costs incurred.

Section 3.14. Action in Extraordinary Circumstances. In the event that

- (A) The Project or major Project equipment suffers an unplanned outage (or OPERATOR reasonably believes that such an occurrence is imminent), and
- (B) OPERATOR has made reasonable, but unsuccessful, efforts to notify and communicate with AUTHORITY regarding such occurrence or imminent occurrence in accordance with the terms of this Agreement then the OPERATOR shall
 - i. Take all reasonably necessary action to prevent or to reasonably mitigate such unplanned outage in accordance with the terms of this Agreement, taking into consideration the restrictions imposed on OPERATOR pursuant to the terms of subsection (B)iv. below;
 - ii. Make reasonable efforts to minimize any cost associated with such remedial action;
 - iii. Continue to attempt to notify and communicate with AUTHORITY regarding the occurrence and the remedial action; and
 - iv. Shall not expend for such purpose more than an aggregate of one hundred thousand dollars (\$100,000.00) in any Fiscal Year without prior AUTHORITY approval. To the extent OPERATOR incurs costs pursuant to Section 3.14 during any Fiscal Year, AUTHORITY will seek the consent of its Board to reinstate a full one hundred thousand dollars (\$100,000.00) limitation with respect

to any subsequent event arising pursuant to Section 3.14 in any such Fiscal Year.

ARTICLE 4

AUTHORITY RESPONSIBILITIES:

Section 4.1. Non-Routine Maintenance and Capital Improvements. The cost of major equipment replacements, teardowns and overhauls, all capital improvements and costs of materials which are not Minor Materials ("Non-routine Expenditures") shall be the responsibility of AUTHORITY and, except in an Emergency, shall be budgeted and authorized by the AUTHORITY only. OPERATOR shall promptly notify AUTHORITY in writing of any mechanical or electrical problems that may require replacement, teardown and/or overhaul of equipment or capital improvements. To the extent reasonably possible Non-routine Expenditures shall be incorporated into the applicable Annual Budget. If such costs have been incurred in an Emergency or incorporated into the applicable approved Annual Budget, or if AUTHORITY has otherwise consented in writing to reimburse OPERATOR for such costs, OPERATOR shall schedule, coordinate, contract and oversee the performance of such activities. OPERATOR shall obtain prior written approval for budgeted expenditures annually. OPERATOR also shall be responsible for monitoring and exercising due diligence in obtaining contract compliance by the contractor performing such work including taking such steps, short of litigation, to enforce any contract compliance or warranties granted to AUTHORITY by such contractor.

AUTHORITY reserves the right to perform non-routine maintenance projects within AUTHORITY or with other contractors, and in such event OPERATOR shall have no responsibility, unless otherwise agreed to in writing, with respect to such Non-routine Expenditures other than to cooperate with AUTHORITY.

Section 4.2. Non-Routine and Additional Costs. AUTHORITY shall be responsible for paying for prior approved parts, supplies, tools, equipment, utilities, permit fees, repairs and third-party services for the Project.

Section 4.3 Annual Budget and Project Operating Plan. AUTHORITY shall be responsible for approval of the Annual budget and Annual Operating Plan.

ARTICLE 5

COMPENSATION AND PAYMENT:

Section 5.1. Payments. As compensation to OPERATOR for performance of the Services hereunder, AUTHORITY shall pay OPERATOR the Annual Operating Fee (or a pro rata portion thereof in the case of a Contract Year of less than 12 months) and the Monthly Variable Fee. In addition, AUTHORITY shall either (i) reimburse OPERATOR

for all Reimbursable Costs or pay such Reimbursable Costs directly to the applicable third parties.

Section 5.2. Annual Operating Fee. AUTHORITY shall pay OPERATOR an annual fee of one-hundred-eighty thousand dollars (\$180,000.00), to be paid in twelve (12) monthly installments of fifteen-thousand dollars (\$15,000.00) payable at the beginning of each month. Beginning on July 1, 2022 and on July 1 of each year thereafter, the Annual Operating Fee (and the corresponding monthly operating fee) shall be increased by a percentage equal to the Consumer Price Index, all urban consumers, U.S. City average, as measured in the month of March, not to exceed three percent (3%) per annum. If the Index is discontinued or revised during the Agreement, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued.

Section 5.3. Monthly Variable Fee. In addition to the payments described above, AUTHORITY shall pay OPERATOR four percent (4%) of AUTHORITY's monthly gross revenues from the Amended Original Pacific Agreement or the new Pacific Agreement or other successor or replacement power purchaser. Such payment shall be made monthly to OPERATOR within thirty (30) days after the AUTHORITY receives payment from Pacific or successor or replacement power purchaser.

Section 5.4. Reimbursable Costs. OPERATOR may supply parts, equipment and tools identified in Section 4.2 (Additional Costs) necessary to perform duties or repairs, which said costs plus five percent (5%) of said costs will be considered Reimbursable Costs. OPERATOR may incur up to one hundred thousand dollars (\$100,000.00) in Reimbursable Costs in any one Fiscal Year, after which no further Reimbursable Costs shall be incurred unless incurred in accordance with (i) the prior written consent of the AUTHORITY, (ii) the applicable Annual Budget, or (iii) Sections 3.13 (Emergency) or 3.14 (Extraordinary Circumstances) of this Agreement.

OPERATOR shall create a master list of all tools owned by the AUTHORITY and shall update the list as tools are purchased.

Section 5.5. Adjustments and Conditions. Notwithstanding the payment of any amount pursuant to the foregoing provisions, AUTHORITY shall remain entitled to conduct a subsequent audit and review of all Reimbursable Costs incurred by the OPERATOR and paid by AUTHORITY and of any supporting documents for a period of two (2) years after the applicable Fiscal Year. If such audit and review shows that any amount previously paid by AUTHORITY to OPERATOR did not constitute a Reimbursable Cost or AUTHORITY underpaid OPERATOR Reimbursable Costs, AUTHORITY may recover such amount from OPERATOR and shall pay to OPERATOR any shortfall in prior payments to OPERATOR, as the case may be. AUTHORITY shall promptly provide a copy of any such audit to OPERATOR.

Section 5.6. Billing and Payment. Within fifteen (15) days following the end of each month, OPERATOR shall submit the original itemized receipts and disbursements showing Reimbursable Costs for such month. Within thirty (30) days after receipt of any such invoice, AUTHORITY shall pay OPERATOR the sum specified, less any portion of such invoice amount that AUTHORITY disputes in good faith or is permitted to offset under this Agreement. With respect to any disputed portion of such invoice, AUTHORITY shall provide OPERATOR with a written statement explaining, in reasonable detail, the basis for such dispute. The parties shall attempt to resolve any such disputed portion in accordance with Article 11.

Any Reimbursable Costs incurred by OPERATOR and not submitted to AUTHORITY within one year of purchase date or incurrence shall not be eligible for reimbursement.

ARTICLE 6

PLANS AND REPORTING:

Section 6.1. Annual Project Operating Budget and Plan.

- (a) Proposal. After the effective date of this Agreement, at least 90 days before the beginning of each Fiscal Year, Operator shall prepare and submit to AUTHORITY a proposed annual budget for the Fiscal Year, established on a monthly basis. The proposed annual budget shall include separate operating and capital budgets. The proposed annual budget shall set forth, in detail reasonably acceptable to AUTHORITY, (i) anticipated operations, repairs and approved capital improvements, (ii) maintenance schedules, (iii) planned procurement (including equipment, spare parts, and consumable inventories), (iv) labor activities, (v) administrative activities, and (vi) other work proposed to be undertaken by OPERATOR, together with an itemized estimate of all Reimbursable Costs to be incurred. Each proposed annual budget shall be accompanied by a proposed annual operating plan setting forth the assumptions and implementation plans underlying the proposed annual budget. Any actions to be performed by the OPERATOR under the proposed annual operating plan shall be consistent with OPERATOR's obligations set forth in this Agreement.
- (b) Adoption. AUTHORITY shall review OPERATOR's proposed annual budget and annual operating plan within 45 days following receipt of the proposals. Authority may request changes, additions, deletions, and modification to the proposals. Upon AUTHORITY's adoption of a final budget and plan (the "Annual Budget" and "annual Project Operating Plan," respectively), the AUTHORITY shall approve such plan in writing. Except to the extent that the terms of Section 3.13 and 3.14 permit OPERATOR to take actions which are outside the final Annual Budget without the consent of the AUTHORITY, the final Annual Budget and Annual Project Operating Plan shall remain in effect through the applicable

Contract Year, subject to revision and amendments proposed by either party and consented to in writing by AUTHORITY. AUTHORITY acknowledges the Project, as a thirty-five year old hydroelectric generating facility, carries an inherent risk of untimely equipment malfunction and failure. AUTHORITY further acknowledges while the Annual Budget is divided into (12) monthly sub-budgets, OPERATOR's Budget authority shall be on an annual basis and not limited by monthly variations which may exceed monthly sub-budgets.

- (c) Changes. OPERATOR shall promptly notify AUTHORITY of any significant deviations or discrepancies from the projections contained in the Annual Budget or Annual Project Operating Plan. This notice shall be sent via electronic mail or nationally recognized overnight courier service.

Section 6.2. Operating Data and Records. OPERATOR shall monitor and record all operating data and information which AUTHORITY must report to any government agency or other person or entity under applicable Laws or that AUTHORITY reasonably requests. Operating data to be reported includes operating logs, meter and gauge readings, flow rates and amounts, and maintenance records.

Section 6.3. Accounts, Reports, Inspection.

- (a) Monthly Reports. Within ten (10) Business Days following the last day of each calendar month, OPERATOR shall submit: (i) a progress report, in reasonable detail acceptable to AUTHORITY, covering all activities during such month with respect to operations and maintenance (including information regarding the amount of electric energy generated (actual vs. budget), hours of operation, outages, accidents, and emergencies), metered generation revenue, details of any significant events, the status of repairs, capital improvements (including replacements and upgrades), labor relations, including employee injuries, other significant matters, and Services. The monthly report shall include a brief summary of major activities planned for the next reporting period and a statement setting forth all Reimbursable Costs paid or incurred in such month.
- (b) Litigation, Permit Lapses. Upon obtaining knowledge thereof, OPERATOR shall promptly notify AUTHORITY in writing of (i) any litigation, claims, disputes or actions, threatened or filed, concerning the Project or Services; (ii) any refusal or threatened refusal to grant, renew or extend (or any action pending or threatened that might affect the granting, renewal or extension of) any license, permit, warranty, approval, authorization or consent relating to the Project or the Service; and (iii) any dispute with any governmental authority relating to the Project or Services.

- (c) Other Information. OPERATOR shall promptly submit to AUTHORITY any material information concerning new or significant aspects of the Project's activities and, upon, AUTHORITY's reasonable request, shall promptly submit any other information concerning the Project or Services.
- (d) Joint Inspection. At least once each month, OPERATOR and AUTHORITY will at their election conduct a joint inspection of the Project and the existing dam. OPERATOR shall document these inspections in the Monthly Reports and shall include in said reports OPERATOR's and AUTHORITY's discussions regarding the results of these inspections. It is understood that appropriate State and Federal agencies may also wish to inspect said facilities, and OPERATOR and AUTHORITY shall jointly accompany said agencies on their inspections.

ARTICLE 7

TERM AND TERMINATION:

Section 7.1. Term. The term of this Agreement shall be from January 1, 2021, to and including December 31, 2025. This Agreement is subject to earlier termination pursuant to Sections 7.2 and 7.3. At any time prior to the expiration of the term, the parties may, by mutual written agreement, extend the term of this Agreement for an additional five (5) years. Extensions of the term shall not exceed an aggregate total of twenty years.

Section 7.2. Immediate Termination by Authority. AUTHORITY may terminate this Agreement immediately upon the Bankruptcy of OPERATOR. If the Agreement is terminated by AUTHORITY pursuant to this Section, OPERATOR shall be compensated for all Reimbursable Costs incurred by OPERATOR and all unpaid Annual Operating Fees to and including the date of such termination under this section.

Section 7.3 Termination Upon Notice By Authority. Beginning January 1, 2022, AUTHORITY may terminate this Agreement without cause with ninety (90) days prior written notice to OPERATOR.

- (a) If AUTHORITY terminates this Agreement pursuant to this Section, OPERATOR shall be compensated for all Reimbursable Costs incurred by OPERATOR, a prorated share of the Monthly Variable Fee, and all unpaid Annual Operating Fees to and including the date of such termination under this section.
- (b) If AUTHORITY terminates this Agreement pursuant to this Section during the limited time period of January 1, 2021, through December 31, 2021, without providing OPERATOR with twelve (12) months prior written notice, which notice in any event shall not be deliverable to OPERATOR prior to January 1, 2022, then AUTHORITY shall also pay to OPERATOR, in addition to the

amount set forth in Section 7.3(a), a twenty five-thousand dollars (\$25,000.00) fee for the reimbursement of OPERATOR's investment expenses.

Section 7.4. Project Condition at End of Term. Upon the expiration or termination of this Agreement, OPERATOR shall remove its personnel from the Project. OPERATOR shall leave the Project in as good condition or better condition as it was on the Effective Date, in accordance with its maintenance duties under this Agreement, normal wear, tear and casualty excepted. OPERATOR shall be paid all unpaid Reimbursable Costs. All special tools, improvements, inventory of supplies, spare parts, safety equipment, Operating manuals and Procedures Manual, operating logs, records and documents maintained by Operator pursuant to this Agreement and any other items furnished on Reimbursable Cost basis under this Agreement shall be returned to the possession of the AUTHORITY. OPERATOR shall use commercially reasonable efforts to cooperate with AUTHORITY or a succeeding operator to assure that the operation, maintenance and management of the Project are not disrupted.

ARTICLE 8

INSURANCE:

Section 8.1. Coverage.

(a) Operator's Obligation to Obtain and Maintain. OPERATOR shall obtain and maintain from and after the date of this Agreement the insurance described below with insurance companies reasonably acceptable to AUTHORITY and with limits and coverage not less than the limits of coverage provisions set forth below (which coverage may include blanket coverage carried by OPERATOR with respect to this Project and other projects, so long as this Project is specifically identified in such coverage):

- i. General Liability Insurance: Liability insurance on an occurrence basis against claims for personal injury (including bodily injury and death) and property damage in the amount of one million dollars (\$1,000,000.00) per occurrence, two million dollars (\$2,000,000.00) per year.
- ii. Automobile Liability Insurance: Automobile liability insurance against claims for personal injury (including bodily injury and death) or property damage arising out of the use of all owned, leased, non-owned and hired motor vehicles, including loading and unloading, and containing appropriate no-fault insurance provisions where applicable in the amount of one million dollars (\$1,000,000.00).

- iii. Workers' Compensation Insurance: Workers' compensation insurance as required by applicable laws, including employers liability insurance for all employees of OPERATOR working at the Project.
 - iv. Excess Liability Insurance: Excess liability insurance on an occurrence basis covering claims in excess of the underlying insurance described in the foregoing subsections (i), (ii) and (iii) up to an aggregate (inclusive of amounts set forth in (i) and (ii) above) of five million dollars (\$5,000,000.00).
- (b) Additional Insured. OPERATOR shall name AUTHORITY as an additional insured for at least three (3) years after the completion of the Services to be rendered under this Agreement.
- (c) Endorsements and Certificates. OPERATOR shall furnish to the AUTHORITY certificates of insurance and policy endorsements evidencing the coverage required pursuant to this Agreement and evidencing that AUTHORITY is an additional insured on the OPERATOR's required policies.
- (d) Notice of Reduced Coverage. If subsequent to OPERATOR furnishing valid certificates of insurance as required in subsection 8.1(c), the amount of insurance held by OPERATOR is reduced, OPERATOR shall immediately notify AUTHORITY in writing of such reduction.

ARTICLE 9

INDEMNIFICATION AND LIABILITIES:

Section 9.1. Indemnification by Operator. OPERATOR shall indemnify, defend and hold harmless AUTHORITY, members thereof, and the respective officers, directors, employees, agents, affiliates and representatives of the AUTHORITY and its member entities (the "Owner Indemnified Parties"), from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonably attorneys' fees) occurring or resulting, or alleged to be occurring or resulting to any and all persons, firms, or corporations furnishing or supplying work, services, materials, or supplies in connection with OPERATOR's performance of its obligations under this Agreement, unless such claims, liabilities or losses arise out of the sole negligence or willful misconduct of AUTHORITY. "OPERATOR's performance" includes OPERATOR's action or inaction and the action or inaction of OPERATOR's officers, employees, agents and subcontractors.

It is understood that the duty of OPERATOR to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by AUTHORITY of insurance certificates and endorsements required under this Agreement does not relieve OPERATOR from liability or limit OPERATOR's liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, OPERATOR acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

AUTHORITY agrees to first look to insurance provided by OPERATOR for payment; however, if payment is denied, AUTHORITY may look to OPERATOR for such indemnity. OPERATOR's duty to indemnify shall be limited to five million dollars (\$5,000,000.00), inclusive of any amounts recovered by AUTHORITY from OPERATOR's insurer. This limit as to indemnity amount does not apply to fines, penalties or assessments by federal or state regulatory or enforcement agencies.

If any term, provision or application of this Indemnification Agreement is found to be invalid, in violation of public policy or unenforceable to any extent, such finding shall not invalidate any other term or provision of this Indemnification Agreement and such other terms and provisions.

Section 9.2. Indemnification by AUTHORITY. AUTHORITY shall indemnify, defend and hold harmless OPERATOR, its officers, directors, employees, and agents, from and against any and all suits, actions, liabilities, legal proceedings, claims, demands, losses, costs and expenses, including, but not limited to, attorneys' fees and expenses, for injury to or death of persons, or loss of or damage to property arising out of the willful misconduct or sole negligence or sole omission(s) of AUTHORITY, except to the extent caused by acts or omission of OPERATOR outside the scope of this Agreement.

Section 9.3 Environmental Liability.

- (a) Operator Liability. OPERATOR shall not be responsible for claims directly or indirectly related to hazardous materials present at the Project before the date of this Agreement or hazardous materials present at the Project subsequent to the date of this Agreement not arising as a direct result of OPERATOR's failure to perform its obligations under this Agreement, except to the extent OPERATOR acted with respect to such materials in a grossly negligent manner. AUTHORITY shall defend, indemnify and hold OPERATOR harmless against such claims, except to the extent such claims arise from OPERATOR's grossly negligent or intentional acts.
- (b) Authority Liability. AUTHORITY shall not be responsible for claims directly related to hazardous materials at the Project arising out of the grossly negligent

or intentional acts of OPERATOR. This provision of the Agreement shall not be construed to require OPERATOR to take corrective action with respect to any hazardous materials at the Project before the date of this Agreement or hazardous materials present at the Project subsequent to the date of this Agreement not arising as a direct result of OPERATOR's failure to perform its obligations under this Agreement.

Section 9.4. Survival. Notwithstanding any provisions herein to the contrary, the parties agree the waivers and disclaimers of liability, indemnities, release from liability, and limitations on liability expressed in this Agreement shall survive the expiration or termination of this Agreement, and shall apply at all times (unless otherwise expressly indicated), regardless of fault, negligence, strict liability, or breach of warranty of the party indemnified, released or whose liabilities are limited, and shall extend to the members, partners, principals, officers, employees, controlling persons, executives, directors, agents, authorized representatives, and affiliates of such party. This provision shall remain in effect for three (3) years after the date of the expiration or termination of this Agreement.

ARTICLE 10

TITLE, DOCUMENTS AND DATA:

Section 10.1. Materials and Equipment. Title to all materials, equipment, tools, supplies, consumables, spare parts and other items purchased or obtained by OPERATOR on a Reimbursable cost basis hereunder shall pass immediately to and vest in AUTHORITY upon passage of title from vendor or supplier thereof, provided, however, that such transfer of title shall in no way affect OPERATOR's obligations as set forth in this Agreement.

Section 10.2. Documents. All materials and documents prepared or developed by OPERATOR, its employees, representatives or contractors in connection with the Project or performance of the Services, including all manuals, data, drawings, plans, specifications, reports, and accounts, shall become AUTHORITY's property when prepared and OPERATOR, its agents, employees, representatives, or contractors shall not use such materials and documents for any purpose other than performance of the Services, without AUTHORITY's prior written approval. All such materials and documents, together with any materials and documents furnished to OPERATOR, its agents, employees, representatives, or contractors by AUTHORITY, shall be delivered to AUTHORITY upon expiration or termination of this Agreement and before final payment is made to OPERATOR. AUTHORITY shall have access to all such materials and documents at any reasonable time upon AUTHORITY's request.

Section 10.3. Retention of Records: OPERATOR shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or

documents evidencing or relating to charges for services or expenditures and disbursements charged to the AUTHORITY for a minimum of five (5) years, or for any longer period required by law, from the date of final payment to OPERATOR under this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon not less than two (2) business days prior oral or written request of the AUTHORITY.

ARTICLE 11

RESOLUTION OF DISPUTES:

Section 11.1. Resolution through Discussion. If any dispute or difference of any kind (a "Dispute") arises between AUTHORITY and OPERATOR in connection with, or arising out of, this Agreement, the AUTHORITY and OPERATOR within thirty (30) DAYS shall attempt to settle such Dispute in the first instance through discussions. The designated representatives of AUTHORITY and OPERATOR shall promptly confer and exert their best efforts in good faith to reach a reasonable and equitable resolution of such Dispute. If the representatives are unable to resolve the Dispute within ten (10) Business Days, the Dispute shall be referred within two (2) Business Days to the responsible senior management of each party for resolution. Neither party shall seek any other means of resolving any Dispute arising in connection with this Agreement until the responsible senior management of AUTHORITY and OPERATOR have had at least ten (10) business days to resolve the Dispute following referral of the Dispute to them. If the parties are unable to resolve the Dispute using the procedure described in this section, either party may take other appropriate action in each party's sole discretion.

Section 11.2. Continued Performance. Subject to all applicable regulatory authority, all parties will utilize their best efforts to continue operations of the hydroelectric facilities during any dispute or following any mechanical malfunction of the facilities. Accordingly, in the event of such dispute or failure or malfunction of the unit, AUTHORITY and OPERATOR will utilize their commercially reasonable efforts to continue operations and no party will, unless in accordance with Prudent Operating Practice, engage in any act of self-help which prevents operation, repair or restarting of the unit. During the pendency of any dispute, OPERATOR and AUTHORITY shall continue to perform their obligations under this Agreement.

Section 11.3. Fees and Costs to Prevailing Party. In the event that either party should bring any action or proceeding in connection with this AGREEMENT it is agreed that the prevailing party in any such action or proceeding shall recover reasonable attorney's fees and costs incurred from the other, the same to be fixed by the Court and included in the prevailing party's recovery therein, or, at the option of the prevailing party, added as part of the prevailing party's costs of suit.

ARTICLE 12

MISCELLANEOUS PROVISIONS:

Section 12.1. Assignment. OPERATOR understands that this AGREEMENT is entered into by AUTHORITY in reliance on the unique expertise and experience of OPERATOR. OPERATOR shall not assign this AGREEMENT or transfer any interest herein without the express written consent of the AUTHORITY, nor shall OPERATOR permit anyone other than itself or its employees or customer to occupy or use said leased premises. AUTHORITY's consent shall not be unreasonably withheld to any proposed assignee. OPERATOR will remain responsible to carry out the terms of this AGREEMENT, unless specifically released by AUTHORITY.

Section 12.2. Access to Project.

- (a) OPERATOR agrees to access and use the Project for the sole purpose of operating and maintaining a hydroelectric facility which will not involve the use of the hydroelectric facility premises by the general public and OPERATOR shall permit no other use of the premises.
- (b) OPERATOR shall be allowed access to the hydroelectric facility premises from existing roads which are located on the Siskiyou County Flood Control and Water Conservation District's ("DISTRICT") property pursuant to an access agreement executed between DISTRICT and AUTHORITY. OPERATOR will utilize these roads in a manner so as to not unreasonably impede AUTHORITY, DISTRICT or campground operations and will promptly repair any road damage caused solely by its activities and not within the normal wear and tear arising from the scope of performance of OPERATOR's obligations under this Agreement.

Section 12.3. Force Majeure. If either AUTHORITY or OPERATOR is rendered wholly or partly unable to perform its obligations under this Agreement because of a Force Majeure Event, the party affected by such Force Majeure Event, provided that the affected party, upon learning of such Force Majeure Event and ascertaining that it will affect its performance hereunder (i) gives notice to the other party within forty-eight (48) hours, which notice shall state the nature of the Force majeure Event, its anticipated duration, and any action taken to avoid or minimize its effect and (ii) uses its reasonable commercial efforts to remedy its inability to perform. The suspension of performance shall be of no greater scope and no longer duration than that which is reasonably necessary. No obligations of either party which arose before the occurrence causing the suspension of performance and which could and should have been fully performed before such occurrence shall be excused as a result of such occurrence. The burden of proof shall be on the party asserting excuse from performance due to a Force Majeure Event.

Section 12.4. Amendments. No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by duly authorized representatives of both parties.

Section 12.5. Governing Law/Venue. This Agreement shall be interpreted and enforced according to the laws of California. Any legal action sought to enforce this Agreement shall be brought in the Superior Court of the State of California in and for the County of Siskiyou, or in the U.S. District Court, Eastern District of California.

Section 12.6. Binding Nature. This Agreement shall bind and benefit the successors and permitted assigns of each of the parties. All assignees of the Agreement will be subject and subordinate to each and every term of this Agreement.

Section 12.7. No County Obligations. This Agreement is not and shall not be deemed to create any obligation of the County of Siskiyou, California, and the County of Siskiyou, California shall under no circumstances be liable hereon.

Section 12.8. Compliance with Power Purchase Agreement. In OPERATOR's performance of this Agreement, the OPERATOR shall operate the Project consistent with any applicable terms and provisions of the Pacific Agreement, attached hereto as Exhibit A, excepting therefrom payment of penalties for the failure to deliver Base Net Metered Output (as defined in the Pacific Agreement) and Article XII obligations of the AUTHORITY thereunder, which costs shall be AUTHORITY's. Except for the costs of Minor Materials, all out of pocket costs incurred by OPERATOR in accordance with its obligations pursuant to Section 12.8 hereof shall be Reimbursable Costs, and to the extent known in advance, be included in the Annual Budget.

Section 12.9. Compliance with Fish and Game Agreement. In OPERATOR's performance of this Agreement, OPERATOR shall operate the Project consistent with all provisions of the Fish and Game Agreement, attached hereto as Exhibit B, relating to the Project and the maintenance of water quantity and quality standards, utilizing Prudent Operating Practice to meet required dissolved oxygen levels and temperatures. Except for the costs of Minor Materials, all out of pocket costs incurred by OPERATOR in accordance with its obligations pursuant to Section 12.9 hereof shall be Reimbursable Costs, and to the extent known in advance, be included in the Annual Budget.

Section 12.10. Condition of Premises and Equipment. OPERATOR agrees, throughout the term of this Agreement, to keep and maintain the premises and equipment in a safe, clean, and proper condition and state of maintenance in accordance with Prudent Operating Practice. Spare Parts, old equipment, new equipment, and Project related documents shall be stored and maintained in a proper and safe storage area.

Section 12.11. Notices. All notices and other communications (collectively "Notices") required or permitted under this Agreement shall be in writing and shall be given to each party at its address or fax number set forth below, or at such other address or fax number that a party has most recently specified in written notice to the other party. All Notices shall be (i) delivered personally or (ii) sent by fax or electronic mail, or (iii) sent by a nationally recognized overnight courier service. Notices shall be deemed to be given (A) when transmitted if sent by fax or electronic mail (provided the transmittal is confirmed) and is promptly followed by written notice delivered by first class mail or (B) upon receipt by the intended recipient if given by any other means. Notices shall be sent to the following addresses:

Operator:

Northbrook Power Management, LLC
14550 N Frank Lloyd Wright Blvd, Suite 210
Scottsdale, AZ 85260
Attn: John C. Ahlrichs, President
Tel: (480) 551-1771
Fax: (480) 551-1991
Email: cahlrichs@nbenergy.com

With copy to:

Northbrook Power Management, LLC
14550 N Frank Lloyd Wright Blvd, Suite 210
Scottsdale, AZ 85260
Attn: Christian Sinclair, Vice President
Tel: (480) 551-1228
Fax: (480) 551-1991
Email: csinclair@nbenergy.com

Authority:

Siskiyou County Power Authority
P.O. Box 1127
Yreka, CA 96097
Attn: Executive Officer
Tel: (530) 842-8250
Fax: (530) 842-8288
Email:

With copy to:

Siskiyou County Counsel
P.O. Box 659
Yreka, CA 96067
Attn: County Counsel
Tel: (530) 842-8100
Fax: (530) 842-7032
Email:

Section 12.12. Fines and Penalties. If any governmental or regulatory authority or agency assesses any fines or penalties against OPERATOR or AUTHORITY arising from OPERATOR's sole failure to operate and maintain the Project in accordance with applicable laws, such fines and penalties shall be the sole responsibility of OPERATOR and shall not be deemed a Reimbursable Cost.

Section 12.13. Waiver. In the event that either AUTHORITY or OPERATOR shall at any time or times waive any breach or default of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement whether of the same or any other condition or obligation.

Section 12.14 Entirety of the Agreement. This Agreement, constitutes the entire agreement and understanding of the parties as to the subject matter of this Agreement, and supersedes all prior agreements, statements, promises, and understandings whether oral or writing, with respect to is subject matter, which are not embodied herein.

Executed in Yreka, California, on the date and year first written above.

Northbrook Power Management, LLC

By:  _____

Name and Title JOHN C. AHLRICH, PRESIDENT

TAXPAYER I.D. 20-3253085

Siskiyou Power Authority

By: _____

Michael N. Kobseff, Chair, Board of Directors

ATTEST:
LAURA BYNUM
Clerk, Board of Directors

By: _____
Deputy

ACCOUNTING: For Annual Fees and Monthly Variable Fee Rate

Fund_2511__ Organization_205011__ Account_723110__

ACCOUNTING: For NTE Reimbursable Costs

Fund_2511__ Organization_205011__ Account_728000__

FY	Annual Fees:	NTE Reimbursable Costs:	Monthly Variable Fee Rate:
20/21	\$ 90,000.00	\$ 100,000.00	\$ 0.01
21/22	\$ 180,000.00	\$ 100,000.00	\$ 0.01
22/23	\$ 180,000.00	\$ 100,000.00	\$ 0.01
23/24	\$ 180,000.00	\$ 100,000.00	\$ 0.01
24/25	\$ 180,000.00	\$ 100,000.00	\$ 0.01
25/26	\$ 90,000.00	\$ 100,000.00	\$ 0.01

APPROVED AS TO INSURANCE REQUIREMENTS

By: _____

Risk Management, Melissa Cummins