



REQUEST FOR PROPOSALS

Floating Solar Technology

PROPOSALS DUE: June 10, 2024

AT THE DISTRICT OFFICE
2024 N.W. Beech Street
Madras, OR 97741

Contact:

Josh Bailey
General Manager
North Unit Irrigation District
Office: 541 475-3625
Email: JBailey@NorthUnitID.Com

REQUEST FOR PROPOSALS

The North Unit Irrigation District will accept sealed proposals for Floating Solar Technology at the District office, 2024 N.W. Beech Street, Madras, OR 97741, or electronically by email at nuid@northunitid.com until 2 pm on Monday, June 10, 2024. Proposals will be opened immediately following closing, and names of proposers will be recorded and made available for public inspection. Pursuant to ORS 279B.060(6), contents of proposals received will not be made available for public inspection until after the Notice of Award has been issued. No Proposals will be received after closing.

This Request for Proposals (RFP) is issued as a permissive cooperative procurement pursuant to ORS 279B.060 and 279A.215.

BACKGROUND AND GENERAL PROJECT DESCRIPTION.

History. The North Unit Irrigation District (“NUID”) was established in 1916 to provide a reliable source of irrigation water in the Deschutes River Basin. The District currently supplies water to nearly 59,000 acres of farmland in Jefferson County. As a local government entity, NUID is governed by a locally elected board of directors. It is under contract with the U.S. Bureau of Reclamation and is a part of the Deschutes Basin Board of Control, a consortium of eight irrigation districts and municipalities that collaborate on issues facing Central Oregon and water users.

Project Summary. NUID’s Canal Floating Photovoltaics Project (“Project”) is a pilot project that seeks to study the technical and economic feasibility of using floating solar panels in canals operated and maintained by NUID to improve the Bend, Redmond, and Madras communities’ water security, offset the cost of water, and meet projected clean energy goals.

In April 2024, the District received a \$2.55 million grant from the U.S. Bureau of Reclamation to implement the Project using floating solar technologies. A separate project using hydrokinetic turbines will be implemented in the same general location of the canal. Although the two types of technology will be installed in similar areas of the canal, they are considered separate and unrelated, except that coordination between all involved parties will be critical for interconnection to the power grid.

NUID intends to use a sole-source procurement process with a renewable energy firm to provide and install hydrokinetic turbines in the same vicinity as the floating solar panels. This RFP is for the floating solar panel portion of the Project only.

Project specifications are provided in Appendix A to this RFP.

Performance Period: The Project is proposed for completion no later than February 2026. It will be evaluated over a five-year time frame and is expected to stay operational for twenty-five (25) more years, up to 2051.

General Project Location: The Project will be located in the concrete-lined section of the NUID Main Canal from the Deschutes diversion to the Pronghorn Estates golf course downstream. The canal’s wider sections are expected to be prime candidates for the deployment of floating solar

panels, with the majority of those sections located west of the Bend Wastewater plant. Maps of the project area are provided in the Scope of Work in Appendix A of this RFP.

CONDITIONS OF WORK.

Site Inspection. Before submitting a Proposal, each Proposer shall inspect the site(s) of the proposed work to arrive at a clear understanding of the conditions under which the work is to be done. NUID will host an optional site visit at 9 a.m. on Thursday, May 23, 2024, at the intersection of Hamhook Road and the NUID Main Canal (GPS coordinates 44.10560, -121.24873). Please RSVP to Josh Bailey if you plan to attend. By submitting a Proposal, the Proposer represents and warrants that the Proposer has compared the site(s) with the Proposal Documents and has satisfied him/herself as to the actual site conditions.

Working Conditions. Each Proposer must inform themselves of the conditions relating to the execution of the work and become thoroughly familiar with all contract documents. Failure to do so will not relieve the successful Proposer of their obligation to enter into a contract and to complete the contemplated work in strict accordance with the contract documents.

Awareness of Applicable Laws. Each Proposer must inform themselves about all federal, state, and local statutes and regulations relevant to the execution of the work, the employment of labor, protection of public health, access to the work, and similar requirements.

INSTRUCTIONS TO PROPOSERS.

1. **Proposal Documents.** The Proposal Documents include the Notice of Request for Proposals, the Request for Proposals (including appendices), the proposed contract or contract terms, and any addenda or clarifications issued prior to receipt of Proposals. The Proposer assumes full responsibility for errors, omissions, or misinterpretations resulting from the use of incomplete sets of Proposal Documents. Proposal Documents are provided to Proposers only for the purpose of obtaining Proposals on the work and do not confer a license or grant of any kind.
2. **Sealed Proposal.** The Proposal must be submitted in a sealed envelope marked “Floating Solar Technology Project” on the envelope or attached in pdf format to an email with “Floating Solar Technology” in the subject line. Proposals must be mailed, delivered, or emailed to Josh Bailey at the address provided on the cover page to this RFP.
3. **Residency Status.** Each Proposal must contain a certification declaring the Proposer’s residency status, as defined in ORS 279A.120. In evaluating Proposals, the District shall, in accordance with OAR 137-046-0310, add a percentage increase to the Proposal of a nonresident Proposer equal to the percentage, if any, of the preference given to the Proposer in the state in which the Proposer resides.
4. **Permissive Cooperative Procurement.** Oregon law (ORS 279A.215) allows other contracting agencies to contract with the selected contractor provided NUID follows competitive bidding requirements; and states in the solicitation that it intends to conduct a permissive cooperative procurement; the selected contractor agrees to extend the terms, conditions and prices of the original contract with NUID to the purchasing contracting agency; and no material change is

made in the terms, conditions or prices of the contract or price agreement between the contractor and the purchasing contracting agency from the terms, conditions and prices of the original contract with NUID. Because the proposed Project is a pilot project that, if successful, may be beneficial to other contracting agencies, NUID intends for this RFP to be a permissive cooperative procurement provided the selected contractor agrees to extend the terms in the original contract to other contracting agencies.

5. Compliance with Laws. In performance of the work, the successful Proposer must comply with all applicable provisions of state, federal, and local laws and regulations, including but not limited to the Oregon Public Contracting Code (ORS 279A and 279B) and NUID's rules and policies, as all are amended from time to time. Furthermore, all of the iron, steel, manufactured products, and construction materials provided for or incorporated into the Project must be produced in the United States, as required by the Build America Buy America Act (BABAA), <http://www.doi.gov/grants/BuyAmerica>.
6. Insurance. The successful Proposer shall file with the District, at the time of execution of the Contract, a certificate of insurance of not less than two million dollars (\$2 million) general liability per occurrence, one million (\$1 million) auto liability naming the District as an additional insured, and worker's compensation coverage that meets the State of Oregon requirements.
7. Proposal Security. The Proposal must be accompanied by a surety bond, irrevocable letter of credit issued by an insured institution as defined in ORS 706.008, cashier's check or certified check in the amount of ten (10) percent of the amount proposed. Proposal security will be returned to all Proposers upon execution of the contract, or, if no contract is awarded, as soon as feasible following NUID's decision to cancel the solicitation.
8. Performance and Payment Bonds. Before or at the time of executing the contract, the successful Proposer shall submit separate performance and payment bonds in the amount of one hundred percent (100%) of the total amount of the contract. Bonds must be executed only by a surety company or companies holding a certificate of authority to transact surety business in Oregon and must meet all other requirements of ORS 279C.380.
9. Form of Proposal. The following minimum requirements as to the form and manner of submitting Proposals must be strictly observed. Variance from these requirements will result in rejection of the Proposal as unresponsive.
 - a) Each Proposal must meet all requirements of this RFP.
 - b) Each separate request for information in this RFP must be addressed.
 - c) Each Proposer must sign their Proposal. Proposals made by corporations or partnerships shall contain names and addresses of the principal officers or partners and must be signed by one of the corporation's principal officers. If submitted by a partnership or limited liability company, the Proposal must be signed by one of the partners or members, clearly indicating that he/she is signing as a partner or member of the firm. If the Proposal is submitted by a joint venture, each of the joint venturers must sign the Proposal in his/her personal capacity.

d) Each Proposal must be submitted in a separate sealed envelope or, if emailed, in pdf format, at the time and place specified for Proposal opening and must be marked as specified in this RFP so as to allow identification of the Proposer without opening.

10. Modification or Withdrawal of Proposals. Proposals may be withdrawn prior to the scheduled time for the opening of the Proposals by telephone, email, written request, or in person. No Proposal may be withdrawn after the time scheduled for the opening of Proposals. Proposals may be modified only as allowed by OAR 137-047-0440.

Proposals shall contain no modifications, deletions, exceptions, reservations or conditions which in any way conflict with or purport to alter any provision contained in the Proposal Documents. Any such proposals shall be rejected pursuant to ORS 279B.100 and OAR 137-047-0650.

11. Cost of Proposals. Each Proposer is solely responsible for costs incurred in preparing and submitting their Proposal. The District will not pay for or reimburse Proposers for such costs.

QUESTIONS AND CLARIFICATIONS. Questions regarding the Project, or requests for clarification or change to this RFP, must be directed to Josh Bailey, District Manager, at (541) 475-3625 or by email at JBailey@NorthUnitID.Com, **at least five (5) days prior to the deadline for submission of proposals**. NUID will issue written notices of clarification, addenda, and proposal results to all Proposers.

PROPOSAL CONTENTS. Proposals should clearly and succinctly address the following in separately delineated sections:

1. Project Approach. Describe the proposed approach to the Project. Include a proposed timeline and significant milestones within the timeline. Clearly delineate any alternatives to the proposed approach and explain the circumstances that might justify using the alternative approach and the advantages and disadvantages of doing so.
2. Revenue-Sharing Methodology. Describe any revenue-sharing methodology proposed for the Project.
3. Prior Experience. Briefly describe at least three (3) projects performed for other persons or entities within the last five (5) years, with priority given to publicly funded projects. Include contact information for an individual who can attest to the quality of the Proposer's performance for each project listed. Include in this section the names and qualifications of each key staff member proposed for the Project. Attach resumes as an appendix to the Proposal.
4. Cost. For each alternative proposed, provide a summary that itemizes the cost of equipment, cost of installation, any associated costs and expenses, and an overall proposed cost for completion of the Project.
5. Additional Benefits. If applicable, describe any proposed value-added services, incentives, or other terms advantageous to NUID.

6. Information Relating to Preferences. Under Oregon law, NUID *must* grant preference points to “resident bidders,” and to Proposers who use recycled materials to manufacture goods being proposed. NUID *may* grant preference points for goods that are fabricated or processed, or services that are performed, entirely within Oregon if the goods or services cost no more than ten percent (10%) more than goods that do not meet this criterion. To benefit from these preferences, Proposals must certify their qualifications for any applicable preferences.
7. Build America, Buy America Certification. Because the Project will be funded by a federal grant, each Proposal must contain a statement certifying that all iron, steel, manufactured products, and construction materials proposed for the Project are or will be produced in the United States, as required by the Build America Buy America Act (BABAA). Failure to provide this certification will cause the Proposal to be disqualified as non-responsive.

PROPOSAL EVALUATION. NUID will evaluate responsive Proposals according to the following procedures:

1. Establish an Evaluation Committee to review and evaluate each responsive Proposal.
2. The Evaluation Committee may use any of the following methods to evaluate responsive Proposals and make an award determination, as circumstances indicate:
 - a) Assign an overall score to each Proposal and rank Proposals based on the assigned score;
 - b) Engage in confidential discussions with Proposers to obtain best and final offers;
 - c) Engage in serial negotiations, beginning with the highest-ranked Proposer;
 - d) Engage in competitive simultaneous negotiations with multiple Proposers;
 - e) Establish a competitive range of highest ranked Proposers and solicit additional information from those in the range, through interviews, soliciting revised Proposals, or soliciting written submissions of additional information, or a combination of these methods.
3. Responsive Proposals will be evaluated and scored using the following criteria:
 - a) Proposed approach, including alternatives (10 points)
 - b) Timeline for completion (10 points)
 - c) Experience with similar projects (10 points)
 - d) Proposed methodology for revenue sharing (10 points)
 - e) Proposed overall cost (10 points)
 - f) Quality of past performance (references) (10 points)
 - g) Preference points for resident bidders, recycled materials, or goods and services provided only in Oregon (variable)
 - h) Willingness to extend contract terms to other contracting agencies (10 points)

RIGHTS RESERVED. NUID reserves the following rights relating to this RFP:

- To waive minor informalities and errors in submitted Proposals.
- Before or during the evaluation process, to seek clarification from individual Proposers on the content of their Proposal.
- To reject any Proposal not in compliance with this RFP or with prescribed public contracting procedures and requirements.
- To reject all Proposals and cancel this solicitation upon a finding by NUID that it is in the public interest to do so.

BASIS FOR CONTRACT AWARD. If a contract is awarded, NUID will award the contract to the responsive, responsible Proposer whose Proposal is most advantageous to NUID based on the evaluation process and evaluation factors described in this RFP, applicable preferences described in ORS 279A.120 and 279A.125 and, when applicable, the outcome of any negotiations. A responsive Proposer means a Proposer whose Proposal conforms, in all material respects, to the Proposal documents. A responsible Proposer means a Proposer who has the capability, in all respects, to fully perform the Contract, and the integrity and reliability to ensure successful completion of the project. Responsibility will be determined in accordance with the standards set forth in ORS 279B.110 and OAR 137-047-0640(1)(c)(F).

PERMITS AND LICENSES. Before commencing work, the selected Contractor must have or obtain any and all permits and licenses required under federal, state, or local law, except that as the Transferred Works Operator for the NUID Main Canal, NUID anticipates that it will secure the required authorizations from the U.S. Bureau of Reclamation, if any, before the selected Contractor commences work.

ADDENDA. Changes to the Proposal Documents, whether in response to requests for clarification or change or a solicitation protest, or to issue supplemental instructions, may only be made by written addendum. All addenda, with the exception of addenda cancelling the solicitation or extending the proposal period, will be issued no less than twenty-four (24) hours prior to the deadline for submission of Proposals. All addenda so issued shall become part of the Proposal Documents. No other oral or written statements to Proposers shall be binding on the District unless reduced to written addendum.

PROTESTS.

1. Solicitation Protest. A Proposer may submit a protest of the RFP specifications or contract terms no later than seven (7) days before the deadline for submission of Proposals. Solicitation protests must be submitted in writing and comply with the requirements of OAR 137-047-0730.
2. Protest of Contract Award. A Proposer may submit a written protest of the Notice of Intent to Award within seven (7) days after issuance of the notice. Protests must be submitted in writing and comply with the requirements of OAR 137-047-0740.

ESTIMATED SCHEDULE. The following schedule is estimated and is subject to change:

- RFP advertised and issued May 17, 2024

- Final date to protest solicitation June 3, 2024
- Final date for questions/requests for clarification June 5, 2024
- Final date for submission of proposals June 10, 2024
- Notice of Intent to Award issued to all Proposers June 12, 2024
- Final date to protest contract award June 19, 2024

APPENDIX A

PROJECT SCOPE AND SPECIFICATIONS

As provided in ORS 279B.060(2)(c), when performing the work, the Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services.

The NUID Main Canal lining was completed in 1997 as part of a \$7,000,000 water conservation project that yielded 26,000 acre-feet of conserved water. Starting from the headworks diversion in Bend, Oregon, down the first twelve miles of the main canal system, the canal floor was lined with 6 inches of RCC (Roller Compacted Concrete), and the side slopes were covered with 3 inches to 6 inches of shotcrete (gunite). This pilot project will utilize a portion of this main canal.

NUID is scoping a scalable floating solar project on the lined section of the main canal that would indicatively produce up to 3.265 megawatts of power. This calculation is based on an understanding of solar irradiance and potential in the designated areas and available funding. This system takes advantage of cooling from the water in the canal, further enhancing system efficiency. It also reduces the evaporative losses from the canal, increasing water conservation in the overall system.

The main canal has a unique geometry that allows for wider, slower sections of the canal to generate significant amounts of solar power. The photovoltaics would help reduce water losses, reduce operations and maintenance costs, and bring additional revenue to NUID as the Transferred Works Operator to ensure continued good stewardship of the Reclamation project.

The images below depict the project location identified for the Project:



Figure 2: NUID Main Canal concrete-lined section shown in red, project area shown in white box.



Figure 3: Zoomed in view on project area, with NUID Main Canal shown in red and prospective pilot project sites shown in white.

The calculations below break down NUID’s estimate of how much power could be generated from these chosen pilot sites if funding were to be increased above the 2.55M grant award:

Section	Length of canal (ft)	Bottom width (ft)	Covered Surface Area (sqft)	Capacity per SF (watt/sqft)	Total Capacity (kW)
Northern	3326.4	50	116,424	19.63472276	2285.95
Southern	1425.6	50	49,896	19.63472276	979.69

Preliminary investigations have indicated that there are at least three points of interconnection that have available capacity for a 3.265 MW pilot project in the vicinity of this project area. NUID has also evaluated the potential of offsetting the Bend Municipal Water Plant’s electric bills with this project and has held initial discussions with the Water Plant’s leadership.

No modifications to the existing concrete liner will be allowed. Allowances for anchors and electrical conduits can be made outside of the canal prism.

The panels are designed to operate in the canal throughout the year, regardless of whether water is flowing or not. However, they must be configured to allow for easy removal in case maintenance is needed on the canal. Ideally, no equipment should be necessary for such removal and installation operations.

A site security fence will be required around the project location. The security fence will be placed within existing easements and should be adequate to protect the infrastructure from acts of theft

and vandalism. The easements typically extend 250 feet in each direction from the centerline of the canal. Also, four (4) security gates will be required, one on each end/side of the project area roads. The gates should be no smaller than 14' wide and should prevent trespasser access to the site.

NUID is interested in pursuing a long-term relationship with the selected contractor to share revenues generated by the Project. Proposers may include in their Proposal a proposed plan for revenue-sharing with NUID, which may include proposed additional investments or in-kind contributions by the Proposer if selected for the contract.

APPENDIX B –KEY CONTRACT TERMS

[DRAFT] AGREEMENT

This AGREEMENT (this “Agreement”), is made and entered into this ___ day of ____, 2024, by and between _____, a _____ (“Company”), and NORTH UNIT IRRIGATION DISTRICT, an irrigation district with offices in Madras, Oregon (“District”).

RECITALS

WHEREAS, [INSERT details of RFP, Company’s proposal in response to RFP, and District’s acceptance of proposal following any negotiations around particulars of Agreement]

NOW, THEREFORE, in consideration of the above recitals, the covenants and conditions hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Company and District do hereby agree as follows:

ARTICLE I

OBLIGATIONS OF COMPANY

1.01. Reimbursement for Consulting Fees. To reimburse District for its retention of third-party engineers, attorneys or other consultants or professionals in order to review Company’s design drawings, submissions to regulatory agencies, and other Project-related documents, Company shall pay to District [INSERT].

1.02. Permit Documentation. Other than authorization for the Project from the U.S. Bureau of Reclamation, which District will apply for and secure, Company shall be responsible for securing all other approvals, permits, and licenses. Company shall provide to District copies of all correspondence relating to approvals, permits, and licenses, including any underlying documentation referred to therein, as and when sent to or received from the permitting or licensing agencies as and when requested by District.

1.03. Payments to District. On an annual basis and from the Commercial Operation Date, Company shall pay to District (in arrears) an amount equal to \$___ per kWh generated by the Project. Notwithstanding any other provision of this Section 1.03, Company’s annual payment to District shall be no less than ___ percent (___%) of the gross revenues received by District from the sale of electricity and any environmental attributes generated by the Project, including without limitation Renewable Energy Certificates.

1.04. Ownership Option and Resulting Payments to District.

A. Ownership. [Company to own, with potential District option to become joint owner of project under a distinct Project Company.]

B. Payments to District. On an annual basis and from the Commercial Operation Date, in addition to payments pursuant to Section 1.03 above, the District shall be entitled to a distribution from the Project Company in accordance with the District Ownership Percentage.

1.05. District Buy-out Option. District shall have the right, but not the obligation, to purchase the Project from Company (the "Buy-Out Option") at any point after the Commercial Operation Date. The purchase price under the Buy-Out Option shall be the total Project cost paid by Company, plus an additional amount that brings the return on investment to Company, calculated at the time of exercise of the Buy-Out Option, equal to __ percent. This Agreement will terminate upon District's exercise of the Buy-Out Option.

1.06. Pilot Operation Phase. The term "Pilot Operation Phase" means a period of between () and () months after the Commercial Operation Date during which will conduct testing of the Project. Company shall not interfere with District's operation of its irrigation system during the Pilot Operation Phase. The end date of the Pilot Operation Phase shall be mutually agreed upon by District and Company after the Project has operated for an entire irrigation season.

1.07. Maintenance of Books and Records. Company shall maintain complete and accurate books and records for the Project to enable all payments due to be verified. Company shall keep a copy of all such books and records for a minimum of three (3) years after their creation and shall provide to District, upon District's request, copies of such books and records for purposes of verifying Company's compliance with its obligations related to the Project under this Agreement.

1.08. Project Impacts. The District agrees, to the best of its ability, to assist Company in obtaining the necessary approvals, permits, and licenses. Company covenants and agrees that the Project will not compromise the Project Site's infrastructure, impair the delivery of water by District to its service area, reduce or affect the quantity of water available to District (with quantity defined to include the rate of water available to the District, the volume of water available to the District, and the period of time in which water is available to the District), degrade or affect the quality of water available to the District, or interfere with District's operation and maintenance activities. District shall have sole control over the dates in which irrigation deliveries begin and end. District shall continue its normal, customary, and emergency operations and maintenance of storage and diversion structures and facilities (including the North Canal Diversion Dam, the Crooked River pumps, Haystack Reservoir, or other structures or facilities) and delivery systems as District determines necessary. Company agrees that these District operations and maintenance functions may temporarily, for undetermined periods of time, interfere with the Project's potential to generate electricity due to reasonable operation and maintenance. To the extent that access to and use of the Project Site requires agreement with another entity or entities other than District, Company agrees that District is not responsible in any way for securing such access to or right to

use the Project Site, and Company further agrees that it will not pursue access to or the right to use the Project Site in a manner that will interfere with the District's existing agreements with the U.S. Bureau of Reclamation or any other entity with which District has an existing agreement.

If approval, permit, or license conditions from any federal, state, tribal or local entities, or any other act or event causes or would cause Company to violate its obligations under this Section 1.08, Company agrees that, if such act or event occurs prior to commencing Project construction or prior to operation, Company shall not pursue construction or operation of the Project until its obligations under this Section 1.08 can be fully met.

1.09. Project Design; Review by District. Company shall design and construct the Project to keep the Project canal systems and District irrigation system operations separate. Company shall provide District with Project design plans as soon as made available from the Project designer and engineers. Company shall use commercially reasonable efforts to address the District's concerns.

1.10. Insurance. Company shall maintain insurance during construction and operation of the Project at the levels acceptable to the District and sufficient to reimburse the District for damages as a result of any violation of this Agreement.

1.11. Performance and Payment Bonds. Before or at the time of executing this Agreement, Company shall submit to the District separate performance and payment bonds in the amount of one hundred percent (100%) of the total amount of the contract. Bonds must be executed only by a surety company or companies holding a certificate of authority to transact surety business in Oregon and must meet all other requirements of ORS 279C.380.

1.12. Compliance With Laws. In the performance of this Agreement, Company shall comply with all applicable federal, state, and local laws and regulations, including but not limited to the following:

A. Pursuant to ORS 279B.220, the Company shall:

- (1) Make payment promptly, as due, to all persons supplying to the Company labor or material for the performance of the work provided for in this Agreement.
- (2) Pay all contributions or amounts due the Industrial Accident Fund from the Company or any subcontractor incurred in the performance of this Agreement.
- (3) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, including the District, on account of any labor or material furnished.
- (4) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

- B. Pursuant to ORS 279B.230(1), the Company shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.
- C. Pursuant to ORS 279B.230(2), Company agrees that it is a subject employer required to comply with ORS 656.017 or is an exempt employer under ORS 656.126.
- D. Pursuant to ORS 279B.045, Company represents that, upon execution of this Agreement Company has complied with the tax laws of the State of Oregon and any political subdivision thereof, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318, and further covenants to continue to comply with such tax laws during the term of this Agreement. Contractor’s failure to comply with this subsection shall constitute a default for which the District may terminate this Agreement and seek damages and other relief available under this Agreement or under applicable law.

1.13. Extension of Contract Terms to Other Parties. Company acknowledges that this Agreement was entered into as a permissive cooperative procurement pursuant to ORS 279B.215. Company hereby agrees to extend the terms, conditions and prices of this Agreement to other contracting agencies other than the District, provided no material change is made in the terms, conditions or prices from those stated herein.

ARTICLE II

OBLIGATIONS OF DISTRICT

2.01. District covenants and agrees that it shall pursue the necessary approvals from the U.S. Bureau of Reclamation as the owner of the NUID Main Canal. Otherwise, Company covenants and agrees that it is responsible for all other necessary approvals, permits, and licenses. The milestones agreed upon by District and Company are as follows:

Task	Estimated Completion Date
Complete Preliminary Design	
Complete Detailed Design	
Complete Interconnection Application	
Negotiate Power Sales Agreement	

File for USBOR approval	
Obtain all necessary permits	
Obtain interconnection agreement	
Construction and civil works	
Complete Pilot Period Operation	
Commence Commercial Operation	

ARTICLE III

REPRESENTATIONS AND WARRANTIES

3.01. Company Representations, Warranties and Covenants. Company hereby represents and warrants to, and covenants with, District as follows:

(a) As of the date hereof, Company is a _____ duly organized and validly existing under the laws of the State of _____ and has the power and authority to enter into, and to perform its obligations under, this Agreement, and further is authorized to do business in the State of Oregon;

(b) As of the date hereof, there are no existing or threatened actions, suits or claims pending, the adverse determination of which would reasonably be expected to materially affect the right of Company to enter into and perform its obligations under this Agreement;

(c) Company has taken all necessary action on its part to authorize the execution and delivery of this Agreement and the performance of its obligations under this Agreement;

(d) This Agreement has been duly executed and delivered on behalf of Company and constitutes a legal, valid, binding obligation of Company, enforceable against Company in accordance with its terms; and

(e) Company's execution and delivery of this Agreement and the performance of its obligations under this Agreement do not conflict with or violate any requirement of applicable laws or regulations and do not conflict with, or constitute a default under, any of Company's organizational documents or any contractual or other obligation of Company.

3.02. District's Representations and Warranties. District hereby represents and warrants to Company as follows:

(a) As of the date hereof, District is an irrigation district, duly organized and validly existing under the laws of the State of Oregon and has the power and authority to enter into, and to perform its obligations under, this Agreement;

(b) As of the date hereof, there are no existing or threatened actions, suits or claims pending, the adverse determination of which would reasonably be expected to materially affect the right of District to enter into and perform its obligations under this Agreement;

(c) District has taken all necessary action on its part to authorize the execution and delivery of this Agreement and the performance of its obligations under this Agreement;

(d) District has not entered into any written or oral agreement, undertaking or contract, that is currently in effect, that would preclude Company from having the rights under this Agreement;

(e) This Agreement has been duly executed and delivered on behalf of District, and constitutes a legal, valid, binding obligation of District, enforceable against District in accordance with its terms; and

(f) District's execution and delivery of this Agreement and the performance of its obligations under this Agreement do not conflict with or violate any requirement of applicable laws or regulations and do not conflict with, or constitute a default under, any of District's organizational documents or any contractual or other obligation of District.

3.03. Confidentiality.

(a) Definition of Confidential Information. As used in this Agreement, the term "Confidential Information" shall mean all technical, financial, commercial and other information with respect to Company, the Project, or District, as applicable, irrespective of the form of communication, other than information that was generally known or otherwise generally available to the public or the industry prior to disclosure to the other party, or information that becomes generally known to the public or the industry after such disclosure through no wrongful act or omission of the receiving party. Failure to mark or otherwise identify any information as confidential or proprietary shall not adversely affect its status as Confidential Information.

(b) Obligations of Confidentiality and Non-Use. Subject to Oregon's Public Records Law, neither Company nor District shall disclose any of the other party's Confidential Information. The foregoing shall not prohibit disclosures made to such party's employees or agents who have a "need to know" the other party's Confidential Information to the extent necessary to perform such party's duties and obligations under this Agreement, made to enforce such party's rights under this Agreement, or compelled to be made by any requirement of law or pursuant to any legal or investigative proceeding before any court, or governmental or regulatory authority, agency or commission so long as the party so compelled to make disclosure of Confidential Information pertaining to the other party provides prior written notice to such other party and uses its commercially reasonable efforts to cooperate with such other party to obtain a protective order or other similar determination with respect to such Confidential Information. Neither Company nor District shall use any of the other party's Confidential Information for its own direct or indirect benefit, or the direct or indirect benefit of any third party, except that each of Company and District may use the other party's Confidential Information to the extent necessary to perform its duties and obligations, or to enforce such party's rights, under this Agreement. Each of Company and District shall take reasonable steps, whether by instruction, agreement, or otherwise, to cause its employees, contractors, and others under its control who may have access to Confidential Information of the other party, to comply with its obligations under this Section 3.03.

(c) Exceptions. Section 3.03(b) shall not apply to information that (a) is available from governmental agencies under the United States Freedom of Information Act or Oregon Public Records Law, (b) a party can prove on the basis of the written record, was known by the receiving party at time of disclosure, (c) the receiving party can prove on the basis of the written record to have been independently developed for the receiving party after the time of disclosure by employees or third parties who have not had access to corresponding Confidential Information, (d) was received by the receiving party, without restriction, from a third party not under any obligation to the other party not to disclose it and otherwise not in violation of the other party's rights, (e) is received and retained by District pursuant to Section 1.10 of this Agreement, or (f) is provided to the Bureau of Reclamation ("Reclamation") as part of District's obligation to confer and consult with Reclamation regarding District irrigation agreements.

ARTICLE IV

INDEMNIFICATION

4.01. Indemnification by District. Subject to the requirements and limitations of the Oregon Tort Claims Act [ORS 30.260 to 30.300], District shall indemnify and hold Company and its shareholders, partners, members, directors, officers and employees harmless from and against all claims, suits, losses, obligations, damages, deficiencies, costs, penalties, liabilities (including, without limitation, strict liabilities), assessments, judgments, amounts paid in settlement, fines and expenses (including, without limitation, court costs and reasonable fees of attorneys and other professionals) (individually and collectively, "Losses") arising out of the failure by District to perform any of its covenants, agreements or undertakings contained in this Agreement, and the acts or omissions of District or any of District's subcontractors or any other third parties for whose actions District is legally liable.

4.02. Indemnification by Company. Company shall indemnify and hold District and its shareholders, partners, members, directors, officers, and employees harmless from and against all Losses arising out of (a) the failure by Company to perform any of its covenants, agreements or undertakings contained in this Agreement, (b) the acts or omissions of Company or any of Company's subcontractors for whose actions Company is legally liable, and (c) the acts or omissions of any other person with respect to Company's pursuit of the Project, this Agreement, or the Project itself, other than those acts and omissions caused by the negligence or willful misconduct of District.

ARTICLE V

TERM, TERMINATION, DEFAULTS, AND REMEDIES

5.01. This Agreement shall continue for () years from the Commercial Operation Date, unless otherwise terminated pursuant to the specific terms of this Agreement.

5.02. Upon termination of this Agreement, which shall occur no later than the date set forth in Section 5.01, the District shall own all improvements made by pursuant to this Agreement. Company agrees that, upon termination, Company shall direct the Project Company to assign to District, or any other entity of District's choosing, all assets associated with the design and construction of the Project (including, without limitation, all feasibility studies, design drawings, and other materials related to the Project's development) and all permits and permit applications (including, without limitation, the License). In the event of the assignment of all Project assets, Company agrees not to interfere with the Project or any other project of District.

5.03. Defaults and Remedies.

A. Defaults. The occurrence of any of the following shall constitute a default by Company if not cured within twenty (20) days after written notice has been given by District to Company specifying the failure: (i) Failure to make when due any payment required under Section 1.01, any payment required under Section 1.03, any distribution required under Section 1.04, or any other payment required to be made by Company under this Agreement; or (ii) abandonment of the Project Site (except as provided for herein); or (iii) any violation of the provisions of Section 1.08; or (iv) failure to perform, observe or honor any other provision of this Agreement; provided, however, that if the failure to perform, observe or honor any other provision under clause (iv) cannot reasonably be cured within said twenty-day (20-day) period, Company will not be in default of this Agreement if Company commences to cure the failure within the twenty-day (20-day) period and diligently and in good faith continues to cure the failure as soon as reasonably possible.

B. Remedies. Per ORS 279B.060(2)(h), if Company fails to perform the work identified in this Agreement for fails to meet established performance standards, the District's remedies may include, but are not limited to:

- 1) Reducing or withholding payment;
- 2) Requiring the contractor to perform, at the contractor's expense, additional work necessary to perform the identified scope of work or meet the established performance standards; or
- 3) Declaring a default, terminating the Agreement, and seeking damages and other relief available under the terms of this Agreement or other applicable laws.

C. Termination of Agreement Due to Default and Remedies. In the event of

any default by Company, District will have the right, in addition to any and all other rights and remedies available to District at law or in equity, to immediately terminate this Agreement and all rights of Company hereunder by giving written notice to Company of such election by District. If District elects to terminate this Agreement, District may recover the following from Company: (i) The amount at the time of the award of the unpaid payments that had been earned at the time of termination of this Agreement; and (ii) any other amount, including attorneys' fees and costs incurred by District in investigation, at trial and on appeal, necessary to compensate for all detriment proximately caused by Company's default. "The amount at the time of the award," as used in subparagraph (i) above, is to be computed by allowing interest at the lesser of ten percent (10%) per annum or the maximum rate District is permitted by law to charge.

D. Right of Possession. In the event of any default set forth in Section 5.03.A by Company, District will also have the right, with or without terminating this Agreement, to take possession of the Project.

ARTICLE VI

MISCELLANEOUS

6.01. Force Majeure. Except for the obligation to make payments when due hereunder, all other obligations under this Agreement shall be suspended for so long as one or both parties hereto are prevented from complying with the provisions hereof by acts of God, the elements, riots, war, acts of Federal, state or local governments, agencies or courts, strikes, lock-outs, damage to or destruction or unavoidable shut-down of necessary facilities, or other matters beyond their reasonable control (specifically excluding, however, matters of mere financial exigency) ("Force Majeure Events"); provided, however, that any party so prevented from complying with its obligations hereunder shall promptly notify the other party in writing of the existence of a Force Majeure Event and shall exercise all due diligence to resume normal operations and performance of obligations at the earliest practicable date.

6.02. Non-Fiduciary Relationship. The parties hereto expressly disclaim and disavow any partnership, joint venture or fiduciary status or relationship between them and expressly affirm that they have entered into this Agreement as independent contractors and that the same is in all respects an "arms-length" transaction.

6.03. Notices. Any notice, election, payment, report or other correspondence required or permitted hereunder shall be deemed to have been properly given or delivered when made in writing and delivered personally to an officer of the party to whom directed, or when sent by United States mail with all necessary postage or charges fully prepaid, return receipt requested, and addressed to the party to whom directed at its below specified address. Any party may at any time change its address for purposes of this Agreement by giving written notice of such change of address to all other parties.

If to Company:

If to District:

NORTH UNIT IRRIGATION DISTRICT
2024 NW Beech Street
Madras, Oregon 97741
Attn: District Manager

With a copy to:

Attn: David E. Filippi
Stoel Rives LLP
900 SW Fifth Avenue, Ste. 2600
Portland, Oregon 97204

6.04. Attorneys' Fees. In the event suit or action is instituted to enforce or interpret any of the terms of this Agreement (including any attachments), or to enforce any right arising out of or in any way connected with this Agreement, the prevailing party will be entitled to recover from the other party such sums as the court may adjudge reasonable as attorneys' fees and costs whether incurred by the prevailing party during investigation, at trial or on appeal of such suit or action, in addition to all other sums provided by law, including reasonable and necessary expert witness fees.

6.05. Further Instruments. The parties hereto agree that they will execute any and all other documents or legal instruments that may be necessary or required to carry out and effectuate all of the provisions hereof.

6.06. Waiver. Any failure of either party to exercise any power given to such party under this Agreement or to insist upon strict compliance with any obligation specified in this Agreement, and any customs, practices or course of dealings between the parties at variance with the terms of this Agreement, do not constitute a waiver of either party's right to demand exact compliance with the terms of this Agreement. The parties hereto agree that any waiver by a party in a particular instance, whether in writing or by course of conduct or otherwise, is not a waiver by such party in any other instance.

6.07. Paragraph Headings. The paragraph headings of this Agreement are inserted only for convenience and in no way define, limit or describe the scope or intent of this Agreement nor affect its terms and provisions.

6.08. Preparation of Agreement. The parties hereto acknowledge that they have both participated in the preparation of this Agreement and, in the event that any question arises regarding its interpretation, no presumption shall be drawn in favor of or against any party hereto with respect to the drafting hereof.

6.09. Governing Law. This Agreement, and all matters relating hereto, including any matter or dispute arising out of this Agreement, shall be interpreted, governed, and enforced

according to the laws of the State of Oregon, and the parties hereto consent to the jurisdiction of any appropriate court in the State of Oregon to resolve such disputes.

6.10. Amendments. This Agreement may be amended at any time upon unanimous agreement of the parties hereto, which amendment(s) must be reduced to writing and signed by all parties in order to become effective.

6.11. Severability. In the event that any provision of this Agreement, or any operation contemplated hereunder, is found by a court of competent jurisdiction to be inconsistent with or contrary to any law, ordinance, or regulation, the latter shall be deemed to control and the Agreement shall be regarded as modified accordingly and, in any event, the remainder of this Agreement shall continue in full force and effect.

6.12. Enforceability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws and regulations. If any provision of this Agreement or the application thereof to any person or circumstance, for any reason and to any extent, shall be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

6.13. Entire Agreement. This Agreement constitutes and represents the entire agreement of the parties hereto with respect to the subject matter hereof, and all other prior agreements, covenants, promises and conditions, verbal or written, between these parties are incorporated herein. No party hereto has relied upon any other promise, representation or warranty, other than those contained herein, in executing this Agreement.

6.14. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties thereto, their heirs, personal representatives, successors and assigns. Company shall not assign any interest in this Agreement, in whole or in part, to any person without the prior written consent of District, which may not be unreasonably withheld, conditioned or delayed. Any assignment by Company made without District's prior written consent is a material breach of this Agreement and will be null and void and of no force or effect; provided, however, that Company shall have the right to assign this Agreement to an affiliate or subsidiary, or make a collateral assignment of this Agreement for financing purposes, without the prior written consent of the District.

6.15. Incorporation of Recitals, Exhibits and Schedules. The above recitals are incorporated herein by this reference and expressly made a part of this Agreement.

6.16. Other Agreements. Except for its obligations under Section 2.01, nothing in this Agreement prevents District from entering into similar agreements with other entities that may propose hydroelectric projects at the Project Site (other than Competing Applications) (on account that some entity other than Company could be awarded the License or other Permit leading to the development of a project at the Project Site) or elsewhere.

6.17. Signing in Counterparts. This Agreement may be executed in counterparts, and each executed counterpart shall have the same force and effect as an original instrument as if both signatories had signed the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives on the date first above written, with this Agreement effective beginning as of the date that Company submits its application for Permit to FERC and only if Company is the first in time to apply for the Permit from FERC for the Project at the Project Site (the "Effective Date").

COMPANY:

_____, a _____ corporation

By: _____

Name: _____

Its: _____

DISTRICT:

NORTH UNIT IRRIGATION DISTRICT

By: _____

Joshua Bailey
Secretary-Manager

By: _____

Michael Kirsch
Chair, Board of Directors

EXHIBIT A: MAP SHOWING PROJECT LOCATION