



Staff Report

TO: Board of Directors

FROM: Keane Sommers, P.E., Hydroelectric Manager

DATE: September 8, 2021

SUBJECT: South Sutter Water District – Hydroelectric Support

HYDROELECTRIC

RECOMMENDATION:

Approve a contract with South Sutter Water District for services associated with the Camp Far West Hydroelectric Project, and authorize the General Manager to execute the necessary documents.

BACKGROUND:

In 1981 South Sutter Water District (SSWD) signed an agreement with Sacramento Municipal Utility District (SMUD) for the construction of a 6.8 Megawatt power plant at Camp Far West Reservoir. Power production started in the spring of 1985. Since that time, SMUD has provided administrative support, operations, and maintenance of the powerhouse. The SSWD/SMUD contract is coming to an end, and SSWD is looking for options for long-term support with plant operations and maintenance.

As a part of their due diligence, SSWD reached out to Nevada Irrigation District (NID or District) for advice on potential options. During those discussions, the concept of NID operating and potentially providing maintenance and administrative services was developed.

This item was discussed at the December 1, 2020, and January 5, 2021, Administrative Practices Committee (APC) meetings and the February 24, 2021, and March 24, 2021 Board of Directors meetings. On March 24, 2021 the Board of Directors provided direction to staff on the terms for the contract. Key points were summarized in a Term Sheet and presented to SSWD for consideration. SSWD accepted the terms of the contract as presented in the Term Sheet.

Following SSWD's acceptance of the Term Sheet NID legal counsel prepared a draft Agreement for Services for consideration by SSWD. Comments that SSWD provided were generally editorial in nature and did not change key terms of the agreement. All SSWD comments were addressed in the final document, and the SSWD Board of Directors approved the Agreement on June 24, 2021.

BUDGETARY IMPACT:

Under the terms of the Agreement SSWD will pay NID the following:

- A one-time fee of \$27,906 within 90 days of the effective date of this agreement to pay for the costs associated with the transaction
- A fixed monthly fee of \$2,733 to cover the cost of standby, invoicing, training, overhead, and knowledge
- An hourly rate that provides a reserve contribution that is 10% above the sum of the salary, benefits, district overhead, and reserve contribution realized by a Hydroelectric Department employee

Assuming approximately 32 total staff hours monthly, which is consistent with NID and SSWD expectations, the expected annual revenue from this contract is approximately \$85,000.

KSS

Attachment: (1)

- Agreement for Services

AGREEMENT FOR SERVICES

This Agreement for Services (“Agreement”) is made and entered into as of this ____ day of _____, 2021 (“Effective Date”), by and NEVADA IRRIGATION DISTRICT, a California Irrigation District formed and existing under the California Water Code (hereinafter “NID” or “OPERATOR”) and SOUTH SUTTER WATER DISTRICT, a California Water District formed and existing under the California Water Code (hereinafter “OWNER” or “SSWD”). (OPERATOR and OWNER are sometimes herein referred to individually as a “Party” and jointly as the “Parties”).

RECITALS

A. OWNER owns the Camp Far West Hydroelectric project, consisting of a 9,000 horsepower turbine and one 6,800 kW generator and related facilities located on the Camp Far West Dam in Nevada, Placer, and Yuba Counties, with certain related facilities and appurtenances (the “Project”).

B. OWNER operates the Project subject to the restrictions and requirements set forth in License No. 2997 dated July 2, 1981 (the “License”) issued by the Federal Energy Regulatory Commission (“FERC”).

C. OPERATOR owns and operates FERC regulated hydroelectric facilities located on the Yuba and Bear Rivers. OPERATOR’s facilities are operated and maintained by its hydroelectric staff members, who possess the unique skills, abilities, and experience necessary to perform such tasks. OWNER desires to retain OPERATOR, and OPERATOR desires to be retained, to assist with the operation and maintenances of the Project, according to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein, the Parties hereto agree as follows:

1. PROVISION OF SERVICES, STANDARDS OF PERFORMANCE, AND NATURE OF RELATIONSHIP.

1.1 OPERATOR to Perform Services for Compensation. OPERATOR shall, subject to the provisions of this Agreement, perform those Services for and related to the Project, as set forth in Section 3 below. OWNER shall compensate OPERATOR for providing the Services set forth herein, and otherwise comply with the terms of this Agreement.

1.2 OPERATOR Status. To the fullest extent permitted by law, OPERATOR shall be an independent contractor hereunder and neither OPERATOR nor anyone acting on its behalf shall be deemed an agent, employee, joint employee or servant of OWNER. Neither OWNER nor OPERATOR shall have any right to act on behalf of or bind the other Party for any purpose whatsoever. OPERATOR shall be free at all times to arrange the time and manner of performance of the Services subject to the terms of this Agreement. As an independent contractor, the mode, manner, method and means used by OPERATOR in the performance of Services shall be of OPERATOR's selection and under the sole control and direction of OPERATOR.

1.3 No Employee Benefits. Even if OPERATOR or any of its agents, employees or subcontractors are determined or adjudged to be a common or statutory law employee of OWNER; OPERATOR, on behalf of OPERATOR and OPERATOR's agents, employees, and subcontractors, acknowledges and agrees to the following: (i) no one performing Services under this Agreement shall receive, nor shall he or she be eligible to receive, any employee benefits of any kind (whether or not such benefits are subject to the Employee Retirement Income Security Act of 1974); (ii) OPERATOR declines all offers of employee benefits of any kind; and (iii) OPERATOR, to the full extent permitted by law, waives any and all rights, if any, to employee benefits of any kind. The employee benefits to which this acknowledgment, declination and waiver apply include, but are not limited to, the following benefits which may currently, or hereafter, be offered by OWNER or any of its affiliates under any agreement, plan, program, arrangement, or otherwise: health, sickness, accident, dental, life, disability and accidental death and dismemberment coverage, whether insured or self-insured, disability, severance, vacation and other paid time off, child care, tuition benefits, expenses, profit sharing, cafeteria plans, pension, 401(k), all other types of retirement plans or programs, and incentive or bonus compensation plans or programs.

1.4 Taxes. OPERATOR and OWNER are both public agencies of the State of California. To the extent this Agreement implicates tax laws (local, state, or federal), the Parties

agree OPERATOR shall be treated as an independent contractor and (to the extent necessary) shall file tax forms consistent with that status. Without limiting the generality of the foregoing, OWNER shall not withhold any taxes or prepare W-2 forms for OPERATOR, but shall provide OPERATOR with a Form 1099, if required by law.

2. PROJECT DOCUMENTS AND MANUALS.

OWNER shall furnish or otherwise make available to OPERATOR all manuals, operating instructions, maintenance logs, and manufacturers' literature relevant to the Project. (Collectively, the "Project Operational Documents"). OWNER shall notify OPERATOR in writing of any amendment to any Project Operational Document.

3. SCOPE OF SERVICES AND STANDARD OF PERFORMANCE.

The Services to be provided by the OPERATOR shall be limited to those expressly set forth below. It is contemplated by this Agreement, and understood by the Parties that OPERATOR shall provide the services on a limited basis, and that OWNER shall be required to provide additional services related to the Project. OPERATOR'S obligations shall be:

3.1. OPERATOR to Provide Personnel.

In providing the Services during the Term of this Agreement, OPERATOR shall maintain staff and utilize the labor, professional, supervisory, and managerial personnel reflected on the Operator Staffing Plan and Related Rates, attached hereto and incorporated by reference as **Exhibit A**. Subject to the terms of this Agreement, OPERATOR shall retain sole authority, control and responsibility with respect to all personnel involved in providing Services and with respect to all labor matters in connection with performance of the Services. Changes to staffing may occur from time to time. OPERATOR shall coordinate with and notify OWNER in writing of any anticipated changes to the Operator Staffing Plan. The personnel of OPERATOR involved in furnishing any of the Services shall be qualified and competent to perform the work assigned to them in connection with this Agreement, and the recommendations, guidance and performance of all personnel of OPERATOR providing Services shall reflect the best professional knowledge and judgment of such personnel.

3.2. OPERATOR'S Operation and Maintenance of the Project

OPERATOR shall perform maintenance tasks at the times and frequencies described in a

written maintenance program (“Maintenance Program”). The Maintenance Program shall be developed by OWNER in consultation with OPERATOR, and shall be completed within six months of the effective date of this Agreement. Delivery of the Maintenance Program shall be a condition precedent to OPERATOR’s maintenance services under this Paragraph. Notwithstanding OPERATOR’S consultation in its development, the Maintenance Program shall constitute the independent judgment and discretion of OPERATOR, and shall not be subject to any express or implied warranty or guaranty of OPERATOR.. OPERATOR will coordinate and agree with OWNER to schedule preventive maintenance shutdowns and OPERATOR will obtain OWNER’S approval prior to revising scheduled outages. It is understood that OWNER must provide additional services for the operation and maintenance of the Project to supplement those provided by OPERATOR pursuant to the Maintenance Program. All operation and maintenance performed by OPERATOR shall be completed in accordance with Prudent Operating Practices and any applicable Project Operating Documents.

3.3. Weekly Inspection.

OPERATOR shall conduct an in-person inspection of the Project approximately every seven days. An on-call employee of OPERATOR shall be available to receive, and respond to after-hours callouts.

3.4. Maintenance of Operating Records and Project Operational Documents.

OPERATOR shall maintain operating logs, records and reports documenting the operation and maintenance of the Project for those Services provided by OPERATOR. It is understood that Project Operational Documents and OWNER’S requirements will likely require documentation of Project operations and services performed by entities other than OPERATOR. OWNER, shall be responsible for the operation records for services performed by any entity other than OPERATOR. Copies of any or all documents that are prepared, revised, or updated and relating to the Project shall be provided to OWNER upon reasonable notice.

3.5. Reporting.

OPERATOR shall fully cooperate with OWNER and provide the OWNER with such data and other information related to the Services provided by OPERATOR pursuant to this Agreement necessary to enable OWNER to comply with any reporting requirements set forth in any Project Operational Document, including information regarding operating logs, meter and gauge

readings, maintenance records, fuel usage, and power generation requirements. It is understood that the Reports provided by OPERATOR will relate solely to the Services performed or provided by OPERATOR, and will not be comprehensive.

OPERATOR shall provide to OWNER draft versions of any and all reports which are intended to be provided to any other party for any reason, including license and permit compliance in sufficient time for OWNER's review and acceptance prior to submission. OWNER at its sole discretion shall determine if OPERATOR or OWNER will submit each report. OPERATOR shall provide to OWNER all supporting or referenced data and other information upon which such reports rely.

3.6. Government Relations.

OPERATOR will coordinate with OWNER any material interaction with regulatory agencies, including the Federal Energy Regulatory Commission (FERC), and other departments, political subdivisions, agencies, commissions, and other governmental instrumentalities with jurisdiction over the Project or any aspect thereof. OPERATOR will promptly communicate to OWNER all requests made to OPERATOR by any such governmental authority but shall have no authority to undertake activities at the Project requested by such authority unless: (a) OWNER provides approval; or (b) emergency conditions necessitate the immediate performance of such activities, provided that OPERATOR shall as soon as reasonably practicable notify OWNER of all communications and related circumstances.

The OWNER shall be responsible for signing and sending all reports and correspondence to FERC and other regulatory agencies; however the OPERATOR shall provide the OWNER with all information requested by the OWNER as needed to prepare such reports and correspondence.

3.7. Procurement.

Subject to the limited scope of Services provided under this Agreement, OPERATOR will work with OWNER to procure at OWNER's cost, materials, tools, spareparts, consumables, supplies, equipment and other items required to operate and maintain the Project. OPERATOR shall utilize OWNER's purchase order approval system when appropriate and provide copies of receipts for all such items with OPERATOR's monthly invoices.

3.8. Administration of Other Contractors.

At times, performance of certain maintenance or procurement of equipment will require contractors to be retained to assist or perform tasks within the scope of Services. OPERATOR shall be authorized, but not required, to directly contract with subcontractors for work within the scope of Service. If OPERATOR engages subcontractors to facilitate the performance of Services, OWNER shall reimburse OPERATOR for all costs incurred, plus a markup not to exceed five percent of total contract cost. OPERATOR shall also be authorized to recommend that OWNER engage designated contractors, in which case, OWNER and the subcontractor shall have the primary contractual relationship for the performance of the work, which work shall be supervised by OPERATOR.

3.9. Operations Review.

OPERATOR will conduct operations review meetings with OWNER monthly, or more frequently as determined by OWNER. On such review meetings, the Parties shall review and evaluate Project safety, Project performance, efficiency, budgetary performance, regulatory and environmental compliance, and other subjects and issues as either may identify.

3.10. Compliance.

OPERATOR shall comply with all applicable statutes, acts, ordinance, regulations, codes, standards, rules and administrative interpretations thereof, of federal, state and local governmental authorities having regulatory jurisdiction over the Project or OPERATOR's performance of services provided for this in Agreement.

OPERATOR shall not be responsible for any non-compliances or violations unless caused by OPERATOR's misconduct or grossly negligent action or inaction(s) pursuant to the terms of this Agreement. In no event shall OPERATOR be responsible for any noncompliance or violations if such were the results of direct instructions or demands of OWNER; or for OWNER's failure to notify OPERATOR of the applicability of the compliance obligation at issue.

3.11. Environmental, Health and Safety Matters.

OPERATOR will provide information as reasonably requested by OWNER on environmental, health, safety matters including but not limited to incident investigations, and near miss (injury free event) investigations, lessons learned, and other information related to OWNER initiatives and programs. Consistent with the entire scope of the Services to be provided during the Term of this Agreement, OPERATOR shall provide such other assistance, services and work

reasonably requested by the OWNER in connection with the operation and maintenance of the Project. Such assistance may include participation in trainings as directed by OWNER. OPERATOR shall comply with all federal, state and local guidance, orders, rules and regulations in effect from time to time related to health and safety matters including those related to COVID-19 matters.

3.12. Emergencies.

If an unexpected event or series of events occur(s) that create(s) a situation which poses anyone or more of an immediate and serious risk of death or significant personal injury to any Persons, damage to property of significant value, including the property of the OWNER, or significant damage to the environment, and OPERATOR has actual knowledge of the event or series of events, OPERATOR may, but shall not be required to, immediately respond and take all action that it is reasonably capable of performing to eliminate or reduce the risk of harm associated with that emergency situation to the extent practicable under the circumstances. OPERATOR shall provide OWNER with notice of the emergency situation as soon as reasonably practicable, and prior to initiating any action if possible. OPERATOR's actions or failure to act in an emergency situation shall be subject to the provisions of Section 9, including provisions relating to limits of liability.

3.14 Collection and Reporting of Safety Information.

OPERATOR shall collect and report safety information for its employees as required by governmental agencies and will provide copies of such data and reports to OWNER when requested by OWNER. OPERATOR shall also collect and report safety information required by OWNER.

3.15. Standard of Performance.

OPERATOR warrants that the Services will be performed in a commercially reasonable manner consistent with the level of care and skill exercised by others when performing services of a similar nature under similar circumstances. Without limiting the generality of the foregoing, Services shall be performed: (a) efficiently, safely, and in compliance with all applicable regulatory requirements and applicable laws; (b) in accordance with all operating, maintenance and administrative manuals and procedures in existence regarding the Project; (d) in accordance

with the requirements of all insurance policies relating to the Project; (c) in accordance with all warranties applicable to the Project and its equipment; and (d) in accordance with the provisions of this Agreement.

4. OPERATOR'S OWN OBLIGATIONS; EXCLUDED SERVICES.

4.1 Services Shall Not Include Scheduling, Dispatch, or Delivery of Electrical Energy.

OWNER shall be solely responsible for the scheduling, dispatch, and delivery of electrical energy from the Project to any off taker/power purchaser and for all interactions between the Project and CAISO controlled electricity grid. OPERATOR will coordinate with any designated and Scheduling Coordinator as directed by OWNER.

4.2 Control Room/Real Time Operations.

While the scope of Services contemplates OPERATOR being available for call-outs, emergencies, and unplanned events or maintenance needs, the OPERATOR shall have no obligation or responsibility to furnish personnel for real-time monitoring, on a 24-hours a day, 7-days a week basis. OWNER shall be separately responsible for arranging for 24-hour, real time monitoring for the Project.

4.3 Precedence of OPERATOR'S Obligations to Operate and Maintain its Own Facilities.

OWNER acknowledges that OPERATOR has an obligation to repair and service its own facilities in order to perform its duties as a California Irrigation District. Such obligations take precedence over any obligations undertaken in this Agreement. In the event that, after consultation with OWNER, OPERATOR reasonably determines it requires any personnel or resources previously committed or which would need to be committed to the performance of Services for OWNER under the terms of this Agreement in order to maintain adequate service to its own customers or system, then OPERATOR shall have the right to divert the use of such personnel or resources to satisfy such requirements.

5. OWNER RESPONSIBILITY DURING THE TERM.

In addition to its obligations to pay OPERATOR pursuant to the terms of this Agreement, OWNER shall remain fully responsible for all costs and expenses associated with the Project,

including without limitation, any applicable property taxes and assessments, FERC fees, State Water Resources Control Board fees, audit fees, property insurance premiums, and other costs and expenses associated with, or arising from, the ownership of the Project.

5.1 OWNER to Provide all Services Not Expressly Undertaken by OPERATOR.

OWNER shall be solely responsible for the overall operation and maintenance of the Project. OWNER understands that OPERATOR is providing the Services on a part-time basis, and pursuant to a Maintenance Program developed by OWNER, and that OWNER will be obligated to supplement the Services provided by the OPERATOR with additional services.

5.2 Access to Site.

OWNER shall grant or cause to be granted to OPERATOR and its employees, authorized independent contractors and authorized representatives, the full use and utilization of all necessary easements, rights-of-ways, licenses and other access rights to all real property improvements and personal property that comprise the Project for the purpose of performing the Services under this Agreement.

5.3 Reports.

OWNER shall provide reasonable and sufficient time in requesting any and all data or other information from OPERATOR for purposes of any required filings.

5.4 Project Permits.

OWNER shall, at its own cost and expense, and in a timely manner, procure, maintain and/or renew all permits and authorizations necessary to operate the Project.

6. COMPENSATION AND PAYMENTS TO OPERATOR.

6.1 Initial Base Fee.

OWNER shall pay OPERATOR an Initial Base Fee in the amount of Twenty-Seven Thousand Nine Hundred Six Dollars (\$27,906.00) upon invoice by OPERATOR, not later than ninety (90) days from the Effective Date of this Agreement.

6.2 Fixed Monthly Fee.

The Fixed Monthly Fee shall be Two Thousand Seven Hundred Thirty-Three Dollars per

month (\$2,733.00). The Fixed Monthly Fee may be adjusted annually as described in this section. The Fixed Monthly Fee does not include charges for personnel or reimbursable expenses as outlined below. The Fixed Monthly Fee shall be payable within thirty (30) days of receipt of an invoice for such charges.

6.3. Personnel Fee.

OWNER shall pay OPERATOR on a monthly basis in arrears for actual time spent in the performance of Services by OPERATOR's employees identified in **Exhibit A** at the hourly rates defined in the attached **Exhibit A**. The Parties shall annually re-evaluate every January the hourly rates defined in the attached **Exhibit A**.

6.4. Equipment Fee.

OWNER shall pay OPERATOR on a monthly basis in arrears for the costs of equipment utilized by OPERATOR in the performance of the Services in accordance with the rates identified in **Exhibit B** hereto.

6.5. Reimbursable Expenses.

OPERATOR will work with OWNER and utilize OWNER's purchase order and approval system as directed by OPERATOR to submit expenses over Seven Hundred Fifty Dollars (\$750.00) for approval and direct payment by OWNER. For expenses under Seven Hundred Fifty Dollars (\$750.00), OWNER shall reimburse OPERATOR on a monthly basis in arrears for all costs, expenses, repairs, tools, or equipment associated with the Services (other than OWNER'S personnel) provided for under this Agreement. Reimbursable expenses in excess of an aggregate of Seven Hundred Fifty Dollars (\$750.00) per month shall require the prior written approval of the OWNER. Unless OWNER directly pays Subcontractors, OWNER shall reimburse OPERATOR for all agreed upon costs and expenses paid by OPERATOR to any Subcontractors in performing the Services provided for under this Agreement, plus any markup permitted by this Agreement.

6.6. Billing and Payment.

OPERATOR shall prepare and submit to OWNER an invoice for the amount due OPERATOR for each calendar month, within fifteen (15) days following the end of that calendar month. OWNER shall pay the undisputed portion of invoices within thirty (30) days after receipt.

6.6.1 Billing Disputes.

If a Party disputes an amount owed or paid as provided in this Agreement, the disputing Party shall immediately notify the other Party of the basis for the dispute and the obligated Party shall pay the undisputed portion of such Invoice no later than the due date. Upon resolution of the dispute, any required payment shall be made within seven (7) Business Days of such resolution along with the interest accrued, from and including the due date through and including the date such payment is actually received by OWNER.

7. INSURANCE.

OPERATOR shall maintain insurance with minimum limits as follows: (a) worker's compensation coverage as required by law, and employer's liability insurance with a limit of \$1,000,000; and (b) commercial general liability insurance, or similar risk-pool arrangement, with a limit of \$2,000,000 per occurrence and \$2,000,000 in the aggregate; and (c) business automobile insurance with a limit of \$1,000,000. Insurance, or similar risk-pooling arrangement, is to be maintained on an occurrence basis. OWNER and its affiliates shall be named as additional insured with respect to such liability policies. All OPERATOR insurance policies shall include a waiver of subrogation in favor of OWNER and its affiliates. OPERATOR shall furnish OWNER with insurance certificates evidencing that OPERATOR has complied with the foregoing insurance requirements.

OWNER shall maintain insurance with minimum limits as follows: (a) worker's compensation coverage as required by law, and employer's liability insurance with a limit of \$1,000,000; and (b) commercial general liability insurance, or similar risk-pool arrangement, with a limit of \$2,000,000 per occurrence and \$2,000,000 in the aggregate. OWNER's commercial general liability insurance shall be written on an occurrence basis and shall include coverage for losses arising out of dam failure or wildfire; and (c) business automobile insurance with a limit of \$1,000,000; and (d) property damage and business interruption insurance covering what are commonly referred to as "Special Form" and machinery breakdown perils, for the benefit of the OWNER covering the property and equipment owned by the OWNER. OPERATOR and its affiliates shall be named as additional insured on a primary and non-contributory basis with respect to commercial general liability policies. All OWNER insurance policies shall include a waiver of subrogation in favor of OPERATOR and its affiliates. OWNER shall furnish

OPERATOR with insurance certificates evidencing that OWNER has complied with the foregoing insurance requirements.

8. TERM AND TERMINATION.

8.1. Term.

The term of this Agreement shall commence on the Effective Date and shall continue for two (2) years, thereafter (the “Term”). The Agreement shall be automatically extended for successive periods of one (1) year each unless either Party notifies the other in writing not later than six months prior to the end of the initial Term or any successive one (1) year period of the party’s desire not to renew this Agreement.

8.2. Early Termination by Either Party.

Either Party may terminate this Agreement for any cause, or no cause whatsoever, upon 60 days’ notice to the other party.

9. INDEMNIFICATION AND LIMITATION OF LIABILITY.

9.1. By OWNER.

OWNER will defend, indemnify and hold harmless OPERATOR, its shareholders, members,directors, officers, employees, representatives, independent contractors, subsidiaries and affiliates, from and against all loss, cost and expense, including without limitation reasonable attorney’s fees, in connection with any claim by a third party for loss or damage to property, or death or injury to any person (including OWNER’s employees) or economic loss, to the extent arising out of, the OWNER’s or its affiliates negligence or misconduct

9.2. By OPERATOR.

OPERATOR will defend, indemnify and hold harmless OWNER, its shareholders, members,directors, officers, employees, representatives, independent contractors, subsidiaries and affiliates, from and against all loss, cost and expense, including without limitation reasonable attorney’s fees, in connection with any claim by a third party for loss or damage to property, or death or injury to any person (including OPERATOR’S employees) or economic loss, to the extent arising out of OPERATOR’s gross negligence in performing the Services in this Agreement.

9.3. Indemnification Procedure

If a claim for indemnification is to be made by a party under this Section 9 (an “Indemnified Party”) against another party (the “Indemnifying Party”), the Indemnified Party shall give written notice to the Indemnifying Party promptly after the Indemnified Party becomes aware of any fact, condition, or event which gives rise to a Claim for which indemnification may be sought under this Section 9 (provided that failure to notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability it may have to the Indemnified Party, except to the extent that the Indemnifying Party has been prejudiced by such failure). Each Indemnified Party shall use commercially reasonable efforts to mitigate Damages for which it seeks indemnification under this Section 9. If any lawsuit, enforcement action, demand or claim is brought or made by any other Person (a “Third Party Claim”) against an Indemnified Party involving a matter for which the Indemnified Party is entitled to indemnification pursuant to Section 9, written notice thereof shall be given promptly to the Indemnifying Party (provided that failure to notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability it may have to the Indemnified Party, except to the extent that the Indemnifying Party has been prejudiced by such failure). After such notice is given, the Indemnifying Party shall be entitled, if it so elects, to take control of the defense and investigation of such Third Party Claim and to employ and engage attorneys of its own choice reasonably acceptable to the Indemnified Party to handle and defend the same, at the Indemnifying Party’s cost, risk and expense, provided that any such exercise of the Indemnifying Party’s rights to take control of the defense and investigation of any Third Party Claim shall not be deemed a waiver of the Indemnifying Party’s right to determine at a later date that such Third Party Claim is not entitled to indemnification under this Agreement, in which case Indemnifying Party may, in the exercise of its sole discretion, determine not to continue to defend any such Third Party Claim and any action taken by the Indemnifying Party in connection with such determination shall be undertaken in a manner so as not to materially prejudice the defense or the rights of the Indemnified Party. Such decision and action by the Indemnifying Party to discontinue the defense of such Third Party Claim shall not relieve the Indemnifying Party of its obligations to indemnify the Indemnified Party from all Damages in the event the Third Party Claim is resolved in a manner which determines that the Indemnified Party was entitled to indemnification by the Indemnifying Party. The Indemnified Party shall cooperate with the Indemnifying Party so as to minimize the risk of any such prejudice. The Indemnified Party shall

cooperate in all reasonable respects with the Indemnifying Party and such attorneys in the investigation, trial and defense of such Third Party Claim and any appeal arising therefrom. The Indemnified Party nevertheless may, at its own cost, participate in the investigation, trial and defense of such Third Party Claim or any appeal arising from any such Third Party Claim.

9.4. Settlement or Compromise of Third Party Action; Failure to Assume Defense.

If the Indemnifying Party has assumed control of the defense of a Third Party Claim pursuant to Section 9, the Indemnifying Party may consent to a settlement or compromise of, or the entry of any monetary judgment arising from such Third Party Claim without the prior written consent of the Indemnified Party if, and only if, the proposed settlement, compromise or entry: (A) does not contain an admission of guilt or wrongdoing on the part of the Indemnified Party, and (B) includes a full and final release of all claims against the Indemnified Party and does not provide for any remedy or sanction against the Indemnified Party other than the payment of money which the Indemnifying Party agrees to pay and does pay . If the Indemnifying Party does not assume the defense of the Third Party Claim in accordance with Section 9 within 30 days after the receipt of notice thereof, the Indemnified Party may, at the Indemnifying Party's expense, defend the Third Party Claim, but may settle and/or compromise the Third Party Claim only with the consent of the Indemnifying Party. Any consent required under this Section 9.4 shall not be unreasonably withheld, delayed or conditioned.

9.5. Limitation of Liability

Notwithstanding any other provision of this Agreement, OPERATOR's total aggregate liability arising out of or in connection with this Agreement for all claims of any kind, whether concerning claims of third parties, or claims of OWNER, shall not exceed the amounts paid or payable by OWNER to OPERATOR for Services rendered during the twelve months preceding the event giving rise to the liability.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, SPECIAL OR CONSEQUENTIAL LOSSES OR DAMAGES SUCH AS LOST REVENUES, LOST PROFITS, DIMINUTION IN PROJECT VALUE OR ANY SIMILAR DAMAGES OR CLAIM FOR DAMAGES ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT.

9.6. No Warranty

Except as specifically set forth or referenced in this Agreement, there are no representations, warranties, or conditions of either party to this Agreement, express, implied, statutory or otherwise, regarding any matter, including any implied warranties or conditions of quality, workmanship, safety, legal compliance or fitness for a particular purpose.

10. MISCELLANEOUS.

10.1. Notices.

All notices or other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered personally, at the time confirmed for delivery if by electronic mail(email), or facsimile, or seven (7) days after mailing if delivered by certified, registered mail, postage prepaid, to the addresses set forth following the signatures of the Parties hereto or to such other addresses as either of the Parties hereto may from time to time designate to the other Party in writing.

10.2. Force Majeure.

Neither Party shall be liable for any delay or failure in its performance of any of the acts required by this Agreement when such delay or failure arises from circumstances beyond the control of such Party, such as acts of God, acts of local, state or national governments (other than the OPERATOR or any its members) or public agencies, acts of public enemies, acts of civil or military authority, labor disputes, material or component shortages, embargoes, rationing, quarantines, blockades, sabotage, utility or communication failures or delays, earthquakes, fire, flood, riots or strikes. The time for performance of any act delayed by such an event may be postponed for a period equal to the period of such delay. Either Party delayed or rendered unable to perform its obligations hereunder by reason of any such event shall give prompt written notice of such event to the other Party and shall exercise due diligence to eliminate such delay or inability with all reasonable dispatch.

10.3. Modification.

This Agreement may not be modified or amended except in writing signed by both Parties.

10.4. Venue.

The Parties agree that the exclusive venue for any legal action arising from or in any manner related to this Agreement or any event arising therefrom, shall be the Nevada County

Superior Court or, if federal jurisdiction exists and is invoked by the appropriate Party, the Sacramento Division of the United States District Court for the Eastern District of California.

10.5. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

10.6. Waiver.

Failure by either Party at any time to enforce any of the provisions of this Agreement shall not be construed as a waiver by such Party of such provisions or in any way affect the validity of this Agreement or any part thereof.

10.7. Assignment.

Neither this Agreement nor any interest herein, shall be sold, assigned, pledged, hypothecated or otherwise transferred by OPERATOR or OWNER without the prior written consent of the other Party.

10.8. Further Assurances.

Each of the Parties hereto agrees to execute and deliver such other and further instruments and documents and to perform such other acts as may be reasonably necessary or appropriate to effectuate the terms and objectives of this Agreement.

10.9. Entire Agreement.

Except where otherwise explicitly indicated, this Agreement and the exhibit hereto set forth the entire agreement between the Parties pertaining to the subject matter hereof and supersede all previous communications, outlines, drafts, agreements, term sheets, understandings and commitments between the Parties relating to the subject matter of this Agreement whether written or oral.

10.10. Due Authority.

Each of the signatories hereto represents and warrants that he has the authority to make the representations, agreements, covenants, and warranties and undertake the promises set forth in this

Agreement on behalf of the entity which the signatory purports to represent.

10.11. Counterparts.

This Agreement may be executed in two or more counterparts each of which when so executed and delivered shall be deemed an original, but all of which taken together shall constitute but one of the same agreement.

10.12. Benefit of Counsel.

Each Party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be applied in interpreting this Agreement.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the dates set forth below, effective as of the Effective Date.

OWNER:

SOUTH SUTTER WATER DISTRICT

By: _____

Its: _____

Date: _____

OPERATOR:

NEVADA IRRIGATION DISTRICT

By: _____

Its: _____

Date: _____

EXHIBIT A

OPERATOR STAFFING PLAN AND HOURLY RATES

- Operations
 - Hydroelectric Generation Superintendent – \$169.00
 - Senior Hydroelectric Plant Operator – \$140.00
 - Hydroelectric Plant Operator I/II – \$131.00
 - Hydroelectric Water Systems Operator I/II – \$108.00

- Compliance
 - Hydroelectric Compliance Administrator – \$165.00
 - Hydroelectric Compliance Technician I/II – \$111.00

- Dam Safety
 - Senior Engineer (Registered) – Dam Safety – \$171.00
 - Assistant Engineer – Associate Engineer (Registered) – \$124.00

- Maintenance
 - Hydroelectric Maintenance Superintendent – \$169.00
 - Hydroelectric Maintenance Supervisor – \$151.00
 - Senior Hydroelectric Systems Technician – \$140.00
 - Senior Hydro Electrical Machinist – \$145.00
 - Hydroelectric Maintenance Technician I/II – \$128.00
 - Hydro Electrical Machinist I/II – \$131.11
 - Hydroelectric Communication Technician I/II – \$124.00
 - Utility Worker I/II – \$101.00

- Administration
 - Hydroelectric Manager – \$185.00
 - Management Assistant – \$96.00
 - Project Manager – \$113.00
 - Overtime and Emergency Call-Out rates shall be billed at the rate above multiplied by the value indicated in the current Memorandum of Understanding for the appropriate employee
 - Mileage paid at current IRS rate
 - Rates will be escalated annually to respond to actual increased labor and benefit costs.
 - Travel time will be billed at the hourly rates above.

EXHIBIT B

EQUIPMENT LIST AND RATE SCHEDULE

- Capital equipment used during the performance of services shall be billed in full day increments at the following rates:
 - Fabrication Equipment (e.g., mill, lathe, ironworker) - \$382.00/day
 - Hydrography Equipment (e.g., flow meters, other measuring equipment) - \$70.00/day
 - Welding Equipment (e.g., TIG welder) - \$142.00/day
 - General Electrical Test Equipment (e.g., thermal imager, TTR tester, power quality analyzer) - \$119/day
 - Specialized Electrical Test Equipment (e.g., Doble High Voltage Substation Analyzer) - \$600/day
 - Remote Operated Vehicles (e.g., Deep Trekker) - \$586/day

- All equipment used during the completion of services must be used by a qualified NID employee and is not available for rent.