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IDAHO PUBLIC
UTILITIES COMMISSION

MEGAN GOICOECHEA ALLEN
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January 26, 2024

VIA ELECTRONIC MAIL

Commission Secretary
Idaho Public Utilities Commission
11331 West Chinden Blvd., Building 8
Suite 201-A
Boise, Idaho 83714

Re: Case No. IPC-E-24-06
Barber Dam Hydro Project
Idaho Power Company's Application for Approval of a Third Amendment to the Existing Energy Sales Agreement for the Sale and Purchase of Electric Energy from the Barber Dam Hydro Project and Acceptance or Rejection of the Replacement Energy Sales Agreement for the same.

Dear Commission Secretary:

Attached for electronic filing is Idaho Power Company's Application in the above-entitled matter. If you have any questions about the attached documents, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink that reads "Megan Goicoechea Allen".

Megan Goicoechea Allen

MAG:cd
Enclosures

MEGAN GOICOECHEA ALLEN (ISB No. 7623)
DONOVAN E. WALKER (ISB No. 5921)
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Attorneys for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)	
OF IDAHO POWER COMPANY FOR)	CASE NO. IPC-E-24-06
APPROVAL OF A THIRD AMENDMENT TO)	
THE EXISTING ENERGY SALES)	APPLICATION
AGREEMENT FOR THE SALE AND)	
PURCHASE OF ELECTRIC ENERGY)	
FROM THE BARBER DAM HYDRO)	
PROJECT AND ACCEPTANCE OR)	
REJECTION OF THE REPLACEMENT)	
ENERGY SALES AGREEMENT FOR THE)	
SAME.)	
)	

Idaho Power Company (“Idaho Power” or “Company”), in accordance with Idaho Public Utilities Commissions (“Commission”) Rule of Procedure¹ 52 and the applicable provisions of the Public Utility Regulatory Policies Act of 1978 (“PURPA”), hereby respectfully applies to the Idaho Public Utilities Commission for an order: (1) authorizing

¹ Hereinafter cited as RP.

that this matter may be processed by Modified Procedure; (2) approving the Third Amendment (“Third Amendment”) to the 1987 Energy Sales Agreement for the sale and purchase of electric energy generated by the Barber Dam Hydroelectric Project (“Facility” or “Project”); (3) accepting or rejecting the replacement Energy Sales Agreement (“ESA” or “Agreement”) between Idaho Power and Seller under which Seller would continue to sell and Idaho Power would continue to purchase electric generation from the Barber Dam Hydro Project; and, if accepted, (4) declaring that all payments for purchases of energy under the ESA between Idaho Power and the Seller be allowed as prudently incurred expenses for ratemaking purposes.

As set forth herein, the parties have entered into a new ESA with updated terms and conditions to replace the existing Agreement upon its forthcoming expiration, and also desire to update certain provisions in the existing ESA for the sake of transparency and clarity of the record in anticipation of the replacement ESA. Given the compressed timing and sequence of these events, Idaho Power has combined the requests related to both the proposed amendment and the replacement contract in this filing in the interest of efficiency and regulatory economy. In support of this Application, Idaho Power represents as follows:

I. BACKGROUND

1. Idaho Power and Interwest Hydro, Inc. entered into a Firm Energy Sales Agreement dated July 13, 1987 (“1987 Agreement”) for the purchase and sale of energy from the Barber Dam Hydroelectric Project located in Ada County, Idaho, which is a Qualifying Facility (“QF”) under PURPA. The 1987 Agreement was approved by the Commission in Order No. 21359.

2. Interwest Hydro, Inc. assigned its interest in the 1987 Agreement to Bonneville Pacific Corporation on May 13, 1988, which in turn assigned its interest to Fulcrum, Inc. on May 13, 1988. Fulcrum, Inc., was converted to Fulcrum, LLC, as of April 2, 2015.

3. The parties entered into a First Amendment to the 1987 Agreement on September 20, 1988, to incorporate the security provisions for the Seller's levelized rate repayment obligation as established by the Commission in Order No 21690, which was approved by the Commission on September 23, 1988, by minute entry in Case No. U-1006-295. On November 24, 1999, the parties entered into a Second Amendment to the 1987 Agreement, to modify the requirements for escrow accounts as security provisions for overpayment liability, which was approved by the Commission in Order No. 28272 issued on January 27, 2000, in Case No. IPC-E-99-12.

4. Fulcrum, LLC, now desires to transfer its interest in the Project to Barber Pool Hydro, LLC ("Barber Pool Hydro"), and as a result of this transfer, Idaho Power, Fulcrum, LLC, and Barber Pool Hydro have entered a Consent, Assignment, and Assumption Agreement, dated December 23, 2023, pursuant to which Fulcrum, LLC has assigned and Barber Pool Hydro has assumed the Agreement, as amended, and the rights and obligations of the Seller thereunder, with Idaho Power's consent. A copy of the Consent, Assignment, and Assumption Agreement is attached to this Application as Attachment 1.

5. Barber Pool Hydro will continue to deliver energy to Idaho Power in accordance with the 1987 Agreement until it expires on April 10, 2024, after which Idaho Power and Barber Pool Hydro intend to proceed under a new contract for the same

Facility (“Replacement ESA”) with updated terms and conditions in conformance with the Commission’s orders directing the implementation of PURPA for the State of Idaho.

6. In the process of preparing the Replacement ESA, the parties became aware that Paragraph B-1 of Appendix B of the 1987 Agreement, as amended, contains an error insofar as it describes the Facility as consisting of two 2,100 kilowatts (“kW”) generating units, though the actual nameplate rating of each of the two generators is 1,850 kW as reflected in the manufacturer’s “nameplate” attached to the units.

7. In anticipation of the Replacement ESA and consistent with the Generator Interconnection Agreement (“GIA”) for the Facility executed on December 14, 2023, the Parties entered into the Third Amendment to: (1) amend the 1987 Agreement based on the assignment to and assumption by Barber Pool Hydro to ensure it correctly identifies the new Seller; and (2) correct the description contained in Paragraph B-1 of Appendix B to reflect the actual nameplate ratings of each of the Facility’s two generating units, 1,850 kW each or 3.7 megawatts (“MW”) total.

II. RELEVANT LAW

8. Pursuant to PURPA and regulations of the Federal Energy Regulatory Commission (“FERC”) implementing it, electric utilities are required to purchase power produced by designated Qualifying Facilities. Under this must purchase provision, the rate a utility must buy the power produced by the QF is generally referred to as the avoided cost rate, which is intended to reflect the incremental cost to the purchasing utility of power, which it would either generate itself or purchase from another source *but for the purchase of power from the QF*. See 18 CFR §292.101(b)(6).

9. While FERC is tasked with developing broad federal regulations to guide

PURPA's implementation, individual state commissions are tasked with implementing PURPA at the state level. "PURPA requires that utilities buy the power output from QF's under a federal rate mechanism (i.e., avoided costs) that is determined and implemented by state utility commissions." Order No. 32697 at 7.

10. Pursuant to its authority under PURPA, this Commission has established and adopted numerous contract terms and conditions for energy sales agreements entered into between regulated utilities and QFs under PURPA and developed parameters for published and negotiated avoided cost rate calculations.

11. The Commission's seminal decisions on PURPA implementation, starting with Order No. 32697, established, in pertinent part, a 10 average megawatts ("aMW") project eligibility cap for access to published avoided cost rates for resources other than wind and solar and confirmed use of the surrogate avoided resource ("SAR") methodology to calculate published rates (updated annually).

12. The Commission also held that both energy and capacity should be considered in determining avoided costs, though payments for capacity should only begin at such time that the utility becomes capacity deficient. See Order No. 32697. If an existing QF seeks a new contract with the utility to replace an expiring contract, the capacity deficit date is still determined as of the date the original contract was executed, and the QF will be entitled to immediate payment for capacity under the replacement contract if it was being paid for capacity at the end of the prior agreement. See *also* Order No. 32871.

13. Relative to QF replacement contracts, the Commission subsequently recognized that conditions existing at the time a legally enforceable obligation was

established in the prior contract could prevent a QF from ever receiving capacity payments, which would be inconsistent with the Commission's prior orders addressing QF eligibility for capacity payments. See, e.g., Order No. 34200 at 4-5. As a result, the Commission has focused on whether the utility has been relying on the QF's power production to meet its capacity needs in determining whether a QF qualifies for immediate capacity payments in a replacement contract.

III. THE THIRD AMENDMENT

14. The Facility is currently delivering energy to Idaho Power in accordance with the 1987 Agreement that expires on April 10, 2024. The Third Amendment dated January 4, 2024, contemplates the following modifications to the 1987 Agreement:

- a. Provides for changing the name of the Seller as contained within the ESA as follows:

In the entirety of the Agreement, any reference to Fulcrum, LLC or its predecessors in interest under the Agreement or its amendments shall be replaced with "Barber Pool Hydro, LLC" from and after the date of assignment and assumption described in the recitals above (i.e., December 23, 2023); provided, however, that any (i) action or obligation performed by Fulcrum, LLC or its predecessors in interest; (ii) notice sent or received by Fulcrum, LLC or its predecessors in interest; (iii) consent given or not given by Fulcrum, LLC or its predecessors in interest; (iv) representation or warranty made by Fulcrum, LLC or its predecessors in interest; or (v) sums paid or incurred by Fulcrum, LLC or its predecessors in interest under the Agreement, as amended, prior to the consummation of the assumption by Barber Pool Hydro, LLC of Seller's obligations under the Agreement, as amended, shall not fail, be deemed untrue, or be deemed ineffective, as applicable, because the reference to Fulcrum, LLC or its predecessors in interest has been replaced with Barber Pool Hydro, LLC pursuant to this Section.

- b. Provides for amending Paragraph B-1 "DESCRIPTION OF FACILITY" of Appendix B as follows (new language is underlined, and deleted language uses strikethrough):

The Seller's Facility is described as two Ideal Electrical Company Voith ~~1850~~ 2400 kW synchronous generators with nameplate ratings at 3 phase, 4160 volts, 60 hertz, 720 RPM driven by ~~Kaplan S~~ type Kaplan Hydro Turbines manufactured by Voith Hydro.

15. The changes contemplated by the Third Amendment do not impact the Facility's eligibility for published rates and the modified combined nameplate capacity is within the amount contemplated in the 1987 Agreement, and therefore, these changes do not otherwise impact the conditions, rates, or other terms of the 1987 Agreement, as amended. A copy of the Third Amendment is attached to this Application as Attachment 2 and as set forth therein is subject to the Commission's approval.

IV. THE REPLACEMENT ESA

16. Because Barber Pool Hydro intends to proceed under a new contract for the same Facility following expiration of the 1987 Agreement, the parties entered into the Third Amendment to update information in order to provide for a smooth transition to the Replacement ESA.

17. On January 17, 2024, Idaho Power and the Seller entered into the Replacement ESA in compliance with Commission Order No. 32697 and its progeny, pursuant to which the Seller would continue to sell and the Company would continue to purchase electric energy generated by the Facility. A copy of the proposed Replacement ESA is attached to this Application as Attachment 3 and is intended to replace the 1987 Agreement, as amended, upon its expiration on April 10, 2024.

18. Under the terms of the proposed Replacement ESA, the Seller elected to contract with Idaho Power for a 20-year term using the non-levelized, published avoided cost rates for non-seasonal hydro resources as currently established by the Commission

in GNR-E-23-02 for replacement contracts and for energy deliveries of less than 10 aMW. See Order No. 35800 dated May 31, 2023. Additionally, because it is a replacement ESA, the proposed ESA contains capacity payments for the entire term of the Agreement consistent with prior Commission Orders.² See, e.g., Order No. 32697 at 21-22; Order No. 32737 at 5; Order No. 32871; and Order No. 34200 at 4-5.

19. The proposed Replacement ESA contains contract provisions consistent with PURPA, FERC regulations, and the Commission's orders directing the implementation of PURPA for the State of Idaho. With regard to the latter, the following discussion demonstrates the proposed Replacement ESA's compliance with certain Idaho-specific provisions that have been the focus of Commission Staff in reviewing similar approval requests: (1) adherence to the capacity size threshold for published rates; (2) eligibility for capacity payments; (3) 90/110 rule with a five-day advance notice for adjusting Estimated Net Energy Amounts; and (4) conformance of Article XXIII, Modification, with recent Commission orders.

Capacity Size Threshold

20. The Seller warrants that the Facility is a PURPA Qualifying Facility and has provided documentation that the project nameplate capacity is 3.7 MW.

21. As defined in paragraphs 1.24 and 4.1.4 of the Replacement ESA, the Seller will be required to provide data on the Facility that Idaho Power will use to confirm that under normal and/or average conditions, the Facility will not exceed 10 aMW on a monthly

² It is the Company's understanding based on prior Commission orders that QF projects that have been included in Idaho Power's load and resource balance during their initial contract term meet the requirements to include value for their replacement contracts as more fully discussed in Order No. 34200 at 4-5. To that end the Barber Dam Hydro Facility is, like other PURPA contracts, included in the Company's generation forecast for existing resources that is considered in the load and resource balance analysis as part of the Integrated Resource Plan ("IRP") process.

basis. Furthermore, as described in paragraph 7.7 of the ESA, should the Facility exceed 10 aMW on a monthly basis or 3,700 kW on an hourly basis, Idaho Power will accept the energy, defined as Inadvertent Energy, but will not purchase or pay for it.

22. Because the Facility produces less than 10 aMW on a monthly basis under normal or average conditions, it is eligible for published avoided cost rates.

Eligibility for Capacity Payments

23. In Case No. GNR-E-11-03, the Commission held if a QF project is being paid for capacity at the end of a contract term and enters into a replacement contract, it will be entitled to immediate payment of capacity. See Order No. 32697 at 21-22; Order No. 32737 at 5; and Order No. 32871. Subsequently, the Commission recognized that there may be circumstances under which a QF should still qualify for immediate capacity payments with a replacement ESA despite not receiving a separate capacity payment under the existing/expiring contract. Under broad PUPRA and Commission guidelines, the primary question for determining capacity payment eligibility is whether or not the operation of the QF permits the Company to avoid or deter adding future additional capacity. See, e.g., Order No. 34200 at 4-5 and Order No. 34295 at 4-5.

24. The 1987 Agreement does not separate energy and capacity components but, considering that Idaho Power has included the QF's production in its IRP load and resource balance in the same manner as other QFs, it is Idaho Power's understanding that a consistent application of the rationale in Order Nos. 32697, 34200, and 34295 calls for including capacity payments for the entire term of the Replacement ESA. More specifically, because the utility has been relying on the QFs power production for IRP planning purposes and no significant changes are contemplated in the replacement

contract, the Replacement ESA contains payment for capacity for the entire term of the replacement contract in line with prior Commission orders.

90/110 Rule and 5-Day Ahead Provision

25. In Idaho, the Commission has determined that the contractual obligation of a QF under PURPA translates into a commitment to deliver its monthly estimated production. Order 29632 at 20. To maintain eligibility for the firm avoided cost rates, as opposed to Schedule 86 non-firm avoided cost rates, Qualifying Facilities are to provide a monthly estimate of the amount of energy they expect to produce, and the delivery of committed energy must fall within a 90/110 band for the QF to be entitled to the firm published avoided cost rate.

26. Consistent with these provisions, the proposed Replacement ESA requires that the Seller provide estimates of net energy and adopted a five-day advanced notice for adjusting Estimated Net Energy Amounts for purposes of complying with 90/110 firmness requirements as set forth in paragraphs 6.2 and 7.1. The notification of Net Energy Amount monthly adjustments described in paragraph 6.2.3 must be provided no later than 5 p.m. Mountain Standard Time on the 25th day of the month that is prior to the month to be revised. If the 25th day of the month falls on a weekend or holiday, then written notice must be received on the last business day prior to the 25th.

27. The Commission has previously approved the same five-day advanced notice revisions to monthly generation estimates in numerous instances, recognizing that Estimated Net Energy Amounts that are closer to the time of delivery can improve the accuracy of input used by the Company for short-term operational planning. See, e.g., Case Nos. IPC-E-19-01, IPC-E-19-03, IPC-E-19-04, IPC-E-19-07, IPC-E-19-12, IPC-E-

21-05, IPC-E-21-23, IPC-E-21-27, IPC-E-21-28, IPC-E-21-29, IPC-E-21-31, IPC-E-22-03, and IPC-E-22-04. Moreover, the Facility has a long generation history under the 1987 Agreement, which further reduces the need for a revision to delivery estimates beyond a five-day advanced notice.

Article XXIII (Modifications)

28. In reviewing other PURPA energy sales agreements recently, the Commission has identified a heretofore standard ESA provision, Article XXIII Modification, that it determined required revisions to address scenarios involving Facility modifications to ensure, *inter alia*: the modified Facility operates under a correct and accurate contract that describes the characteristics and parameters of the modified Facility and the rate paid to the Facility and recovered from ratepayers, starting from the first operation date after the Facility is modified, reflect the proper and authorized rate of the modified Facility. See, e.g., Order Nos. 35705 and 35767.

29. The proposed Replacement ESA between Idaho Power and Seller incorporates the provisions and language recently approved by the Commission and in conformity with Order No. 35705.

Other Pertinent Provisions

30. The Facility is already interconnected and selling energy to Idaho Power and the Replacement ESA specifies a Scheduled First Energy Date and Scheduled Operation Date for this Facility of April 11, 2024. See Appendix B. Articles IV and V of this ESA recognize that information provided under the previous agreement may still be applicable to this Replacement ESA. As specified in the ESA, Idaho Power shall review the previously provided information and will accept the information as previously

submitted, request updates to that information, and/or require new information to satisfy compliance with the various requirements for the Seller to be granted a First Energy Date and Operation Date for this Replacement ESA. In addition, Idaho Power will monitor the ongoing requirements through the full term of this ESA.

31. The ESA provides that all applicable interconnection charges and monthly operational or maintenance charges under Schedule 72 will be assessed to Seller. Idaho Power and Seller entered into 72 Generator Interconnection Agreement, or “GIA,” on or about December 14, 2023. PURPA QF generation must be a designated network resource (“DNR”) to serve Idaho Power’s retail load on its system. In order for the Facility to maintain its DNR status, there must be a power purchase agreement associated with its transmission service request in order to maintain compliance with Idaho Power’s non-discriminatory administration of its Open Access Transmission Tariff (“OATT”) and maintain compliance with FERC requirements.

32. Article XXI of the ESA provides that it will only become finally effective upon the Commission’s approval of all of the Replacement ESA’s terms and conditions and declared that all payments Idaho Power makes to the Seller for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes.

V. MODIFIED PROCEDURE

33. Idaho Power believes that a technical hearing is not necessary to consider the issues presented herein and respectfully requests that this Application be processed under Modified Procedure, i.e., by written submissions rather than by hearing. RP 201, *et seq.* If, however, the Commission determines that a technical hearing is required, the Company stands ready to prepare and present its testimony in such hearing.

34. Because the existing contract will run its full term and expire on April 10,

2024, the Parties request that the Commission set a procedural schedule that would result in a final Commission determination prior to the expiration of the existing contract.

VI. COMMUNICATIONS AND SERVICE OF PLEADINGS

35. Communications and service of pleadings, exhibits, orders, and other documents relating to this proceeding should be sent to the following:

Donovan E. Walker
Megan Goicoechea Allen
IPC Dockets
1221 West Idaho Street (83702)
P.O. Box 70
Boise, Idaho 83707
dwalker@idahopower.com
mgoicoecheaallen@idahopower.com
dockets@idahopower.com

Energy Contracts
Idaho Power Company
1221 West Idaho Street (83702)
P.O. Box 70
Boise, Idaho 83707
energycontracts@idahopower.com

VII. REQUEST FOR RELIEF

36. Idaho Power respectfully requests that the Commission issue an order: (1) authorizing that this matter may be processed by Modified Procedure; (2) approving the Third Amendment to the 1987 Agreement; (3) accepting or rejecting the Replacement ESA between Idaho Power and the Seller submitted herewith without change or condition; and, if accepted, (3) declaring that all payments for purchases of energy under the ESA between Idaho Power and the Seller be allowed as prudently incurred expenses for ratemaking purposes.

Respectfully submitted this 26th day of January, 2024.



MEGAN GOICOECHEA ALLEN
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of January, 2024, I served a true and correct copy of the within and foregoing APPLICATION upon the following named parties by the method indicated below, and addressed to the following:

Commission Secretary Idaho Public Utilities Commission 11331 W. Chinden Blvd., Bldg No. 8 Suite 201-A (83714) PO Box 83720 Boise, ID 83720-0074	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> FAX <input type="checkbox"/> FTP Site <input checked="" type="checkbox"/> Email
---	--

Courtesy Copy:

Ted Sorenson
Barber Pool Hydro LLC
711 E Turtle Point Drive
Ivins, UT 84738
ted@tsorenson.net
miriah@tsorenson.net



Christy Davenport
Legal Administrative Assistant

**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION
CASE NO. IPC-E-24-06**

IDAHO POWER COMPANY

ATTACHMENT 1

CONSENT, ASSIGNMENT, AND ASSUMPTION AGREEMENT

This CONSENT, ASSIGNMENT, AND ASSUMPTION AGREEMENT (the "Agreement") is entered into to be effective as of the 23 day of December 2023 ("Effective Date") between and among Idaho Power Company ("IPC"), Fulcrum, LLC ("Assignor"), and Barber Pool Hydro, LLC ("Assignee").

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, IPC, Assignor, and Assignee hereby agree as follows:

- 1. Acknowledgement.** IPC and Assignor acknowledge that they are parties to the Energy Sales Agreement dated July 13, 1987 (the "Assigned Agreement"). In connection with a pending acquisition transaction between Assignor and Assignee, Assignor desires to assign the Assigned Agreement and its rights and obligations under the Assigned Agreement to Assignee, and Assignee desires to accept the rights and assume the obligations of the Assignor under the Assigned Agreement, all in accordance with the terms and subject to the conditions set forth in this Agreement, and effective at the time set forth in this Agreement.
- 2. Consent to Assignment; Effectiveness.** Subject to the terms and conditions of this Agreement, IPC hereby consents to the assignment of the Assigned Agreement to Assignee and accepts the substitution of Assignee to perform under the Assigned Agreements in lieu of Assignor, as if Assignee were an original signatory to the Assigned Agreement in lieu of Assignor. The foregoing consent by IPC and assignment and delegation by Assignor and Assignee shall be effective immediately upon the Execution of a SubLease Agreement between Assignor and Assignee for lease and operation of the generating property that is the subject of the Assigned Agreement (the "Closing"); provided, however, that if such Closing shall not have occurred on or prior to January 4, 2024, this Agreement shall be of no force or effect and shall be deemed terminated.
- 3. Representations and Warranties of Assignor and Assignee.** Assignor hereby represents and warrants to IPC that there is no action or omission of Assignor as of immediately prior to the Effective Date that would constitute a material or immaterial breach or default (assuming the giving of notice and the passage of any time required for the act or omission to constitute a default) of Assignor under the Assigned Agreement. Assignor and Assignee each represent and warrant to IPC that Assignee can perform and has the legal and financial capacity to perform the obligations of Assignor under the Assigned Agreement and that such performance does not conflict with any obligations of Assignee. The foregoing representations and warranties shall be deemed continuing representations and warranties of Assignor and Assignee from the Effective Date through the Closing, and Assignor or Assignee shall notify IPC immediately if any such representation or warranty shall be false or misleading at any time prior to the Closing.
- 4. Acceptance of Assignment and Assumption.** Effective as of the Closing, Assignee accepts the assignment and delegation by Assignor of the rights, obligations, and liabilities under the Assigned Agreement, agrees to be bound by all of the terms of the Assigned Agreement, and agrees to assume all of the obligations and liabilities of Assignor under the Assigned Agreement, whether arising prior to or subsequent to the Closing. Assignee agrees that it will be a party to the Assigned Agreement as of the Closing and that henceforth all references to Assignor in the Assigned Agreement will be deemed to refer to Assignee.
- 5. Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties thereto and their respective successors and permitted assigns.
- 6. Amendments.** This Agreement cannot be amended, supplemented, or modified except by an agreement in writing which makes specific reference to this Agreement, and which is signed by the party against which enforcement of any such amendment, supplement, or modification is sought.
- 7. Further Assurances.** Assignor and Assignee agree that upon request of IPC, at any time and from time to time, each will do, execute, acknowledge, and deliver, or will cause to be done, executed, acknowledged, and delivered, all such further acts, deeds, assignments, transfers, conveyances, and assurances as may be reasonably required to evidence further the assignment and assumption contemplated by this Agreement.
- 8. Miscellaneous.** This Agreement shall not alter, modify, or amend the terms of the Assigned Agreement other than as set forth in this Agreement. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Idaho. This Agreement may be executed in counterparts, each of which shall be considered an original, and which together constitute one and the same instrument.

AGREED AND ACCEPTED, to be effective as of the Effective Date.

IDAHO POWER COMPANY:

By: Ryan N. Adelman

Name: Ryan Adelman

Title: Vice President Power Supply


FULCRUM, LLC:

By: 

Name: Craig Herlihy

Title: Chief Financial Officer - Project Number: 21615078

BARBER POOL HYDRO, LLC:

By: 

Name: Ted Sorenson

Title: Manager - Project Number: 21615078

**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION
CASE NO. IPC-E-24-06**

IDAHO POWER COMPANY

ATTACHMENT 2

**THIRD AMENDMENT
TO THE
FIRM ENERGY SALES AGREEMENT
FOR THE BARBER DAM HYDRO PROJECT**

This Third Amendment of the Firm Energy Sales Agreement (“Third Amendment”) is effective as of this 4th day of January 2024 (“Effective Date”), and is entered into by and between Idaho Power Company, an Idaho corporation (“Idaho Power”), and Barber Pool Hydro, LLC, a limited liability company (“Seller”) (individually a “Party” and collectively the “Parties”).

WHEREAS, Idaho Power and Interwest Hydro, Inc. entered into a Firm Energy Sales Agreement dated July 13, 1987 (“Agreement”) for the purchase and sale of energy from the Barber Dam Hydroelectric Project (“Project”) located in Ada County, Idaho (the “Facility”), which is a Qualifying Facility under Public Utility Regulatory Policies Act of 1978 (“PURPA”). The Agreement was approved by the Idaho Public Utilities Commission’s (“Commission”) in Order No. 21359;

WHEREAS, Interwest Hydro, Inc. assigned its interest in the Agreement to Bonneville Pacific Corporation on May 13, 1988, which in turn assigned its interest to Fulcrum, Inc. on May 13, 1988;

WHEREAS, Idaho Power and Seller entered into a First Amendment to the Agreement on September 20, 1988, to incorporate the security provisions for the Seller’s levelized rate repayment obligation as established by the Commission in Order No 21690, which was approved by the Commission on September 23, 1988, by minute entry in Case No. U-1006-295;

WHEREAS, Idaho Power and Seller entered into a Second Amendment to the Agreement on November 24, 1999, to modify the requirements for escrow accounts as security provisions for overpayment liability, which was approved by the Commission in Order No. 28272 issued on January 27, 2000, in Case No. IPC-E-99-12;

WHEREAS, Fulcrum, Inc., was converted to Fulcrum, LLC, as of April 2, 2015, which now desires to transfer its interest in the Project to Barber Pool Hydro, LLC;

WHEREAS, as a result of this transfer, Idaho Power, Fulcrum, LLC, and Barber Pool Hydro, LLC have entered a Consent, Assignment, and Assumption Agreement, effective as of December 23, 2023, pursuant to which Fulcrum, LLC has assigned and Barber Pool Hydro, LLC has assumed the Agreement, as amended, and the rights and obligations of the Seller thereunder, with Idaho Power’s consent; and

WHEREAS, as a result of this assignment and assumption, the Parties desire to amend the Agreement to ensure it correctly identifies the new Seller;

WHEREAS, the Facility will continue to deliver energy to Idaho Power in accordance with the 1987 Agreement until it expires on April 10, 2024, after which the Idaho Power and Barber Pool Hydro, LLC intend to proceed under a new energy sales agreement (“ESA”) for the same Facility (“Replacement ESA”) with updated terms and conditions in conformance with the Commission’s orders directing the implementation of PURPA for the State of Idaho;

WHEREAS, in the process of preparing the Replacement ESA, it has come to the Parties' attention that Paragraph B-1 of Appendix B of the 1987 Agreement, as amended, contains an error insofar as it describes the Facility as consisting of two 2,100 kilowatts ("kW") generating units, though the actual nameplate rating of each of the two generators is 1,850 kW as reflected in the manufacturer's "nameplate" attached to the units;

WHEREAS, in anticipation of the Replacement ESA and consistent with the Generator Interconnection Agreement ("GIA") for the Project executed on December 14, 2023, which will both list 1,850 kW as the nameplate rating for each of the Facility's two generators, the Parties desire to enter into this Third Amendment to the 1987 Agreement to correct the description contained in Paragraph B-1 of Appendix B to reflect the actual nameplate ratings of each of the Facility's two generating units; and

WHEREAS, these changes do not impact the Project's eligibility for published rates and the modified combined nameplate capacity is within the amount contemplated in the original Agreement, and therefore, these changes do not otherwise impact the conditions, rates, or other terms of the Agreement, as amended.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereto agree as follows:

1. **Incorporation of Recitals.** The above-stated recitals are incorporated into and made a part of this Agreement, as amended, by this reference to the same extent as if these recitals were set forth in full at this point.

2. **Amendments.**

A. In the entirety of the Agreement, any reference to Fulcrum, LLC or its predecessors in interest under the Agreement or its amendments shall be replaced with "Barber Pool Hydro, LLC" from and after the date of assignment and assumption described in the recitals above (i.e., December 23, 2023); provided, however, that any (i) action or obligation performed by Fulcrum, LLC or its predecessors in interest; (ii) notice sent or received by Fulcrum, LLC or its predecessors in interest; (iii) consent given or not given by Fulcrum, LLC or its predecessors in interest; (iv) representation or warranty made by Fulcrum, LLC or its predecessors in interest; or (v) sums paid or incurred by Fulcrum, LLC or its predecessors in interest under the Agreement, as amended, prior to the consummation of the assumption by Barber Pool Hydro, LLC of Seller's obligations under the Agreement, as amended, shall not fail, be deemed untrue, or be deemed ineffective, as applicable, because the reference to Fulcrum, LLC or its predecessors in interest has been replaced with Barber Pool Hydro, LLC pursuant to this Section.

B. Paragraph B-1 "DESCRIPTION OF FACILITY" of Appendix B is hereby amended as follows (new language is underlined, and deleted language uses ~~strikethrough~~):

The Seller's Facility is described as two Ideal Electrical Company ~~Voith~~ 1850 ~~2100~~ kW synchronous generators with nameplate ratings at 3 phase, 4160 volts, 60 hertz, 720 RPM driven by ~~Kaplan~~ S type Kaplan Hydro Turbines ~~manufactured by Voith Hydro.~~

3. **Commission Approval.** The obligations of the Parties under this Third Amendment are subject to the Commission’s approval of this Third Amendment, and such approval being upheld on appeal, if any, by a court of competent jurisdiction.

4. **Effect of Amendments.** Except as expressly amended by this Third Amendment, the Agreement, as amended, shall remain in full force and effect.

5. **Capitalized Terms.** All capitalized terms used in this Third Amendment and not defined herein shall have the same meaning as used in the Agreement, as amended.

6. **Scope of Amendments.** This Third Amendment shall be binding upon and inure to the benefit of the Parties hereto, and their respective heirs, executors, administrators, successors, and assigns, who are obligated to take any action which may be necessary or proper to carry out the purpose and intent thereof.

7. **Authority.** Each Party represents and warrants that as of the Effective Date: (i) it is validly existing and in good standing in the state in which it is organized, (ii) it is the proper party to amend the Agreement, and (iii) it has the requisite authority to execute this Third Amendment.

8. **Counterparts.** This Third Amendment may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute a single instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Third Amendment to be duly executed as of the date above written.

BARBER POOL HYDRO, LLC

IDAHO POWER COMPANY

By: Ted Sorenson

By: Ryan N. Adelman

Name: Ted Sorenson

Name: Ryan Adelman

Title: Manager

Title: Vice President, Power Supply

Date: 1/4/2024

Date: 1/4/2024

**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION
CASE NO. IPC-E-24-06**

IDAHO POWER COMPANY

ATTACHMENT 3

ENERGY SALES AGREEMENT
BETWEEN
IDAHO POWER COMPANY
AND
BARBER POOL HYDRO LLC
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ENERGY SALES AGREEMENT (Non-Levelized)
(Non-Seasonal Hydro Facility 10 average Monthly MW or Less)

Project Name: Barber Dam Hydro

Project Number: 20240411

THIS ENERGY SALES AGREEMENT (“AGREEMENT”), entered into on as of the Effective Date defined in Paragraph 1.11, between BARBER POOL HYDRO LLC, (Seller), and IDAHO POWER COMPANY, an Idaho corporation (Idaho Power), hereinafter sometimes referred to collectively as “Parties” or individually as “Party.”

WITNESSETH:

WHEREAS, Seller owns, maintains and operates a PURPA Qualifying Facility; and

WHEREAS, Seller wishes to sell, and Idaho Power is required to purchase, electric generation produced by a PURPA Qualifying Facility.

THEREFORE, In consideration of the mutual covenants and agreements hereinafter set forth, the Parties agree as follows:

ARTICLE I: DEFINITIONS

As used in this Agreement and the appendices attached hereto, the following terms shall have the following meanings:

- 1.1 “Adjusted Estimated Net Energy Amount” – The Estimated Net Energy Amount specified in paragraph 6.2 including any adjustments that have been made in accordance with paragraphs 6.2.2, 6.2.3 or 6.2.4.
- 1.2 “Authorized Agent” – A person or persons specified within paragraph 25.2 of this Agreement as being authorized and empowered, for and on behalf of the Seller, to execute instruments, agreements, certificates, and other documents (collectively “Documents”) and to take actions on behalf of the Seller, and that Idaho Power Company and its directors, officers, employees, and agents are entitled to consider and deal with such persons as agents of the Seller for all purposes,

until such time as an authorized officer of the Seller shall have delivered to Idaho Power Company a notice in writing stating that such person is and shall no longer be an agent on behalf of the Seller. Any Documents executed by such persons shall be deemed duly authorized by the Seller for all purposes.

- 1.3 “Commission” – The Idaho Public Utilities Commission.
- 1.4 “Contract Year” – The period commencing each calendar year on the same calendar date as the Operation Date and ending three hundred sixty-four (364) days thereafter.
- 1.5 “Delay Cure Period” – One hundred twenty (120) days immediately following the Scheduled Operation Date.
- 1.6 “Delay Damages” – Current month’s Initial Year Monthly Estimated Net Energy Amount as specified in paragraph 6.2.1 as of the Effective Date divided by the number of days in the current month multiplied by the number of days in the Delay Period in the current month multiplied by the current month’s Delay Price.
- 1.7 “Delay Period” – All days past the Scheduled Operation Date until the Seller’s Facility achieves the Operation Date or the Agreement is terminated by Idaho Power.
- 1.8 “Delay Price” – The current month’s Mid-Columbia Market Energy Cost minus the current month’s All Hours Energy Price as specified in Section 7.6 and Appendix E-3 of this Agreement. If this calculation results in a value less than zero (0), the result of this calculation will be zero (0).
- 1.9 “Designated Network Resource (DNR)” – A resource that is designated for Idaho Power network load and does not include any resource, or any portion thereof, that is committed for sale to third parties or otherwise cannot be called upon to meet Idaho Power’s network load.
- 1.10 “Designated Dispatch Facility” – Idaho Power’s Load Serving Operations, or any subsequent group designated by Idaho Power.
- 1.11 “Effective Date” – The date upon which this Energy Sales Agreement was fully executed by both Parties.

1.12 “Environmental Attributes” – Any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility, and its avoided emission of pollutants. Environmental Attributes include but are not limited to: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;¹ (3) the reporting rights to these avoided emissions, such as REC Reporting Rights. REC Reporting Rights are the right of a REC purchaser to report the ownership of accumulated RECs in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the REC purchaser’s discretion, and include without limitation those REC Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. RECs are accumulated on a MWh basis and one REC represents the Environmental Attributes associated with one (1) MWh of energy. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits or investment tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) the cash grant in lieu of the investment tax credit pursuant to Section 1603 of the American Recovery and Reinvestment Act of 2009, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits.

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Environmental Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

- 1.13 “Estimated Net Energy Amount” – The monthly Estimated Net Energy Amount (kWh) provided by the Seller in accordance with paragraph 6.2 and which may be adjusted periodically throughout the Term of this Agreement in accordance with paragraph 6.2.
- 1.14 “Facility” – That electric generation facility described in Appendix B of this Agreement.
- 1.15 “Facility Nameplate Capacity” – The sum of the individual Generation Unit Nameplate Capacities that are installed at this Facility.
- 1.16 “First Energy Date” – The day commencing at 00:01 hours, Mountain Time, following the day that Seller has satisfied the requirements of Article IV and after the Seller requested First Energy Date.
- 1.17 “Forced Outage” – A partial or total reduction of a) the Facility’s capacity to produce and/or deliver Net Energy to the Point of Delivery, or b) Idaho Power's ability to accept Net Energy at the Point of Delivery for non-economic reasons, as a result of Idaho Power or Facility: 1) equipment failure which was **not** the result of negligence or lack of preventative maintenance, or 2) responding to a transmission provider curtailment order, or 3) unplanned preventative maintenance to repair equipment that left unrepaired, would result in failure of equipment prior to the planned maintenance period, or 4) planned maintenance or construction of the Facility or electrical lines required to serve this Facility, or 5) icing events within the immediate water source used as the Facility’s primary motive force that causes the Facility to reduce energy production.
- 1.18 “Fueled Rates” – Fueled Rates shall apply to Qualifying Facility projects fueled with fossil fuels as described in Schedule 73, Rate Options.
- 1.19 “Generator Interconnection Agreement (GIA)” – The interconnection agreement that specifies terms, conditions and requirements of interconnecting to the Idaho Power electrical system, which will include but not be limited to all requirements as specified by Schedule 72.
- 1.20 “Generation Unit” – A complete electrical generation system within the Facility that is able to generate and deliver electricity to the Point of Delivery independent of other Generation Units within the same Facility.

- 1.21 “Heavy Load Hours (HL)” – The daily hours, applicable to energy deliveries, from hour ending 0700 - 2200 Mountain Time, (16 hours) excluding all hours on all Sundays, New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas.
- 1.22 “Inadvertent Energy” – Electric energy Seller did not intend to generate. Inadvertent energy is described in paragraph 7.7 of this Agreement.
- 1.23 “Interconnection Facilities” – All equipment specified in the GIA.
- 1.24 “Initial Capacity Determination” – The process by which Idaho Power confirms that under normal or average design conditions the Facility will generate at no more than ten (10) average megawatts (MW) per month.
- 1.25 “Light Load Hours (LL)” – The daily hours from hour ending 2300 – 0600 Mountain Time (8 hours), plus all other hours on all Sundays, New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas.
- 1.26 “Losses” – The loss of electrical energy expressed in kilowatt hours (kWh) occurring as a result of the transformation and transmission of energy between the point where the Facility’s energy is metered and the Facility’s Point of Delivery. The loss calculation formula will be as specified in Appendix B of this Agreement.
- 1.27 “Market Energy Reference Price” – Eighty-five percent (85%) of the Mid-Columbia Market Energy Cost.
- 1.28 “Material Breach” – A Default (paragraph 19.2.1) subject to paragraph 19.2.2.
- 1.29 “Maximum Capacity Amount” – The maximum capacity (MW) of the Facility will be as specified in Appendix B of this Agreement.
- 1.30 “Mid-Columbia Market Energy Cost” – Eighty-two and four tenths percent (82.4%) of the monthly arithmetic average of each day’s Intercontinental Exchange (“ICE”) daily firm Mid-C Peak Avg and Mid-C Off-Peak Avg index prices. Each day’s index prices will reflect the relative proportions of peak hours and off peak hours in the month as follows:

The Mid-Columbia Market Energy Cost actual calculation being:

$$.824 * \left(\sum_{X=1}^n \{(\text{ICE Mid-C Peak Avg}_x * \text{HL hours for day}) + (\text{ICE Mid-C Off-Peak Avg}_x * \text{LL hours for day})\} / (n*24) \right)$$

where n = number of days in the month

If the ICE Mid-C Index prices are not reported for a particular day or days, prices derived from the respective averages of HL and LL prices for the immediately preceding and following reporting periods or days shall be substituted into the formula stated in this definition and shall therefore be multiplied by the appropriate respective numbers of HL and LL Hours for such particular day or days with the result that each hour in such month shall have a related price in such formula. If the day for which prices are not reported has in it only LL Hours (for example a Sunday), the respective averages shall use only prices reported for LL hours in the immediately preceding and following reporting periods or days. If the day for which prices are not reported is a Saturday or Monday or is adjacent on the calendar to a holiday, the prices used for HL Hours shall be those for HL hours in the nearest (forward or backward) reporting periods or days for which HL prices are reported. If the ICE Mid-C Index reporting is discontinued by the reporting agency, both Parties will mutually agree upon a replacement index, which is similar to the ICE Mid-C Index. The selected replacement index will be consistent with other similar agreements and a commonly used index by the electrical industry.

- 1.31 “Monthly Nameplate Energy” – Facility Nameplate Capacity (kW) multiplied by the hours in the applicable month.
- 1.32 “Nameplate Capacity” – The full-load electrical quantities assigned by the designer to a Generation Unit and its prime mover or other piece of electrical equipment, expressed in kilovolt-amperes, kilowatts, horsepower or other appropriate units. The nameplate is usually attached to the individual machine or device. This value is established for the term of this Agreement in Appendix B, item B-1 of this Agreement and validated in paragraph 4.1.4 of this Agreement.

- 1.33 “Net Energy” – All of the electric energy produced by the Facility, less Station Use and Losses, expressed in kilowatt hours (kWh) delivered by the Facility to Idaho Power at the Point of Delivery. Subject to the terms of this Agreement, Seller commits to deliver all Net Energy to Idaho Power at the Point of Delivery for the full term of the Agreement. Net Energy does not include Inadvertent Energy.
- 1.34 “Non-Fueled Rates” – Non-Fueled Rates shall apply to Qualifying Facility Projects that do not use fossil fuels as their primary fuel as described in Schedule 73, Rate Options.
- 1.35 “Non-seasonal Hydro Facility” – As described in Commission Order 32802, a hydro generating Facility that does not qualify as a Seasonal Hydro Facility.
- 1.36 “Operation Date” – For new projects, the day commencing at 00:01 hours, Mountain Time, following the day that all requirements of paragraph 5.2 have been completed and after the Seller requested Operation Date. For existing projects already delivering energy to Idaho Power under an existing energy sales agreement, the Operation Date will be at hour beginning 00:01 on the Scheduled Operation Date selected in Appendix B-3, provided the Commission approves the replacement Agreement and the Seller completes all of the Article IV and Article V requirements prior to the Scheduled Operation Date specified in Appendix B-3.
- 1.37 “Point of Delivery” – The location specified in the GIA and referenced in Appendix B, where Idaho Power’s and the Seller’s electrical facilities are interconnected and the energy from this Facility is delivered to the Idaho Power electrical system.
- 1.38 “Prudent Electrical Practices” – Those practices, methods and equipment that are commonly and ordinarily used in electrical engineering and operations to operate electric equipment lawfully, safely, dependably, efficiently and economically.
- 1.39 “Renewable Energy Certificate” or “REC” - A certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, indicating generation of renewable energy by the Facility, and includes all Environmental Attributes arising as a result of the generation of electricity associated with the REC. One REC represents the Environmental Attributes associated with the generation of one thousand (1,000) kWh of Net Energy.

- 1.40 “Scheduled Operation Date” – The date specified in Appendix B-3 when Seller anticipates achieving the Operation Date. The Scheduled Operation Date provided by the Seller shall be a reasonable estimate of the date that the Seller anticipates that the Seller’s Facility shall achieve the Operation Date and complete Article V compliance items.
- 1.41 “Schedule 72” – Idaho Power’s Tariff No. 101, Schedule 72 or its successor schedules as approved by the Commission.
- 1.42 “Schedule 73” – Idaho Power’s Tariff No. 101, Schedule 73 or its successor schedules as approved by the Commission.
- 1.43 “Security Deposit” – \$45 per kW Nameplate Capacity of the entire Facility.
- 1.44 “Season” – The three periods identified in paragraph 6.2.1 of this Agreement.
- 1.45 “Station Use” – Electric energy that is used to operate equipment that is auxiliary or otherwise related to the production of electricity by the Facility.
- 1.46 “Termination Damages” – Financial damages the non-defaulting party has incurred as a result of termination of this Agreement.

ARTICLE II: NO RELIANCE ON IDAHO POWER

- 2.1 Seller Independent Investigation – Seller warrants and represents to Idaho Power that in entering into this Agreement and the undertaking by Seller of the obligations set forth herein, Seller has investigated and determined that it is capable of performing hereunder and has not relied upon the advice, experience or expertise of Idaho Power in connection with the transactions contemplated by this Agreement.
- 2.2 Seller Independent Experts – All professionals or experts including, but not limited to, engineers, attorneys or accountants, that Seller may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Seller.

ARTICLE III: WARRANTIES

- 3.1 No Warranty by Idaho Power – Any review or acceptance Seller’s design, specifications,

equipment or facilities shall not be an endorsement or a confirmation by Idaho Power and Idaho Power makes no warranties, expressed or implied, regarding any aspect of Seller's design, specifications, equipment or facilities, including, but not limited to, safety, durability, reliability, strength, capacity, adequacy or economic feasibility.

- 3.2 Qualifying Facility Status – Seller warrants that the Facility is a “Qualifying Facility,” as that term is used and defined in 18 C.F.R. §292.201 et seq. and Seller will take such steps as may be required to maintain the Facility's Qualifying Facility status during the term of this Agreement and Seller's failure to maintain Qualifying Facility status will be a Material Breach of this Agreement. Idaho Power reserves the right to review the Facility's Qualifying Facility status and associated support and compliance documents at any time during the term of this Agreement.
- 3.3 FERC License / Exemption / Determination – Seller warrants that Seller possesses a valid license, exemption from licensing, or a determination of a qualifying conduit hydropower facility (pursuant to section 30 of the Federal Power Act) from the Federal Energy Regulatory Commission ("FERC") for the Facility. Seller recognizes that Seller's possession and retention of a valid FERC license, exemption, or a determination of a qualifying conduit hydropower facility is a material part of the consideration for Idaho Power's execution of this Agreement. If applicable, Seller will take such steps as may be required to maintain a valid FERC license, exemption, or a determination of a qualifying conduit hydropower facility for the Facility during the term of this Agreement, and Seller's failure to maintain a valid FERC license or exemption will be a material breach of this Agreement.

ARTICLE IV: CONDITIONS TO ACCEPTANCE OF ENERGY

- 4.1 First Energy Date – Prior to the Effective Date of this Agreement, this Facility has been delivering energy to Idaho Power in accordance with a Firm Energy Sales Agreement dated July 13, 1987, and some of the requirements of this Article are similar to the requirements of the 1987 agreement. Prior to the First Energy Date and as a condition of Idaho Power's acceptance of deliveries of energy from the Seller under this Agreement, Idaho Power shall review the

previously provided information and at Idaho Power's sole discretion may 1) accept the previously provided information as meeting the requirements of this Article or, 2) require updates to the previously provided information or 3) require the Seller to provide new information to complete the following requirements.

- 4.1.1 Licenses, Leases, Permits, Determinations, Approvals – Submit proof to Idaho Power that all licenses, leases, permits, determinations and approvals necessary for Seller's operations have been obtained from applicable federal, state or local authorities, including, but not limited to, evidence of compliance with Subpart B, 18 C.F.R. §292.201 et seq. as a certified Qualifying Facility.
- 4.1.2 Opinion of Counsel – Submit to Idaho Power an opinion letter signed by an attorney admitted to practice and in good standing in the State of Idaho providing an opinion that Seller's licenses, permits, determinations and approvals as set forth in paragraph 4.1.1 above are legally and validly issued, are held in the name of the Seller and, based on a reasonable independent review, counsel is of the opinion that Seller is in substantial compliance with said permits as of the date of the opinion letter. The opinion letter will be in a form acceptable to Idaho Power and will acknowledge that the attorney rendering the opinion understands that Idaho Power is relying on said opinion. Idaho Power's acceptance of the form will not be unreasonably withheld. The opinion letter will be governed by and shall be interpreted in accordance with the legal opinion accord of the American Bar Association Section of Business Law (1991).
- 4.1.3 Commission Approval – Confirm with Idaho Power that Commission approval of this Agreement in a form acceptable to Idaho Power has been received.
- 4.1.4 Initial Capacity Determination – Submit to Idaho Power such data as Idaho Power may reasonably require to perform the Initial Capacity Determination. Such data will include but not be limited to, Generation Unit Nameplate Capacity, equipment specifications, prime mover data, resource characteristics, normal and/or average operating design conditions and Station Use data. Upon receipt of this information, Idaho Power will

review the provided data and if necessary, request additional data to complete the Initial Capacity Determination within a reasonable time.

4.1.4.1 If the Maximum Capacity Amount specified in Appendix B of this Agreement and the cumulative manufacturer's Nameplate Capacity rating of the individual Generation Units at this Facility does not exceed ten (10) MW, the Seller shall submit detailed, manufacturer, verifiable data of the Nameplate Capacity ratings of the individual Generation Units to be installed at this Facility. Idaho Power will verify that the data provided establishes the combined Nameplate Capacity rating of the Generation Units to be installed at this Facility does not exceed ten (10) MW and will determine if the Seller has satisfied the Initial Capacity Determination.

4.1.4.2 If the Maximum Capacity or the cumulative manufacture's Nameplate Capacity Rating of the individual Generation Units at this Facility exceeds ten (10) MW, Idaho Power will review all data submitted by Seller to determine if it is a reasonable estimate that the Facility will not exceed ten (10) average MW in any month.

4.1.5 Nameplate Capacity – Submit to Idaho Power manufacturer's and engineering documentation that establishes the Nameplate Capacity of each individual Generation Unit that is included within this entire Facility. The sum of the individual Generation Unit capacity ratings shall be equal to Facility Nameplate Capacity. Upon receipt of this data, Idaho Power shall review the provided data and determine if the Nameplate Capacity specified is reasonable based upon the manufacturer's specified generation ratings for the specific Generation Units.

4.1.6 Completion Certificate – Submit a certificate executed by an authorized agent of the Seller attesting that all mechanical and electrical equipment of the designated Generation Unit has been completed to enable the Generation Unit to begin testing and deliver Test Energy in a safe manner.

- 4.1.7 Insurance – Submit written proof to Idaho Power of all insurance required in Article XIII.
- 4.1.8 Interconnection – Provide written confirmation from Idaho Power’s business unit that administers the GIA that Seller has satisfied all interconnection, hourly metering and testing requirements that will enable the Facility to be safely connected to the Idaho Power electrical system.
- 4.1.9 Designated Network Resource (DNR) – Confirm that the Seller’s Facility has completed all of the requirements to be an Idaho Power DNR capable of delivering energy up to the amount of the Maximum Capacity at the Point of Delivery.
- 4.1.9.1 As specified in Appendix B item 7 of this Agreement, the Seller’s Facility must achieve DNR status prior to Idaho Power accepting any energy from this Facility. Appendix B item 7 provides information on the initial application process required to enable Idaho Power to determine if network transmission capacity is available for this Facility’s Maximum Capacity Amount and/or if Idaho Power transmission network upgrades will be required. The results of this study process and any associated costs will be included in the GIA for this Facility.
- 4.1.9.2 At least thirty (30) days prior to the Scheduled First Energy Date and after the Facility has completed all requirements of the GIA that enable the Facility to come online, Idaho Power will complete the process for getting the Seller’s Facility approved as an Idaho Power DNR. If the Seller estimates that the actual First Energy is expected to be different than the Scheduled First Energy Date specified in Appendix B of this Agreement, the Seller must notify Idaho Power of this revised date no later than 30 days prior to Scheduled First Energy Date. The Facility cannot deliver any energy to Idaho Power until it is approved as a DNR and after completing all the requirements of the GIA and complying with the requirements of this Agreement.
- 4.1.10 Written Acceptance – Request and obtain written confirmation from Idaho Power that all conditions to acceptance of energy have been fulfilled. Such written confirmation shall be

provided within a commercially reasonable time following the Seller's request and will not be unreasonably withheld by Idaho Power.

ARTICLE V: TERM AND OPERATION DATE

5.1 Term – Subject to the provisions of paragraph 5.2 below, this Agreement shall become effective on the Effective Date and shall continue in full force and effect for a period of twenty (20) Contract Years from the Operation Date, except that if the Operation Date is granted for a date that is after the Scheduled Operation Date identified in Appendix B, in which case the Term shall start on the Scheduled Operation Date.

5.2 Operation Date – Prior to the Effective Date of this Agreement, this Facility has been delivering energy to Idaho Power in accordance with a Firm Energy Sales Agreement dated July 13, 1987, and some of the requirements of this Article are similar to the requirements of the 1987 agreement. Prior to the Operation Date and as a condition of Idaho Power's acceptance of deliveries of energy from the Seller under this Agreement, Idaho Power shall review the previously provided information and at Idaho Power's sole discretion may 1) accept the previously provided information as meeting the requirements of this Article or, 2) require updates to the previously provided information or 3) require the Seller to provide new information to complete the following requirements. A single Operation Date will be granted for the entire Facility and may occur only after the Facility has achieved all of the following:

- a) The Facility is online and delivering electricity to Idaho Power at the Point of Delivery.
- b) Seller has demonstrated to Idaho Power's satisfaction that all mechanical and electrical testing has been completed satisfactorily and the Facility is able to provide energy in a consistent, reliable and safe manner.
- c) Engineer's Certifications – Submit an executed Engineer's Certification of Design & Construction Adequacy and an Engineer's Certification of Operations and Maintenance (O&M) Policy as described in Commission Order No. 21690. These certificates will be in the form specified in Appendix C but may be modified to the extent necessary to

recognize the different engineering disciplines providing the certificates.

d) Seller has requested an Operation Date from Idaho Power in a written format.

e) Seller has received written confirmation from Idaho Power of the Operation Date.

5.3 Operation Date Delay – Seller shall cause the Facility to achieve the Operation Date on or before the Scheduled Operation Date. Delays in the interconnection and transmission network upgrade study, design and construction process (This includes any delay in making the required deposit payments set forth in the Facility’s GIA) that **are not** caused by Idaho Power or Force Majeure events accepted by both Parties, **shall not** prevent Delay Damages or Termination Damages from being due and owing as calculated in accordance with this Agreement.

5.4 Termination – If Seller fails to achieve the Operation Date prior to the Scheduled Operation Date, such failure will be a Material Breach and shall subject the Seller to Delay Damages during the Delay Cure Period. If Seller fails to achieve an Operation Date during the Delay Cure Period, Idaho Power may immediately terminate this Agreement with no further notice required.

5.5 Delay Damages Billing and Payment – Idaho Power shall calculate and submit to the Seller any Delay Damages due Idaho Power within fifteen (15) days after the end of each month or within 30 days of the date this Agreement is terminated by Idaho Power.

5.6 Termination Damages Billing and Payment – Idaho Power shall calculate and submit to the Seller any Termination Damages due Idaho Power within thirty (30) days after this Agreement has been terminated. Seller shall respond within 15 days. In the event of a dispute regarding the calculation of Termination Damages, either party may resort to a court of competent jurisdiction.

5.7 Seller Payment – Seller shall pay Idaho Power any calculated Delay or Termination Damages within 15 days from when Idaho Power presents these final adjusted billings to the Seller. Final adjusted billing being the original billing adjusted to reflect any mutually agreed to changes from the original billing. Seller’s failure to pay these damages within the specified time will be a Material Breach of this Agreement and Idaho Power shall draw funds from the Security Deposit provided by the Seller in an amount equal to the calculated damages.

5.8 Security Deposit – Within thirty (30) days of the date of a final non-appealable Commission Order

approving this Agreement as specified in Article XXI, the Seller shall post and maintain liquid security in a form as described in Appendix D equal to or exceeding the amount specified within this Agreement as the Security Deposit until such time as the Security Deposit is released by Idaho Power as specified in paragraph 5.8.1. Failure to post this Security Deposit in the time specified above will be a Material Breach of this Agreement and Idaho Power may terminate this Agreement. In accordance with Commission Order No. 32697 E(1)(8), this Article 5.8 shall not be required in situations where the parties are entering into a new Energy Sales Agreement (“ESA”) for an existing Qualifying Facility (“QF”) project already in commercial operation so long as the new ESA is between the same parties and there are no material modifications to the existing QF project.

5.8.1 Security Deposit Release – Idaho Power shall release any remaining Security Deposit provided by Seller promptly after either the Facility has achieved its Operation Date or this Agreement has been terminated and only after all final adjusted Delay and Termination Damages have been paid in full to Idaho Power.

ARTICLE VI: PURCHASE AND SALE OF NET ENERGY

6.1 Net Energy Purchase and Delivery – Except when either Party's performance is excused as provided herein, Idaho Power will purchase and Seller will sell all of the Net Energy to Idaho Power at the Point of Delivery. All Inadvertent Energy produced by the Facility will also be delivered by the Seller to Idaho Power at the Point of Delivery. At no time within any hour will the Seller's Facility generation deliveries to Idaho Power exceed the Maximum Capacity Amount specified in Appendix B.

6.2 Estimated Net Energy Amounts – Neither the monthly Estimated Net Energy Amounts provided as of the Effective Date of this Agreement nor monthly Adjusted Estimated Net Energy Amounts provided during the term of this Agreement shall exceed ten (10) average monthly MW nor be greater than the Maximum Capacity Amount (measured in kW) multiplied by the hours in the applicable month. Seller agrees to provide initial and revised Estimated Net Energy Amounts using an automated electronic input portal provided by Idaho Power. If the electronic portal is not

available, Seller will provide Estimated Net Energy Amounts to Idaho Power via email or alternate methods as specified by Idaho Power.

6.2.1 Monthly Estimated Net Energy Amounts provided as of the Effective Date of this Agreement:

	<u>Month</u>	<u>kWh</u>
Season 1	March	814,086
	April	1,437,145
	May	1,934,933
Season 2	July	1,861,857
	August	1,607,134
	November	148,650
	December	205,573
Season 3	June	1,882,523
	September	1,079,257
	October	401,565
	January	325,930
	February	535,133

6.2.2 Seller's Adjustment of Estimated Net Energy Amounts – Prior to the Operation Date, the Seller may revise all of the previously provided monthly Estimated Net Energy Amounts. This revision must be submitted using the electronic portal provided by Idaho Power if available. If the portal is not available, then written notice must be provided to Idaho Power by electronic notice (electronic mail) as agreed to by both parties.

6.2.3 Seller's Adjustment of Estimated Net Energy Amounts After the Operation Date – After the Operation Date, the Seller may revise any future monthly Estimated Net Energy Amounts by providing written notice no later than 5 PM Mountain Standard time on the 25th day of the month that is prior to the month to be revised. If the 25th day of the month falls on a weekend or holiday, then Idaho Power must receive the revision no later than the last business day prior to the 25th day of the month. For example, if the Seller would like to revise the Estimated Net Energy Amount

for October, they would need to submit a revised schedule no later than September 25th or the last business day prior to September 25th.

- a.) This revision must be submitted using the electronic portal provided by Idaho Power if available. If portal is not available, then written notice must be provided to Idaho Power by electronic notice (electronic mail) as agreed to by both parties.
- b.) If the Seller does not update the electronic portal or provide written notice of changes to the Estimated Net Energy Amounts, then it will be deemed to be an election of no change from the most recently provided monthly Estimated Net Energy Amounts. Idaho Power is unable to accept any requested changes to the Estimated Net Energy Amounts if the date and time that Idaho Power receives the requested change is after the deadline.

6.2.4 Idaho Power Adjustment of Monthly Estimated Net Energy Amounts – If Idaho Power is excused from accepting the Seller’s Net Energy as specified in paragraph 12.2.1 or if the Seller declares a Suspension of Energy Deliveries as specified in paragraph 12.3.1 and the Seller’s declared Suspension of Energy Deliveries is accepted by Idaho Power, the monthly estimated Net Energy amount as specified in paragraph 6.2 for the specific month in which the reduction or suspension under paragraph 12.2.1 or 12.3.1 occurs will be temporarily reduced in accordance with the following and only for the actual month in which the event occurred:

NEA = Current Month’s Estimated Net Energy Amount (Paragraph 6.2)

- SGU =
- a.) If Idaho Power is excused from accepting the Seller’s Net Energy as specified in paragraph 12.2.1 this value will be equal to the percentage of curtailment as specified by Idaho Power multiplied by the TGU as defined below.
 - b.) If the Seller declares a Suspension of Energy Deliveries as specified in paragraph 12.3.1 this value will be the sum of the individual Generation Units size ratings as specified in Appendix B that are impacted by the circumstances causing the Seller to declare a Suspension of Energy Deliveries.

TGU = Sum of all of the individual generator ratings of the Generation Units at this Facility as specified in Appendix B of this agreement.

RSH = Actual hours the Facility's Net Energy deliveries were either reduced or suspended under paragraph 12.2.1 or 12.3.1

TH = Actual total hours in the current month

Resulting formula being:

$$\begin{array}{l} \text{Adjusted} \\ \text{Estimated} \\ \text{Net Energy} \\ \text{Amount} \end{array} = \text{NEA} - \left(\left(\frac{\text{SGU}}{\text{TGU}} \times \text{NEA} \right) \times \left(\frac{\text{RSH}}{\text{TH}} \right) \right)$$

This Adjusted Estimated Net Energy Amount will be used in applicable Surplus Energy calculations for only the specific month in which Idaho Power was excused from accepting the Seller's Net Energy or the Seller declared a Suspension of Energy Deliveries.

- 6.3 Failure to Deliver Minimum Amounts of Net Energy – Unless excused by an event of Force Majeure or Idaho Power's inability to accept Net Energy, Seller's failure to deliver Net Energy in any Contract Year in an amount equal to at least ten percent (10%) of the sum of the monthly estimated Net Energy amounts in effect as of the Operation Date shall constitute an event of default.

ARTICLE VII: PURCHASE PRICE AND METHOD OF PAYMENT

- 7.1 Surplus Energy – (1) Net Energy produced by the Seller's Facility and delivered to the Idaho Power electrical system during the month which exceeds one hundred ten percent (110%) of the monthly Adjusted Estimated Net Energy Amount for the corresponding month specified in paragraph 6.2, or (2) if the Net Energy produced by the Seller's Facility and delivered to the Idaho Power electrical system during the month is less than ninety percent (90%) of the monthly Adjusted Estimated Net Energy Amount for the corresponding month specified in paragraph 6.2,

then all Net Energy delivered by the Facility to the Idaho Power electrical system for that given month, or (3) all Net Energy produced by the Seller's Facility and delivered by the Facility to the Idaho Power electrical system prior to the Operation Date, or (4) all monthly Net Energy that exceeds the Monthly Nameplate Energy.

- 7.2 Surplus Energy Price – For all Surplus Energy, Idaho Power shall pay to the Seller the current month's Market Energy Reference Price or the applicable All Hours Energy Price, whichever is lower.
- 7.3 Base Energy – The Net Energy produced by the Seller's Facility and delivered to the Idaho Power electrical system after the Facility has achieved an Operation Date which is greater than or equal to ninety percent (90%) and less than or equal to one hundred ten percent (110%) of the monthly Adjusted Estimated Net Energy Amount for the corresponding month specified in paragraph 6.2.
- 7.4 Base Energy Heavy Load Purchase Price – For all hourly Base Energy received during Heavy Load Hours, Idaho Power will pay the monthly non-levelized Base Energy Heavy Load Purchase Price as specified in Appendix E.
- 7.5 Base Energy Light Load Purchase Price – For all hourly Base Energy received during Light Load Hours, Idaho Power will pay the monthly non-levelized Base Energy Light Load Purchase Price as specified in Appendix E.
- 7.6 All Hours Energy Price – The price to be used in the calculation of the Surplus Energy Price and Delay Damage Price shall be the monthly non-levelized All Hours Energy in Appendix E.
- 7.7 Inadvertent Energy –
- 7.7.1 Inadvertent Energy is electric energy produced by the Facility which the Seller delivers to Idaho Power at the Point of Delivery that:
- a.) exceeds ten thousand (10,000) kW multiplied by the hours in the specific month in which the energy was delivered. (For example, January contains 744 hours. 744 hours times 10,000 kW = 7,440,000 kWh. Energy delivered in January in excess of 7,440,000 kWh in this example would be Inadvertent

Energy.) or

b.) exceeds the Maximum Capacity Amount (in kW) in any hour.

7.7.2 Although Seller intends to design and operate the Facility to generate no more than the Maximum Capacity Amount in any hour and no more than ten (10) average MW monthly and therefore does not intend to generate and deliver Inadvertent Energy, Idaho Power will accept Inadvertent Energy but will not purchase or pay for Inadvertent Energy.

7.7.3 Delivering Inadvertent Energy to Idaho Power for two (2) consecutive months and/or in any three (3) months during a Contract Year will be a Material Breach of this Agreement and Idaho Power may terminate this Agreement within sixty (60) days after the Material Breach has occurred.

7.8 Payments – Undisputed Base Energy and Surplus Energy payments, less any payments due to Idaho Power will be disbursed to the Seller within thirty (30) days of the date which Idaho Power receives and accepts the documentation of the monthly Base Energy and Surplus Energy actually delivered to Idaho Power as specified in Appendix A. Seller agrees to use payment method as specified by Idaho Power which could be ACH (Automated Clearing House), electronic, wire, paper checks or any other method for making payments to Seller.

7.9 Continuing Jurisdiction of the Commission – This Agreement is a special contract and the rates, terms and conditions contained in this Agreement will be construed in accordance with Idaho Power Company v. Idaho Public Utilities Commission and Afton Energy, Inc., 107 Idaho 781, 693 P.2d 427 (1984), Idaho Power Company v. Idaho Public Utilities Commission, 107 Idaho 1122, 695 P.2d 1 261 (1985), Afton Energy, Inc. v. Idaho Power Company, 111 Idaho 925, 729 P.2d 400 (1986), Section 210 of the Public Utility Regulatory Policies Act of 1978 and 18 C.F.R. §292.303-308

ARTICLE VIII: ENVIRONMENTAL ATTRIBUTES

8.1 Pursuant to Commission Order No. 32697 and Order No. 32802 the Environmental Attributes and

Renewable Energy Certificates as defined within this Agreement and directly associated with the production of energy from the Seller's Facility are owned by the Seller.

ARTICLE IX: FACILITY AND INTERCONNECTION

- 9.1 Design of Facility – Seller will design, construct, install, own, operate and maintain the Facility and any Seller-owned Interconnection Facilities so as to allow safe and reliable generation and delivery of Net Energy and Inadvertent Energy to the Idaho Power Point of Delivery for the full term of the Agreement in accordance with the GIA.

ARTICLE X:

METERING, METERING COMMUNICATIONS AND SCADA TELEMETRY

- 10.1 Metering – Idaho Power shall, provide, install, and maintain metering equipment needed for metering the electrical energy production from the Facility. The metering equipment will be capable of measuring, recording, retrieving, and reporting the Facility's hourly gross electrical energy production, Station Use, maximum energy deliveries (kW) and any other electricity measurements at the Point of Delivery that Idaho Power needs to administer this Agreement and integrate this Facility's electricity delivered to the Idaho Power electrical system. Specific equipment, installation details and requirements for this metering equipment will be established in the GIA process and documented in the GIA. Seller shall be responsible for all initial and ongoing costs of this equipment as specified in Schedule 72 and the GIA.
- 10.2 Metering Communications – Seller shall, at the Seller's sole initial and ongoing expense, arrange for, provide, install, and maintain dedicated metering communications equipment capable of transmitting the metering data specified in paragraph 10.1 to Idaho Power in a frequency, manner and form acceptable to Idaho Power. Seller shall grant Idaho Power sole control and use of this dedicated metering communications equipment. Specific details and requirements for this metering communications equipment will be established in the GIA process and documented in the GIA.
- 10.3 Supervisory Control and Data Acquisition (SCADA) Telemetry – In addition to the requirements

of paragraph 10.1 and 10.2, Idaho Power may require telemetry equipment and telecommunications which will be capable of providing Idaho Power with continuous instantaneous SCADA telemetry of the Seller's Net Energy and Inadvertent Energy production in a form acceptable to Idaho Power. Seller shall grant Idaho Power sole control and use of this dedicated SCADA and telecommunications equipment. Specific details and requirements for this SCADA Telemetry and telecommunications equipment will be established in the GIA process and documented in the GIA. Seller shall be responsible for all initial and ongoing costs of this equipment as specified in Schedule 72 and the GIA.

ARTICLE XI – RECORDS

- 11.1 Maintenance of Records – Seller shall maintain monthly records at the Facility or such other location mutually acceptable to the Parties. These records shall include total generation, Net Energy, Station Use, Surplus Energy, Inadvertent Energy and maximum hourly generation (kW) and be recorded in a form and content acceptable to Idaho Power. Monthly records shall be retained for a period of not less than five (5) years.
- 11.2 Inspection – Either Party, after reasonable notice to the other Party, shall have the right, during normal business hours, to inspect and audit any or all records pertaining to the Seller's Facility generation, Net Energy, Station Use, Surplus Energy, Inadvertent Energy and maximum generation (kW) records pertaining to the Seller's Facility.

ARTICLE XII: OPERATIONS

- 12.1 Communications – Idaho Power and the Seller shall maintain appropriate operating communications through Idaho Power's Designated Dispatch Facility in accordance with the GIA.
- 12.2 Acceptance of Energy –
- 12.2.1 Idaho Power shall be excused from accepting and paying for Net Energy or accepting Inadvertent Energy which would have otherwise been produced by the Facility and

delivered by the Seller to the Point of Delivery:

- a.) If generation deliveries are interrupted due an event of Force Majeure or Forced Outage.
- b.) If interruption of generation deliveries is allowed by Section 210 of the Public Utility Regulatory Policies Act of 1978 and 18 C.F.R. §292.304
- c.) If temporary disconnection and/or interruption of energy deliveries is in accordance with Schedule 72 or other provisions as specified within the GIA.
- d.) If Idaho Power determines that curtailment, interruption or reduction of Net Energy or Inadvertent Energy deliveries is necessary because of line construction, electrical system maintenance requirements, emergencies, electrical system operating conditions, electrical system reliability emergencies on its system, or as otherwise required by Prudent Electrical Practices.

12.2.2 If, in the reasonable opinion of Idaho Power, Seller's operation of the Facility or Interconnection Facilities is unsafe or may otherwise adversely affect Idaho Power's equipment, personnel or service to its customers, Idaho Power may temporarily disconnect the Facility from Idaho Power's transmission/distribution system as specified within the GIA or Schedule 72 or take such other reasonable steps as Idaho Power deems appropriate.

12.2.3 Under no circumstances will the Seller deliver generation from the Facility to the Point of Delivery in an amount that exceeds the Maximum Capacity Amount at any moment in time. Seller's failure to limit deliveries to the Maximum Capacity Amount will be a Material Breach of this Agreement.

12.2.4 If Idaho Power is unable to accept the generation from this Facility and is not excused from accepting the Facility's generation, Idaho Power's damages shall be limited to only the value of the estimated electricity that Idaho Power was unable to accept valued at the applicable energy prices specified in this Agreement. Idaho Power will have no

responsibility to pay for any other costs, lost revenue or consequential damages the Facility may incur.

12.3 Seller Declared Suspension of Energy Deliveries –

12.3.1 If the Seller's Facility experiences a Forced Outage, and the Seller initiates a Declared Suspension of Energy Deliveries, Seller shall, after giving notice as provided in paragraph 12.3.2 below, temporarily reduce deliveries of Net Energy (kW) to Idaho Power from the Facility to not exceed the reduced energy deliveries (kW) stated by the Seller in the initial declaration for a period of not less than forty-eight (48) hours ("Declared Suspension of Energy Deliveries"). The Seller's Declared Suspension of Energy Deliveries will begin at the start of the next full hour following the Seller's telephone notification as specified in paragraph 12.3.2 and will continue for the time as specified in the written notification provided by the Seller. In the month(s) in which the Declared Suspension of Energy occurred, the Estimated Net Energy Amount will be adjusted as specified in paragraph 6.2.3.

12.3.2 If the Seller desires to initiate a Declared Suspension of Energy Deliveries as provided in paragraph 12.3.1, the Seller will notify the Designated Dispatch Facility by telephone. The beginning hour of the Declared Suspension of Energy Deliveries will be at the earliest the next full hour after making telephone contact with Idaho Power. The Seller will, within twenty four (24) hours after the telephone contact, provide Idaho Power a written notice in accordance with Article XXV that will contain the beginning hour and expected duration of the Declared Suspension of Energy Deliveries, a description of the conditions that caused the Seller to initiate a Declared Suspension of Energy Deliveries and the reduced level (kW) of energy deliveries the Facility is requesting that will be set as the maximum energy deliveries to Idaho Power for the duration of the Declared Suspension of Energy Delivery event (not less than 48 hours). Idaho Power will review the documentation provided by the Seller to determine Idaho Power's acceptance of the described Forced Outage as qualifying for a Declared Suspension of Energy Deliveries as specified in

paragraph 12.3.1. Idaho Power's acceptance of the Seller's Forced Outage as an acceptable Forced Outage will be based upon the clear documentation provided by the Seller that the Forced Outage is not due to an event of Force Majeure or by neglect, disrepair or lack of adequate preventative maintenance of the Seller's Facility.

- 12.4 Scheduled Maintenance – On or before January 31st of each calendar year, Seller shall submit a written proposed maintenance schedule of significant Facility maintenance for that calendar year and Idaho Power and Seller shall mutually agree as to the acceptability of the proposed schedule. If the Seller intends to perform planned maintenance at approximately the same time every year, the Seller may submit a maintenance schedule for the first calendar year and include a statement that this maintenance schedule shall be consistent for all future years, until such time as the Seller notifies Idaho Power of a change to this schedule. The Parties determination as to the acceptability of the Seller's timetable for scheduled maintenance will take into consideration Prudent Electrical Practices, Idaho Power system requirements and the Seller's preferred schedule. Neither Party shall unreasonably withhold acceptance of the proposed maintenance schedule.
- 12.5 Idaho Power Maintenance Information – Upon receiving a written request from the Seller, Idaho Power shall provide publicly available information with regard to Idaho Power planned maintenance information that may impact the Facility.
- 12.6 Contact Prior to Curtailment – Idaho Power will make a reasonable attempt to contact the Seller prior to interrupting the interconnection or curtailing deliveries from the Seller's Facility. Seller understands that in the case of emergency circumstances, real time operations of the electrical system, and/or unplanned events, Idaho Power may not be able to provide notice to the Seller prior to interruption, curtailment, or reduction of electrical energy deliveries to Idaho Power.

ARTICLE XIII: INDEMNIFICATION AND INSURANCE

- 13.1 Indemnification – Each Party shall agree to hold harmless and to indemnify the other Party, its officers, agents, affiliates, subsidiaries, parent company and employees against all loss, damage, expense and liability to third persons for injury to or death of person or injury to property,

proximately caused by the indemnifying Party's, (a) construction, ownership, operation or maintenance of, or by failure of, any of such Party's works or facilities used in connection with this Agreement, or (b) negligent or intentional acts, errors or omissions. The indemnifying Party shall, on the other Party's request, defend any suit asserting a claim covered by this indemnity. The indemnifying Party shall pay all documented costs, including reasonable attorney fees that may be incurred by the other Party in enforcing this indemnity.

- 13.2 Insurance – During the term of this Agreement, Seller shall secure and continuously carry insurance as specified in Appendix F.

ARTICLE XIV: FORCE MAJEURE

- 14.1 Force Majeure – As used in this Agreement, “Force Majeure” or “an event of Force Majeure” means any cause beyond the control of the Seller or of Idaho Power which, despite the exercise of due diligence, such Party is unable to prevent or overcome. Force Majeure includes, but is not limited to, acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, or changes in law or regulation occurring after the effective date, which, by the exercise of reasonable foresight such party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome. Fluctuations and/or changes of the motive force and/or the fuel supply **are not** events of Force Majeure. If either Party is rendered wholly or in part unable to perform its obligations under this Agreement because of an event of Force Majeure, both Parties shall be excused from whatever performance is affected by the event of Force Majeure, provided that:

- (1) The non-performing Party shall, as soon as is reasonably possible after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence.
- (2) The suspension of performance shall be of no greater scope and of no longer duration than is required by the event of Force Majeure.
- (3) No obligations of either Party which arose before the occurrence of the Force

Majeure event and which could and should have been fully performed before such occurrence shall be excused as a result of such occurrence.

ARTICLE XV: LIABILITY; DEDICATION

- 15.1 Limitation of Liability – Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. Neither party shall be liable to the other for any indirect, special, consequential, nor punitive damages, except as expressly authorized by this Agreement.
- 15.2 Dedication – No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party’s system or any portion thereof to the Party or the public or affect the status of Idaho Power as an independent public utility corporation or Seller as an independent individual or entity.

ARTICLE XVI: SEVERAL OBLIGATIONS

- 16.1 Several Obligations – Except where specifically stated in this Agreement to be otherwise, the duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or impose a trust or partnership duty, obligation or liability on or with regard to either Party. Each Party shall be individually and severally liable for its own obligations under this Agreement.

ARTICLE XVII: WAIVER

- 17.1 Waiver – Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or other matter.

ARTICLE XVIII: CHOICE OF LAWS AND VENUE

- 18.1 State of Idaho Laws – This Agreement shall be construed and interpreted in accordance with the laws of the State of Idaho without reference to its choice of law provisions.

18.2 Venue – For any litigation arising out of or related to this Agreement will lie in the District Court of the Fourth Judicial District of Idaho in and for the County of Ada.

ARTICLE XIX: DISPUTES AND DEFAULT

19.1 Disputes – All disputes related to or arising under this Agreement, including, but not limited to, the interpretation of the terms and conditions of this Agreement, will be submitted to the Commission for resolution.

19.2 Notice of Default

19.2.1 Defaults – If either Party fails to perform any of the terms or conditions of this Agreement (an “event of default”), the non-defaulting Party shall cause notice in writing to be given to the defaulting Party, specifying the manner in which such default occurred. If the defaulting Party shall fail to cure such default within the sixty (60) days after service of such notice, or if the defaulting Party reasonably demonstrates to the other Party that the default can be cured within a commercially reasonable time but not within such sixty (60) day period and then fails to diligently pursue such cure, then the non-defaulting Party may, at its option, terminate this Agreement and/or pursue its legal or equitable remedies.

19.2.2 Material Breaches – The notice and cure provisions in paragraph 19.2.1 do not apply to defaults identified in this Agreement as Material Breaches. Material Breaches must be cured as expeditiously as possible following occurrence of the breach. Idaho Power can terminate the Agreement at any time following the Material Breach unless there is a specific cure, or cure period, identified by this Agreement for that specific Material Breach then that cure, or cure period, shall apply.

19.3 Operation Date Requirements – Prior to the Operation Date and thereafter for the full term of this Agreement, Seller will provide Idaho Power with the following:

19.3.1 Insurance – Evidence of compliance with the provisions of Appendix F. If Seller fails to comply, such failure will be a Material Breach.

19.3.2 Engineer's Certifications – Every three (3) years after the Operation Date, Seller will supply Idaho Power with a completed Certification of Ongoing Operations and Maintenance form as specified in Appendix C. The certification will be from a Registered Professional Engineer licensed in the State of Idaho. Seller's failure to supply the required certificate will be an event of default. Such a default may only be cured by Seller providing the required certificate; and

19.3.3 Licenses / Leases / Permits / Determinations – During the full term of this Agreement, Seller shall maintain compliance with all leases, permits, licenses and determinations described in paragraph 4.1.1 of this Agreement. In addition, Seller will supply Idaho Power with copies of any new or additional permits, licenses or determinations. At least every fifth Contract Year, Seller will update the documentation described in Paragraph 4.1.1. If at any time Seller fails to maintain compliance with the leases, permits, licenses and determinations described in paragraph 4.1.1 or to provide the documentation required by this paragraph, such failure will be an event of default and may only be cured by Seller submitting to Idaho Power evidence of compliance from the permitting agency.

ARTICLE XX: GOVERNMENTAL AUTHORIZATION

20.1 This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party of this Agreement.

ARTICLE XXI: COMMISSION ORDER

21.1 Commission Order – Idaho Power shall file this Agreement for its acceptance or rejection by the Commission. This Agreement shall only become finally effective upon the Commission's approval of all terms and provisions hereof without change or condition and declaration that all payments to be made to Seller hereunder shall be allowed as prudently incurred expenses for ratemaking purposes.

ARTICLE XXII: SUCCESSORS AND ASSIGNS

22.1 This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties hereto. Neither this Agreement nor any rights or obligations of either Party hereunder may be assigned, in whole or in part, by operation of law or otherwise, without the prior written consent of both Parties, which consent shall not be unreasonably withheld. Any party with which Idaho Power may consolidate, merge, convey or transfer substantially all of its electric utility assets, shall automatically, without further act, and without need of consent or approval by the Seller, succeed to all of Idaho Power's rights, obligations and interests under this Agreement. Any purported assignment in derogation of the foregoing shall be void. This article shall not prevent a financing entity with recorded or secured rights from exercising all rights and remedies available to it under law or contract. Idaho Power shall have the right to be notified by the financing entity that it is exercising such rights or remedies.

ARTICLE XXIII: MODIFICATION

- 23.1 No later than the First Energy Date, the Seller will provide Idaho Power with an "as-built" description of the Facility in the form set forth in Appendix B.
- 23.2 The Seller will not modify the Facility from the description set forth in Appendix B without prior notification to Idaho Power. A proposed modification to the Facility that would change the Facility as described in Appendix B is referred to herein as a "Proposed Facility Modification." Proposed Facility Modification does not include additions or expansions to the Facility that result in an increase to the Maximum Capacity Amount, which are addressed in paragraph 23.6. The Seller may not begin construction of any Proposed Facility Modification(s) unless and until the following requirements have been met:
- (i) Seller has promptly notified Idaho Power of the Proposed Facility Modification(s) prior to initiating the modification design, specification, purchasing and construction process;
 - (ii) Seller has provided Idaho Power with detailed plans regarding the Proposed Facility Modification(s), including proposed revisions to the as-built description of the Facility set

forth in Appendix B; and

- (iii) The Proposed Facility Modification has been reviewed by Idaho Power and a determination made to either pursue an amendment as a Proposed Facility Modification pursuant to paragraphs 23.3 and 23.4 or as an expansion or additional project pursuant to paragraph 23.6.

23.3 Idaho Power will review any Proposed Facility Modification(s) and “as-built” descriptions to determine whether an amendment of the Agreement is appropriate as set forth in paragraph 23.4. In reviewing any Proposed Facility Modification(s) or actual modifications reflected in the as-built description, Idaho Power shall consider the following information: (i) The nature, scope, and extent of the proposed or actual modification(s); (ii) The impact, if any, on the applicable avoided cost rates or other relevant terms and conditions; and (iii) Such other information as may reasonably be necessary including the effect on any other provisions hereof which may be impacted by the proposed or actual modification. Proposed modifications could result in several possible actions including but not limited to: no change to Appendix B, and thus no further action; an amendment to conform Appendix B to the modified Facility; an amendment to adjust the pricing and other relevant terms and conditions; or a termination and new Agreement.

23.4 Based on its review, Idaho Power, at its sole determination in accordance with the provisions of the Public Utility Regulatory Policies Act of 1978 and any amendments thereto (“PURPA”) and subject to Commission approval, may choose to enter into an amendment of the Agreement to adjust the pricing or other relevant terms and conditions as necessary, including Appendix B;

23.4.1 If Idaho Power determines that it is appropriate to revise the Agreement, the Parties will enter into a written amendment to the Agreement revising the relevant terms, conditions, description in Appendix B, and, if necessary, pricing, referred to herein as the “Facility Modification Amendment”. The Facility Modification Amendment will be submitted to the Commission for approval. If the pricing is adjusted, the Parties will agree on and include in the amendment a pricing true-up mechanism to ensure that the correct rates apply to the modified Facility from the completion date of the modification.

- 23.4.2 If the Commission determines that the Proposed Facility Modification would require termination of the Agreement, the Seller may abandon the Proposed Facility Modification or accept the termination. If the Seller accepts the termination, Seller will be responsible for Termination Damages, if any, and the Parties may negotiate a new agreement based on the Facility as modified.
- 23.5 In addition to prior notification of any modifications to the Facility from the description set forth in Appendix B, no later than thirty (30) days following the date of substantial completion of such modification, and prior to the first Operation Date of such modification, Seller must provide Idaho Power with an “as-built” description of the modified Facility in the form set forth in Appendix B of this Agreement; provided that the Facility, as reflected in the “as-built” description to be provided under this paragraph, may not deviate from the Facility Modification Amendment, except, in each case, to the extent such further modification(s) are authorized under a subsequent written amendment to this Agreement that is executed by the Parties and approved by the Commission. If the “as-built” description deviates from the then-approved Appendix B, Idaho Power will review it and follow the process described in paragraphs 23.3 and 23.4.
- 23.6 Idaho Power is not required to purchase any Net Energy above the Maximum Capacity Amount. If Seller builds an expansion or additional project such that the expansion, or additional project would be deemed a single Qualified Facility or the same site under FERC regulations, Seller may not require Idaho Power (and Idaho Power will have no obligation to purchase pursuant to this Agreement) the output of any such expansion, or additional facility under the terms, conditions and prices in this Agreement. Instead, Seller may exercise any rights to enter into a new agreement for the sale of such incremental energy from such additional facility that is a Qualified Facility under then-applicable laws and regulations.
- 23.7 Idaho Power is not obligated to and shall not make any incremental payment to Seller as a result of any modification, addition, or expansion of the Facility if such modification was not authorized and approved by the Commission pursuant to the provisions of this Article 23. Should the Seller modify, construct additions, and/or expand the Facility without notification to Idaho Power nor the

authorization and approval of the Commission pursuant to the provisions of this Article 23, any incremental payments to Seller resulting from and subsequent to the modification, addition, and/or expansion of the Facility that deviate from the description in Appendix B shall be unauthorized and immediately due and owing back to Idaho Power. Failure to repay, or reasonably offset future payments made to Seller designed to repay and recoup any unauthorized payment amounts will be deemed a material breach of this Agreement.

23.8 No modification to this Agreement shall be valid unless it is in writing and signed by both Parties and subsequently approved by the Commission.

ARTICLE XXIV: TAXES

24.1 Each Party shall pay before delinquency all taxes and other governmental charges which, if failed to be paid when due, could result in a lien upon the Facility or the Interconnection Facilities.

ARTICLE XXV: NOTICES AND AUTHORIZED AGENTS

25.1 Notices – All written notices under this Agreement shall be directed as follows and shall be considered delivered when faxed, e-mailed and confirmed with deposit in the U.S. Mail, first-class, postage prepaid, as follows:

To Seller:

Original document to:
Ted Sorenson
Barber Pool Hydro, LLC
711 E Turtle Point Drive
Ivins, UT 84738
208-589-6908
ted@tsorenson.net
miriah@tsorenson.net

To Idaho Power:

Original document to:
Vice President, Power Supply
Idaho Power Company
PO Box 70
Boise, Idaho 83707
energycontracts@idahopower.com

Copy of document to:
Cogeneration and Small Power Production
Idaho Power Company
PO Box 70
Boise, Idaho 83707
energycontracts@idahopower.com

Either Party may change the contact person and/or address information listed above, by providing written notice from an authorized person representing the Party.

25.2	<u>Authorized Agent Names</u>	<u>Title</u>
	Ted Sorenson	Manager
	Miriah Elliott	Director of Business Operations
	Lorna Jorgensen	Ada County Authorized Agent

The Seller may modify the Authorized Agents by requesting and completing an Authorized Agent form provided by Idaho Power. This document will include the requested changes and require signature(s) from an authorized party of the Seller.

ARTICLE XXVI: ADDITIONAL TERMS AND CONDITIONS

26.1 Equal Employment. Seller agrees to comply with all applicable equal employment opportunity, small business, and affirmative action laws and regulations. All Equal Employment Opportunity and affirmative action laws and regulations are hereby incorporated by this reference, including provisions of 38 U.S.C. §4212, Executive Order 11246, as amended, and any subsequent executive orders or other laws or regulations relating to equal opportunity for employment on government contracts. To the extent this Agreement is covered by Executive Order 11246, the Equal Opportunity Clauses contained in 41 C.F.R. §60-1.4, 41 C.F.R. §60-250.5, and 41 C.F.R. §60-741.5 are incorporated herein by reference.

26.2 Prior to the Seller executing this Agreement, the Seller shall have:

- a) Submitted an interconnection application for this Facility and is in compliance with all payments and requirements of the interconnection process.

- b) Acknowledged responsibility for all interconnection costs and any costs associated with acquiring adequate firm transmission capacity to enable the project to be classified as an Idaho Power DNR. If final interconnection or transmission studies are not complete at the time the Seller executes this Agreement, the Seller understands that the Seller's obligations to pay Delay and Termination Damages associated with the project's failure to achieve the Operation Date by the Scheduled Operation Date as specified in this Agreement is not relieved by final interconnection or transmission costs, processes or schedules.
- c) Provide acceptable and verifiable evidence to Idaho Power that demonstrates the Facility is eligible for the published avoided costs requested by the Seller and contained within this Agreement. Commission Order No. 35800 effective June 1, 2023, provides the current published avoided costs for Non-Seasonal Hydro Facilities, Seasonal Hydro Facilities, Other Facilities, Solar Facilities, and Wind Facilities. Commission Order No. 32697 provides for full capacity payments for existing projects that have requested replacement contracts after their existing contract expires.

26.3 This Agreement includes the following appendices, which are attached hereto and included by reference:

- Appendix A – Generation Scheduling and Reporting
- Appendix B – Facility and Point of Delivery
- Appendix C – Engineer's Certifications
- Appendix D – Forms of Liquid Security
- Appendix E – Non-Seasonal Hydro Facility Energy Prices
- Appendix F – Insurance Requirements

ARTICLE XXVII: SEVERABILITY

27.1 The invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of any other terms or provisions and this Agreement shall be construed in all other respects as if the invalid or unenforceable term or provision were omitted.

ARTICLE XXVIII: COUNTERPARTS

28.1 This Agreement may be executed in two or more counterparts, each of which shall be deemed an

original but all of which together shall constitute one and the same instrument.

ARTICLE XXIX: ENTIRE AGREEMENT

29.1 This Agreement constitutes the entire Agreement of the Parties concerning the subject matter hereof and supersedes all prior or contemporaneous oral or written agreements between the Parties concerning the subject matter hereof.

IN WITNESS WHEREOF, The Parties hereto have caused this Agreement to be executed in their respective names on the dates set forth below:

Idaho Power Company

Barber Pool Hydro LLC

By

Ryan N. Adelman

By

Ted Sorenson

Ryan Adelman
Vice President, Power Supply

Ted Sorenson
Manager

Dated

1/17/2024

Dated

1/16/2024

“Idaho Power”

“Seller”

APPENDIX A

A –1 MONTHLY POWER PRODUCTION AND SWITCHING REPORT

At the end of each month, the power production and switching report will be emailed to:
cspaccounting@idahopower.com

If email is not available, then the report can be mailed to:

Idaho Power Company
Cogeneration and Small Power Production Reports
C/O Financial Accounting
1221 W. Idaho
Boise, Idaho 83702

The meter readings required on this report will be the readings on the Idaho Power meter equipment measuring the Facility's total energy production and Station Usage delivered to Idaho Power and the maximum generated energy (kW) as recorded on the metering equipment and/or any other required energy measurements to adequately administer this Agreement. This document shall be the document to enable Idaho Power to begin the energy payment calculation and payment process. The meter readings on this report may not be used to calculate the actual payment, but instead will be a check of the automated meter reading information that will be gathered as described in item A-2 below:

Idaho Power Company

Cogeneration and Small Power Production

MONTHLY POWER PRODUCTION AND SWITCHING REPORT

Month _____ Year _____

Project Name _____ Project Number: _____
 Address _____ Phone Number: _____
 City _____ State _____ Zip _____

	<u>Facility</u>	<u>Station</u>	Metered <u>Maximum</u> kW
	<u>Output</u>	<u>Usage</u>	
Meter Number:	_____	_____	
End of Month kWh Meter Reading:	_____	_____	
Beginning of Month kWh Meter:	_____	_____	
Difference:	_____	_____	
Times Meter Constant:	_____	_____	
kWh for the Month:	_____	_____	= <u>Net Generation</u>
Metered Demand:	_____	_____	

Breaker Opening Record

<u>Date</u>	<u>Time</u>	<u>Meter</u>

*	<u>Reason</u>

Breaker Closing Record

<u>Date</u>	<u>Time</u>	<u>Meter</u>

* Breaker Opening Reason Codes

- 1 Lack of Adequate Prime Mover
- 2 Forced Outage of Facility
- 3 Disturbance of IPCo System
- 4 Scheduled Maintenance
- 5 Testing of Protection Systems
- 6 Cause Unknown
- 7 Other (Explain)

I hereby certify that the above meter readings are true and correct as of Midnight on the last day of the above month and that the switching record is accurate and complete as required by the Energy Sales Agreement to which I am a Party.

Signature

Date

A-2 AUTOMATED METER READING COLLECTION PROCESS

Monthly, Idaho Power will use the provided metering and telemetry equipment and processes to collect the meter reading information from the Idaho Power provided metering equipment that measures the Net Energy and energy delivered to supply Station Use for the Facility recorded at 12:00 AM (Midnight) of the last day of the month.

The meter information collected will include but not be limited to energy production, Station Use, the maximum generated power (kW) and any other required energy measurements to adequately administer this Agreement.

A-3 SELLER CONTACT INFORMATION

Seller's Contact Information

Name: Ted Sorenson

Telephone Number: 208-589-6908

24-Hour Project Operational Contacts

Name: Kyle Brown

Telephone Number: 208-867-1490

Name: Andrew Thompson

Telephone Number: 208-420-6748

APPENDIX B

FACILITY AND POINT OF DELIVERY

Project Name: Barber Dam Hydro

Project Number: 20240411

B-1 DESCRIPTION OF FACILITY

The Barber Dam Hydro Project (“Project”) executed a 35-year Firm Energy Sales Agreement on July 13, 1987. The project started delivering energy to Idaho Power in April of 1989. The 1987 agreement expires on April 10, 2024.

The Project has two brushless AC synchronous generators (3 phase, 4160 volt, 60 hertz, 720 RPM, 1947 KVA) rated at 1,850 kW each, manufactured by Ideal Electrical Company Mansfield, Ohio. Each generator is connected to an S type Kaplan hydro turbine manufactured by Voith Hydro, York Pennsylvania. Total QF nameplate rating is 2 generators x 1,850 kW = 3,700 kW (3.7 MW).

Facility Nameplate Capacity for Barber Dam Hydro: 3,700 kW

Qualifying Facility Category (Small Power Production or Cogeneration): Small Power Production

Primary Energy Source (Hydro, Wind, Solar, Biomass, Waste, Geothermal): Hydro

Fueled or Non-Fueled Rate (Generator primarily fueled with fossil or non-fossil fuel): Non-Fueled

B-2 LOCATION OF FACILITY

The facility is located in the SE Quarter of Section 29, Township 3 North, Range 3 East, Boise Meridian, Ada County, Idaho.

Nearest City: Boise

County and State: Ada County, Idaho

Location Coordinates: Latitude 43°33'40.53"N (43.5612)

Longitude 116°7'16.73"W (-116.1213)

Interconnection / Point of Delivery: Vicinity of Barber Dam Power Plant

B-3 SCHEDULED FIRST ENERGY DATE AND SCHEDULED OPERATION DATE

This Facility is interconnected and already delivering energy to Idaho Power pursuant to a Firm Energy Sales Agreement that the parties agree to have expire on April 10, 2024. The Scheduled

First Energy Date and the Scheduled Operation Date for this Agreement is the hour beginning 00:01 on April 11, 2024. The Actual Operation Date will also be April 11, 2024, provided that the Commission approves the replacement Agreement, and the Seller completes all of the Article IV and Article V requirements prior to April 11, 2024.

B-4 MAXIMUM CAPACITY AMOUNT:

The Maximum Capacity Amount is 3,700 kW which is consistent with the value provided by the Seller to Idaho Power in accordance with the GIA. This value is the maximum generation that potentially could be delivered by the Seller's Facility to the Idaho Power electrical system at any moment in time.

B-5 POINT OF DELIVERY

"Point of Delivery" means, unless otherwise agreed by both Parties, the point of where the Seller's Facility energy is delivered to the Idaho Power electrical system. The GIA will determine the specific Point of Delivery for this Facility. The Point of Delivery identified by the GIA will become an integral part of this Agreement.

B-6 LOSSES

If the Idaho Power metering equipment is capable of measuring the energy deliveries by the Seller to the Idaho Power electrical system at the Point of Delivery, no Losses will be calculated for this Facility. If the Idaho Power metering equipment is unable to measure the energy deliveries directly at the Point of Delivery, the Losses will be calculated. This loss calculation is currently set at (".85%") of the kWh electricity production recorded on the Facility generation metering equipment. If at any time during the term of this Agreement, Idaho Power determines that the loss calculation needs to be revised due to a change in the electrical equipment or some other factor, then Idaho Power may adjust the calculation and retroactively adjust the previous month's kWh loss calculations.

B-7 DESIGNATED NETWORK RESOURCE (DNR)

This Facility is an Idaho Power DNR pursuant to an existing energy sales agreement. The DNR status will continue if this Agreement is 1) executed and approved by the Commission, and 2) a GIA has been executed by both parties and 3) the Seller is in compliance with all requirements of that GIA.

Idaho Power cannot accept or pay for generation from this Facility if the Facility has not achieved the status of being an Idaho Power DNR. Federal Energy Regulatory Commission (“FERC”) rules require Idaho Power to prepare and submit the application to achieve DNR status for this Facility. Because much of the information Idaho Power needs to prepare the DNR application is specific to the Seller’s Facility, Idaho Power’s ability to file the DNR application in a timely manner is contingent upon timely receipt of the required information from the Seller. Prior to Idaho Power beginning the process to enable Idaho Power to submit a request for DNR status for this Facility, the Seller shall have 1) filed a Generation Interconnection application, 2) submitted all information required by Idaho Power to complete the application, and 3) either executed this Agreement or, at a minimum, provided Idaho Power with confirmation of the Seller’s intent to complete this Agreement in a timely manner. Seller’s failure to provide complete and accurate information in a timely manner can significantly impact Idaho Power’s ability and cost to attain the DNR designation for the Seller’s Facility and the Seller shall bear the costs of any of these delays that are a result of any action or inaction by the Seller.

APPENDIX C

ENGINEER'S CERTIFICATION

OF

OPERATIONS & MAINTENANCE POLICY

The undersigned _____, on behalf of himself/herself and _____, hereinafter collectively referred to as "Engineer," hereby states and certifies to the Seller as follows:

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.
2. That Engineer has reviewed the Energy Sales Agreement, hereafter referred to as the "Agreement," between Idaho Power as Buyer, and _____ as Seller, dated _____.
3. That the cogeneration or small power production project which is the subject of the Agreement and this Statement is identified as Idaho Power Company Facility No. _____ and is hereinafter referred to as the "Project."
4. That the Project, which is commonly known as the _____ Project, is located in Section _____ Township _____ Range _____, Boise Meridian, _____ County, Idaho.
5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a _____ year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project.
8. That Engineer has reviewed and/or supervised the review of the Policy for Operation and Maintenance ("O&M") for this Project and it is his professional opinion that, said Project has been designed and built to appropriate standards, and adherence to said O&M Policy will result in the Project's producing at or near the design electrical output, efficiency and plant factor for the full Contact Term of _____ years.
9. That Engineer recognizes that Idaho Power, in accordance with paragraph 5.2 of the Agreement, is

relying on Engineer's representations and opinions contained in this Statement.

10. That Engineer certifies that the above statements are complete, true and accurate to the best of his/her knowledge and therefore sets his/her hand and seal below.

By _____

(P.E. Stamp)

Date _____

APPENDIX C
ENGINEER'S CERTIFICATION
OF
ONGOING OPERATIONS AND MAINTENANCE

The undersigned _____, on behalf of himself/herself and _____ hereinafter collectively referred to as "Engineer," hereby states and certifies to the Seller as follows:

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.
2. That Engineer has reviewed the Energy Sales Agreement, hereafter referred to as the "Agreement," between Idaho Power as Buyer, and _____ as Seller, dated _____.
3. That the cogeneration or small power production project which is the subject of the Agreement and this Statement is identified as Idaho Power Company Facility No. _____ and hereinafter referred to as the "Project".
4. That the Project, which is commonly known as the _____ Project, is located in Section ____ Township _____ Range _____, Boise Meridian, _____ County, Idaho.
5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a _____ year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project.

8. That Engineer has made a physical inspection of said Project, its operations and maintenance records since the last previous certified inspection. The Engineer certifies, based on the Project's appearance and the information provided by the Project, that the Project's ongoing O&M has been completed in accordance with said O&M Policy; that it is in reasonably good operating condition; and it is in the Engineer's professional opinion that if adherence to said O&M Policy continues, the Project will continue producing at or near its design electrical output, efficiency and plant factor for the remaining _____ years of the Agreement.

9. That Engineer recognizes that Idaho Power, in accordance with paragraph 5.2 of the Agreement, is relying on Engineer's representations and opinions contained in this Statement.

10. That Engineer certifies that the above statements are complete, true and accurate to the best of his/her knowledge and therefore sets his/her hand and seal below.

By _____

(P.E. Stamp)

Date _____

APPENDIX C

ENGINEER'S CERTIFICATION
OF
DESIGN & CONSTRUCTION ADEQUACY

The undersigned _____, on behalf of himself/herself and _____ hereinafter collectively referred to as "Engineer", hereby states and certifies to Idaho Power as follows:

1. That Engineer is a Licensed Professional Engineer in good standing in the State of Idaho.
2. That Engineer has reviewed the Energy Sales Agreement, hereafter referred to as the "Agreement", between Idaho Power as Buyer, and _____ as Seller, dated _____.
3. That the cogeneration or small power production project, which is the subject of the Agreement and this Statement, is identified as Idaho Power Company Facility No _____ and is hereinafter referred to as the "Project".
4. That the Project, which is commonly known as the _____ Project, is located in Section _____ Township _____ Range _____, Boise Meridian, _____ County, Idaho.
5. That Engineer recognizes that the Agreement provides for the Project to furnish electrical energy to Idaho Power for a _____ year period.
6. That Engineer has substantial experience in the design, construction and operation of electric power plants of the same type as this Project.
7. That Engineer has no economic relationship to the Design Engineer of this Project and has made the analysis of the plans and specifications independently.
8. That Engineer has reviewed the engineering design and construction of the Project, including the civil work, electrical work, generating equipment, prime mover conveyance system, Seller furnished Interconnection Facilities and other Project facilities and equipment.
9. That the Project has been constructed in accordance with said plans and specifications, all

applicable codes and consistent with Prudent Electrical Practices as that term is described in the Agreement.

10. That the design and construction of the Project is such that with reasonable and prudent operation and maintenance practices by Seller, the Project is capable of performing in accordance with the terms of the Agreement and with Prudent Electrical Practices for a _____ year period.

11. That Engineer recognizes that Idaho Power, in accordance with paragraph 5.2 of the Agreement, in interconnecting the Project with its system, is relying on Engineer's representations and opinions contained in this Statement.

12. That Engineer certifies that the above statements are complete, true and accurate to the best of his/her knowledge and therefore sets his/her hand and seal below.

By _____

(P.E. Stamp)

Date _____

APPENDIX D

FORMS OF LIQUID SECURITY

The Seller shall provide Idaho Power with commercially reasonable security instruments such as Cash, Cash Escrow Security, Guarantee or Letter of Credit as those terms are defined below or other forms of liquid financial security that would provide readily available cash to Idaho Power to satisfy the Security Deposit requirement and any other security requirements within this Agreement.

For the purpose of this Appendix D, the term “Credit Requirements” shall mean acceptable financial creditworthiness of the entity providing the security instrument in relation to the term of the obligation in the reasonable judgment of Idaho Power, provided that any guarantee and/or Letter of Credit issued by any other entity with a short-term or long-term investment grade credit rating by Standard & Poor’s Corporation or Moody’s Investor Services, Inc. shall be deemed to have acceptable financial creditworthiness.

1. Cash – Seller shall deposit cash in the amount of the required Security Deposit with Idaho Power. Idaho Power will not be responsible to calculate or pay any interest on these funds deposited with Idaho Power.
2. Cash Escrow Security – Seller shall deposit funds in an escrow account established by the Seller in a banking institution acceptable to both Parties equal to the required security amount(s). A single escrow account may be established for all security requirements, however detailed accounting of the individual security requirements must be maintained by the Seller and Seller shall be obligated to maintain the appropriate amounts to satisfy each security requirement within the individually identified accounts. The Seller shall be responsible for all costs.

3. Guarantee or Letter of Credit Security – Seller shall post and maintain in an amount equal to the Security Deposit: (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to Idaho Power at its discretion, or (b) an irrevocable Letter of Credit in a form acceptable to Idaho Power, in favor of Idaho Power. The Letter of Credit will be issued by a financial institution acceptable to both parties. A single aggregate Guarantee or Letter of Credit may be provided for all security requirements, however detailed accounting of the individual security requirements must be maintained by the Seller and Seller shall be obligated to maintain the appropriate amounts to satisfy each security requirement within the individually identified accounts. The Seller shall be responsible for all costs associated with establishing and maintaining the Guarantee(s) or Letter(s) of Credit.

APPENDIX E

NON-SEASONAL HYDRO FACILITY ENERGY PRICES

(Prices based on the Nameplate Capacity Amount of 3,700 kW, Non-Fueled Rates)

E-1 Base Energy Heavy Load Purchase Price – For all Base Energy received during Heavy Load Hours, Idaho Power will pay the non-levelized energy price in accordance with Commission Order No. 35800 effective June 1, 2023, with full capacity payments per Commission Order No. 32697 and seasonalization factors applied:

Year	Season 1 - (73.50 %)	Season 2 - (120.00 %)	Season 3 - (100.00 %)
	\$/MWh	\$/MWh	\$/MWh
2024	51.04	83.33	69.44
2025	48.89	79.83	66.52
2026	47.30	77.22	64.35
2027	46.29	75.57	62.98
2028	46.52	75.94	63.29
2029	47.10	76.90	64.08
2030	48.16	78.63	65.52
2031	49.77	81.25	67.71
2032	51.74	84.47	70.39
2033	53.89	87.98	73.32
2034	56.12	91.62	76.35
2035	58.35	95.27	79.39
2036	59.77	97.58	81.31
2037	61.12	99.78	83.15
2038	63.66	103.94	86.62
2039	64.21	104.84	87.36
2040	67.08	109.52	91.27
2041	68.96	112.59	93.83
2042	70.28	114.75	95.62
2043	71.19	116.23	96.86
2044	72.33	118.09	98.41

E-2 Base Energy Light Load Purchase Price – For all Base Energy received during Light Load Hours, Idaho Power will pay the non-levelized energy price in accordance with Commission Order No. 35800 effective June 1, 2023, with full capacity payments per Commission Order No. 32697 and seasonalization factors applied:

Year	Season 1 - (73.50 %) \$/MWh	Season 2 - (120.00 %) \$/MWh	Season 3 - (100.00 %) \$/MWh
2024	45.69	74.59	62.16
2025	43.54	71.09	59.24
2026	41.94	68.48	57.07
2027	40.94	66.84	55.70
2028	41.16	67.21	56.01
2029	41.75	68.17	56.80
2030	42.81	69.89	58.24
2031	44.42	72.52	60.43
2032	46.39	75.74	63.11
2033	48.54	79.24	66.04
2034	50.77	82.88	69.07
2035	53.00	86.53	72.11
2036	54.42	88.84	74.03
2037	55.77	91.05	75.87
2038	58.31	95.21	79.34
2039	58.86	96.10	80.08
2040	61.73	100.78	83.99
2041	63.61	103.86	86.55
2042	64.93	106.01	88.34
2043	65.84	107.50	89.58
2044	66.98	109.35	91.13

E-3 All Hours Energy Price – The price to be used in the calculation of the Surplus Energy Price and Delay Damage Price shall be the non-levelized energy price in accordance with Commission Order 35800 effective June 1, 2023, with full capacity payments per Commission Order No. 32697 and seasonalization factors applied:

Year	Season 1 - (73.50 %) \$/MWh	Season 2 - (120.00 %) \$/MWh	Season 3 - (100.00 %) \$/MWh
2024	48.66	79.44	66.20
2025	46.51	75.94	63.28
2026	44.91	73.33	61.11
2027	43.91	71.68	59.74
2028	44.13	72.06	60.05
2029	44.72	73.01	60.85
2030	45.78	74.74	62.28
2031	47.39	77.37	64.47
2032	49.36	80.58	67.15
2033	51.51	84.09	70.08
2034	53.74	87.73	73.11
2035	55.97	91.38	76.15
2036	57.38	93.69	78.07
2037	58.74	95.90	79.91
2038	61.28	100.05	83.38
2039	61.83	100.95	84.12
2040	64.70	105.63	88.03
2041	66.58	108.71	90.59
2042	67.90	110.86	92.38
2043	68.81	112.34	93.62
2044	69.95	114.20	95.17

APPENDIX F

INSURANCE REQUIREMENTS

The Seller shall secure and continuously carry insurance as specified within this Appendix for the term of the Agreement.

1. All insurance required by this Agreement shall be placed with an insurance company with an A.M. Best Company rating of A- or better.
2. If the insurance coverage required in this Appendix is cancelled, materially changed or lapses for any reason, the Seller will immediately notify Idaho Power in writing. This notice will advise Idaho Power of the specific reason for cancellation, material change or lapse and the steps being taken to comply with these Insurance Requirements. Failure to provide this notice and to comply with these Insurance Requirements within five (5) days of the cancellation, material change or lapse will constitute a Material Breach and Idaho Power may terminate this Agreement.
3. Prior to the First Energy date and subsequently within ten (10) days of the annual anniversary of the Operation Date, the Seller shall provide a Certificate of Insurance in the name of Idaho Power Company and list Idaho Power Company as an Additional Insured Endorsement and Waiver of Subrogation Endorsement.
4. The Certificate of Insurance shall evidence the appropriate insurance coverage of Comprehensive General Liability Insurance for both bodily injury and property damage with limits equal to one million dollars (\$1,000,000), each occurrence, combined single limit. The deductible for such insurance shall be consistent with current Insurance Industry Utility practices for similar property.