

**FIRST AMENDMENT TO
MEMORANDUM OF UNDERSTANDING BETWEEN SISKIYOU COUNTY,
CALIFORNIA AND THE KLAMATH RIVER RENEWAL CORPORATION**

THIS FIRST AMENDMENT is to that Memorandum of Understanding ("MOU") executed on May 19, 2021, between the County of Siskiyou ("County") and Klamath River Renewal Corporation ("KRRC") to address the impacts on County roads and bridges and associated rights of ways, including impacts related to wear-and-tear and traffic, from KRRC's implementation of the **Definite Plan** (as that term is defined in the MOU) to remove four hydroelectric developments on the Klamath River.

WHEREAS, the parties have agreed to undertake the **Preemptive Roadway Work** set forth in Table 1 of Exhibit A to the MOU; and,

WHEREAS, the parties desire to restructure when the parties will undertake the roadway work in Table 1 of Exhibit A to the MOU; and

WHEREAS, the parties have agreed that, following KRRC's completion of dam removal and associated equipment demobilization, KRRC shall have certain supplemental mitigation responsibilities and obligations for repair of significant damage (materially in excess of wear and tear expected as a result of the heavy hauling) to the **Designated Roads** (as that term is defined in the MOU); and,

WHEREAS, the parties agree that an amendment to Exhibit A of the MOU is needed to address the potential for **Project** work (as that term is defined in the MOU) to cause road failure on **Designated Roads** *prior to* KRRC's completion of dam removal and associated equipment demobilization; and,

WHEREAS, such road failure could block access to the Lower Klamath Project site and residential homes, resulting in both a significant delay for the **Project** and a serious public safety issue for Siskiyou County's residents.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS.

Section 3 of Exhibit A of the Memorandum of Understanding, is amended to read as follows:

Section 3. Road Maintenance Responsibility/Implementation.

Prior to commencement of Project work involving heavy loading, which will be prior to reservoir drawdown, KRRC Contractor will undertake repairs to Copco Road.

Quantities, locations, and costs for KRRC Contractor Roadway Work are specified in the Roadway Repair Plan (Table 1) (KRRC Contractor Roadway Work). The County will approve the locations and the completion of KRRC Contractor Roadway Work pursuant to standards specified in Section 7 of this Exhibit A. KRRC Contractor will be responsible for complying with all applicable state and federal laws, including prevailing wage.

The County will undertake repairs to Copco Road, Ager Road, and Ager-Beswick Road (Siskiyou County Roadway Work). Quantities, costs, and locations for Siskiyou County Roadway Work are specified in Table 1. KRRC shall deposit Eight Hundred Ten Thousand Dollars (\$810,000.00) in a trust account by May 1, 2022. The County may not draw on such funds until July 1, 2022, or the KRRC's acceptance of the Final Order, whichever is later. The County shall draw on that account based on actual expenditure for Siskiyou County Roadway Work. Such work will be completed, and the trust account will terminate, not more than one year following KRRC Contractor's completion of the Project work involving heavy loading related to dam removal. The terms and conditions for deposits, withdrawals, reporting and accounting, and termination of the account, shall be specified in an implementation agreement between KRRC and the County.

Following dam removal and equipment demobilization by KRRC Contractor, post-removal road repairs will commence that are the responsibility of both KRRC and the County. These repairs include, but pursuant to Section 6 (Repair of Significant Damage), may not be limited to, road preparation work, digouts, handpatches and application of asphalt overlay (Table 1). The Parties recognize actual costs for the Asphalt Overlay may differ from estimated costs and agree that in such event KRRC Contractor will fulfill its obligation with overlay mileage based on the budget stated in Table 1 (row 2), although KRRC Contractor will also be responsible to repair damage caused by the Project as specified in Section 6.

The KRRC Contractor Roadway Work and the Siskiyou County Roadway Work are collectively referred to hereinafter as the "Roadway Work." The Parties shall fully cooperate with each other and other contractors to schedule and coordinate the Roadway Work so as to avoid any delay or hindrance of any Project work, and to assure orderly and expeditious performance and completion of all work as a whole.

Table 1. Roadway Work

| | Roadway | Roadway Work Description | Timing | Costs | |
|------------------------------------|-------------------|---|------------------|-----------------|-----------------|
| | | | | Siskiyou County | KRRC Contractor |
| 1 | Copco Road | Single Chip Seal: (~\$30,000 per mile x 3 miles) | Post Dam Removal | \$100,000 | |
| 2 | Copco Road | Prep Road/Digout/ Hand Patch: Crew/Equipment/Material over multiple weeks to repair damaged sections of road. | Maintenance | | \$200,000 |
| | | 125' Asphalt Overlay: 22' wide x .125' thick, mileage based on available budget | Post Dam Removal | | \$1,575,000 |
| 3 | Copco Road | Prep Road/Digout/Hand Patch: Crew/Equipment/ Materials for several weeks to repair damaged sections of road. | Maintenance | | \$425,000 |
| | | Single Chip Seal: (~\$40,000 per mile x 9 miles) | Post-Dam Removal | \$360,000 | |
| 4 | Ager Road | Grader Blankets: (200 Tons, ~ 2 weeks) | Maintenance | \$50,000 | |
| 5 | Ager Beswick Road | Crack Seal / Prep | Post-Dam Removal | \$60,000 | |
| | | Single Chip Seal: (~\$30,000 per mile x 8 miles) | Post-Dam Removal | \$240,000 | |
| Subtotals: | | | | \$810,000 | \$2,200,000 |
| Total Cost of Roadway Work: | | | | \$3,010,000 | |

Following the completion of the post-dam removal roadway work, and any additional work deemed necessary through a Supplemental Mitigation Plan, as specified in Section 6, the County shall be responsible for maintenance of these roads in a good and serviceable condition consistent with applicable maintenance standards. Such maintenance will be subject to the availability of funding for such repairs (which funding is anticipated to be appropriated by the County Board of Supervisors at levels roughly consistent with historical funding for repair of the relevant roads), and by such methods as determined by the County.

The County shall continue to plow snow on Copco Road at the County's expense at the current level of service, which is as follows: Primary Plow Route (Standard Initial plow route) – Hornbrook to Fish Hatchery. Secondary Route (Plowed when time allows)

– Fish Hatchery to Power Plant/City Water Source (below Fall Creek), a request to plow an additional two-mile section may be made by KRRC Contractor and will be plowed as soon as time and resources allow.

The County shall monitor and approve the work completed by KRRC Contractor or its sub-contractors for acceptance, which such approval shall not be unreasonably delayed, conditioned or denied. Any costs incurred by the County in monitoring or approving the work ("Monitoring and Approval Costs") shall be reimbursed by KRRC in accordance with Section 9 of this Exhibit A.

Section 6 of Exhibit A of the Memorandum of Understanding ("MOU"), is amended to read as follows:

Section 6. Existing Conditions Verification - Process for Pre/Post Construction Surveys to Document Road Condition; Repair of Significant Damage.

Prior to the commencement of Project work involving heavy loading, KRRC Contractor will document existing condition of the Designated Roads using a video survey and associated plan markup documentation. This survey and documentation will serve as the base roadway condition of the Designated Roads.

If, prior to the completion of dam removal and associated equipment demobilization, the Parties agree that the Project work has caused significant damage (materially in excess of wear and tear expected as a result of the heavy hauling) to the Designated Roads making the roads unsafe for public use, then KRRC Contractor shall promptly propose a repair plan to repair the Project-caused damage to the Designated Roads (Road Failure Mitigation Plan). Subject to County acceptance, KRRC Contractor shall undertake repair per the plan, at no cost to the County.

Following completion of dam removal and associated equipment demobilization by KRRC Contractor, and after completion of the Roadway Work in Table 1, KRRC Contractor shall again video survey the condition of the Designated Roads. If, based on such video survey, the Parties agree that the Project work has not resulted in remaining injury to the Designated Roads, then neither KRRC nor KRRC's Contractor shall have any further obligation or responsibility arising under this MOU for any repair to or

maintenance of the Designated Roads. If, based on such video survey, the Parties agree that any injury to any portion of the Designated Roads remains as a result of the Project work, including any and all injury to the Designated Roads which would not have occurred had such work not been done, then KRRC shall propose a plan (Supplemental Mitigation Plan) to repair and make good such damage to the Designated Roads, subject to the County's acceptance, and will repair such damage to the Designated Roads at no cost to the County. The County may require KRRC to provide a performance bond as a surety for performance of a Road Failure Mitigation Plan and/or Supplemental Mitigation Plan if such a bond is determined by the County to be reasonably necessary in view of the scope and extent of the work to be performed.

In the event that the Parties are unable to agree upon (a) whether Project work has caused significant damage to the Designated Roads (materially in excess of wear and tear expected as a result of heavy hauling), or (b) the terms and conditions of a Supplemental Mitigation Plan, then in such event, either Party may, by written notice to the other Party, declare such matter to be a dispute (Dispute) to be resolved in accordance with this Section 6 of this Exhibit A. Within thirty (30) days of the date of such notice, the Parties shall make senior management officials available to commence negotiations to resolve the Dispute. The Parties shall undertake commercially reasonable efforts to resolve their differences, giving due regard to all pertinent facts and relevant circumstances. The Parties may elect, by mutual agreement, to submit the Dispute to mediation, to be conducted by a mutually agreeable mediator. The County Board of Supervisors and KRRC will promptly and in good faith consider and decide any proposed resolution.

Any Disputes under this MOU, including disputes as to whether Project work has caused significant damages to the Designated Roads (materially in excess of wear and tear expected as a result of the heavy hauling), shall be raised not later than 90 days after KRRC Contractor has completed Project work involving heavy loading related to dam removal. Pending resolution of a Dispute, the Parties shall continue to fulfill their respective duties under the MOU. If the Parties are unable to resolve the Dispute within sixty (60) days of the date of commencement of good faith negotiations, then either Party

may terminate the negotiations by written notice to the other Party and may thereafter pursue any remedy as may be available to such Party under applicable law.

This amended Section 3 and amended Section 6 take effect when this Amendment is counter-signed. All other terms and conditions of the MOU are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the 20th day of May 2023.

KLAMATH RIVER RENEWAL CORPORATION:

By: Mark Benson May 9, 2023
Date

Its: Chief Executive Officer

COUNTY OF SISKIYOU

DocuSigned by:
By: Angela Davis 5/20/2023
Angela Davis Date
County Administrator
County of Siskiyou

APPROVED AS TO LEGAL FORM:

DocuSigned by:
Natalie Reed 5/19/2023
Natalie Reed Date
County Counsel

APPROVED AS TO ACCOUNTING FORM:

| | | |
|------|--------|---------|
| Fund | Org | Account |
| 2103 | 301010 | 551610 |

DocuSigned by:
Diane L. Olson 5/19/2023
Diane L. Olson Date
Auditor/Controller

APPROVED AS TO INSURANCE REQUIREMENTS:

DocuSigned by:
Melissa Cummins 5/20/2023
Melissa Cummins Date
Melissa Cummins, Risk Man.