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IDAHO PUBLIC  
UTILITIES COMMISSION

April 23, 2024

**VIA ELECTRONIC FILING**

Monica Barrios-Sanchez, Secretary  
Idaho Public Utilities Commission  
11331 W. Chinden Blvd., Bldg 8,  
Suite 201-A (83714)  
PO Box 83720  
Boise, Idaho 83720-0074

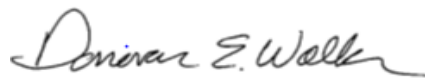
Re: Case No. IPC-E-24-18  
In the Matter of Idaho Power Company's Application for Approval of a Clean  
Energy Your Way Construction Agreement with the City of Boise and the  
First Amendment Thereto

Dear Ms. Barrios-Sanchez:

Attached for electronic filing please find Idaho Power Company's Application in the  
above matter.

Please feel free to contact me directly with any questions you might have about  
this filing.

Very truly yours,



Donovan E. Walker

DEW:sg  
Attachment

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Attorney for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER )  
COMPANY'S APPLICATION FOR ) CASE NO. IPC-E-24-18  
APPROVAL OF A CLEAN ENERGY YOUR )  
WAY CONSTRUCTION AGREEMENT WITH ) APPLICATION  
THE CITY OF BOISE AND THE FIRST )  
AMENDMENT THERETO. )  
)  
)  
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Idaho Power Company ("Idaho Power" or "Company"), in accordance with RP 52 and *Idaho Code* §§ 61-502 and 61-503, hereby requests that the Idaho Public Utilities Commission ("Commission") issue an order approving the Clean Energy Your Way ("CEYW") Renewable Construction Agreement with the City of Boise City ("City of Boise" or "City"), as well as the First Amendment thereto, which authorizes the City to purchase up to 10 megawatts ("MW") from the existing and active Power Purchase Agreement ("PPA") between Idaho Power and Black Mesa Energy, LLC ("Black Mesa" or "Renewable Resource"). The Black Mesa PPA was previously approved by the Commission in Order No. 35482 on August 1, 2022.<sup>1</sup> The Renewable Construction Agreement is included

<sup>1</sup> Case No. IPC-E-22-06, *In the Matter of Idaho Power Company's Application for Approval of a Replacement Special Contract with Micron Technology, Inc. and a Power Purchase Agreement with Black Mesa Energy, LLC.*

herewith as Attachment 1. The First Amendment is included herewith as Attachment 2.

In this Application, the Company seeks the Commission's approval to commence the CEYW Renewable Construction Agreement, as amended, with the City of Boise beginning September 1, 2024, and in accordance with the pricing terms listed in Revised Exhibit 1 included with Attachment 2 of this Application. The Agreement under review in this case leverages CEYW pricing already approved by the Commission and formalizes contract provisions in Micron, Technology, Inc.'s ("Micron") Commission-authorized Special Contract to share a portion of the Black Mesa project with an interested third-party customer of Idaho Power.

Idaho Power's Application is based on the following:

#### **I. BACKGROUND**

1. The City of Boise has adopted a goal of 100 percent clean electricity use across city government operations by 2030. The City has engaged in discussions with Idaho Power dating back to 2019 to determine what Idaho Power programs, if any, could be accessed to support the City in achieving its clean energy objectives. The City of Boise was an active participant in the development of the CEYW program via the regulatory process and has continued to work with Idaho Power on ways to participate in the CEYW program, most recently through the execution of the Renewable Construction Agreement for which the Company seeks authorization in this Application.

2. The Renewable Construction Agreement between Idaho Power and the City is consistent with the CEYW Construction framework, as proposed by the Company in Case No. IPC-E-21-40 and approved by the Commission in Order No. 35893.<sup>2</sup>

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<sup>2</sup> *In the Matter of Idaho Power Company's Application to Expand Clean Energy Offerings Through the Clean Energy Your Way Program.*

Additionally, the Renewable Construction Agreement leverages a provision in Micron's Commission-approved Special Contract that allows for another Idaho Power customer to purchase a share of generation from Black Mesa<sup>3</sup>:

Micron and Idaho Power agree that 10 MW of the Project Output from the Black Mesa Renewable Resource PPA may be reserved and potentially dedicated to another customer of Idaho Power, at the election of Idaho Power. If such an election is exercised, then the "Project Output" for the Black Mesa Renewable Resource PPA [for Micron] shall be 30 MW.

3. While the Renewable Construction Agreement between the City and Idaho Power is consistent with the framework for the CEYW Construction option, it has two notable differences from the previous CEYW Construction agreements authorized by the Commission for Brisbie, LLC ("Brisbie") and Micron. First, the City of Boise agreement does not contemplate procuring a new resource. Rather, the Renewable Construction Agreement formalizes the City as a purchaser of up to 10 MW—or 25 percent of the generation—of the existing and already authorized Black Mesa PPA.

4. Second, the Renewable Construction Agreements for Brisbie and Micron exist within those large customers' broader Special Contracts. This Special Contract vehicle is not available for the City of Boise because the City is not a Special Contract customer. The City has accounts of various sizes, including three (3) Schedule 19, Large Power Service ("Schedule 19"), accounts that are eligible for the CEYW Construction Option provision contained in Schedule 62, Clean Energy Your Way Program ("Schedule 62"). The City seeks to apply the Schedule 62 CEYW Construction option to two (2) of the City's three (3) Schedule 19 accounts. As such, this Application is Idaho Power's first request to authorize a Schedule 62 CEYW Renewable Construction Agreement with a

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<sup>3</sup> Case No. IPC-E-22-06, Direct Testimony of Connie Aschenbrenner, Exhibit 1, Section 9.3, p 20-21.

customer billed under Schedule 19.

5. Consistent with the Commission-authorized framework for the CEYW Construction option, the Company does not propose to modify any aspect of the City of Boise's existing pricing under Schedule 19. Rather, the Company proposes to authorize additional charges and credits associated with the Renewable Resource and consistent with the charges for CEYW customers on Schedule 19, as listed in Schedule 62.

## **II. CITY OF BOISE CEYW TERMS AND PROVISIONS**

6. CEYW Contract Overview. As introduced above, the Renewable Construction Arrangement between Idaho Power and the City of Boise builds upon a third-party customer off-taker provision in Micron's Special Contract. Within the Renewable Construction Arrangement under review in this case, the City is positioned as a "Buyer" of generation and environmental attributes from the Black Mesa PPA. More specifically, the Renewable Construction Agreement defines the City's purchase authority and staggered timeline in Section 1.6 under the "Buyer's Share" definition:

"Buyer's Share" means up to 25%. All generation and Environmental Attributes from the Black Mesa Renewable Resource PPA will be allocated up to a 75% - 25% basis according to the ramp referenced below in this Section, 25% representing the Buyer's Share and 75% representing the share of another Idaho Power customer. The initial Buyer's Share, effective September 1, 2024, shall be up [to] [sic] 8 MW or 20%. Effective September 1, 2025, Buyer's Share shall be 9 MW or 22.5%. Effective September 1, 2026, and each year thereafter, Buyer's Share shall be 10 MW or 25%.

7. The "ramp" schedule as referenced above in the "Buyer's Share" definition was designed to align with the load growth forecast for the City's two Schedule 19 accounts to which this Renewable Construction Agreement applies: the Boise Airport and the Lander Street Water Renewable Facility ("Lander Facility"). The load forecast for

these two facilities was provided by the City of Boise, reviewed by Idaho Power, and then matched with an amount of generation from Black Mesa such that renewable generation supporting these facilities would not exceed 110 percent of these facilities' forecast annual energy use.

8. While the City of Boise has three Schedule 19 accounts, the City, in consultation with Idaho Power, selected the Boise Airport and the Lander Facility as the best options for this Renewable Construction Arrangement. As a highly visible location, the Airport is an important public facility for the City to associate with its clean electricity goal. Meanwhile, the Lander Facility is a major source of the City's electric demand.

9. As this Renewable Construction Agreement builds off an existing agreement between Idaho Power and Micron, the treatment of the Renewable Resource remains the same. That is, Black Mesa does not serve Micron directly nor will it serve the City directly. Rather, Black Mesa is connected directly to the Company's transmission system. Micron is currently paying for the full output from Black Mesa at the PPA contract rate and is credited for the established value the resource brings to Idaho Power's system. Similarly, beginning September 1, 2024 (a date that aligns with the start of Micron's fiscal year), the City of Boise will begin taking a share of Black Mesa, also at the PPA contract rate and receiving an associated share of credit for the Renewable Resource's value to Idaho Power's system. Finally, the environmental attributes associated with Black Mesa—in the form of Renewable Energy Certificates ("REC")—associated with the City's Buyer's Share of generation will be fully claimed by the City of Boise.

10. Pricing and Billing. Pricing and billing are detailed in Exhibit 1 as part of Attachment 2 to this Application. At a high level, pricing and credit treatment described

herein aligns with the structure outlined for the CEYW Construction option in Idaho Power's Application in Case No. IPC-E-21-40 and the Commission's associated Order No. 35893. The City's two Schedule 19 accounts associated with this Renewable Construction Agreement will continue to be billed under Schedule 19, which includes payment for all standard services not associated with the Renewable Resource. When the Renewable Resource is not generating, the City will pay for energy under the two facilities' standard Schedule 19 energy charges. When the Renewable Resource is generating, the City will pay for its total share of output at the PPA contract rate.

11. In addition, the City will be billed a fixed cost charge on a per-kilowatt-hour basis for the amount of energy the City of Boise is no longer purchasing from Idaho Power; in other words, the amount of energy the City will no longer purchase from Idaho Power is the amount of generation the City will purchase associated with its share of Black Mesa. The fixed cost charge for Schedule 19 customers with a CEYW Construction agreement is detailed in Schedule 62.

12. The City will also be credited for the benefits derived from its share of the resource through a Renewable Energy Facility Credit. The methodology to derive this credit is based on the authorized methodology used in Micron's Special Contract.

13. Finally, the City of Boise will receive an Excess Generation Price for any amount of its share of generation that exceeds the energy requirements of the City's two applicable facilities in a given hour. The Excess Generation Price will be the lesser of the Commission-authorized Mid-Columbia ("Mid-C") market forecast prices stemming from Idaho Power's most recently filed Integrated Resource Plan ("IRP") or actual Mid-C heavy or light load hourly prices. This Excess Generation Price construct is consistent with the

Commission's decisions in both the Brisbie and Micron cases, Order Nos. 35777 and 35482, respectively.

14. Contingency Fund. The Renewable Construction Agreement between the City of Boise and Idaho Power contains provisions intended to financially protect Idaho Power and its customers in the unlikely event of a default by the City of Boise. Section 8 of the Renewable Construction Agreement outlines the Contingency Fund that has been established by the City of Boise.

15. The Contingency Fund would be used to cover energy costs associated with the City of Boise's share of the PPA if the City defaulted on this contract. The Contingency Fund amount of \$810,000, which is equivalent to \$81,000 per MW for the City's maximum 10 MW share of Black Mesa, is sized to cover any differences between the Renewable Resource PPA contract value and the amount for which Idaho Power could sell the City's share of Black Mesa generation on the market. The methodology for establishing the Contingency Fund is consistent with the per MW of nameplate approach used to develop the credit support mechanisms for both Brisbie and Micron.

16. No-Harm Financial Analysis. In consultation with Commission Staff, Idaho Power completed an analysis to evaluate any impact on non-participants due to the proposed change in the allocation of Black Mesa from Micron to the City of Boise. The proposed arrangement, with as much as 25 percent of Black Mesa allocated to the City of Boise, was compared against the current arrangement with 100 percent of Black Mesa allocated to Micron.

17. The Company considered each pricing component under the existing Micron arrangement and the proposed City of Boise arrangement. Idaho Power began



the impact analysis by identifying the pricing components that would not be impacted or change due to a pro-rata allocation of Black Mesa and then isolating the pricing components that could change under the proposed arrangement.

18. The Company identified three pricing components that remain unchanged under either arrangement and, therefore, have no impact on non-participants:

- The Black Mesa PPA will continue to be paid and guaranteed in full under either arrangement.
- The capacity credit value included in Idaho Power's Power Cost Adjustment will not change under the proposed arrangement with the City of Boise—allocation of the generation of the project does not change the overall capacity contribution of the Renewable Resource.
- The fixed cost of energy would be collected in full under both arrangements—via the Embedded Energy Fixed Cost for Micron and the Schedule 19 fixed cost charge identified in Schedule 62 for the City of Boise.

19. Idaho Power identified two components of the proposed arrangement with the City of Boise that would be different:

- Micron's embedded energy rate is lower than the City of Boise and, therefore, would result in a change to Idaho Power's revenue collection.
- Micron will not have any excess generation associated with Black Mesa, considering the size of the resource relative to Micron's total load. The City of Boise's share of Black Mesa, however, will create excess generation at its two (2) Schedule 19 facilities in some hours.

20. Considering only the two items that will change under the proposed City of Boise arrangement, Idaho Power evaluated the impact on non-participates using a two-step analysis, each with a “pass/fail” determination.

21. For the first step, Idaho Power analyzed whether the City of Boise’s reduction in embedded energy collection would exceed the additional energy collection from Micron. In each of the ten years evaluated (beginning September 1, 2024, with the City taking an allocation of Black Mesa), the additional energy sales from Micron *exceeded* the reduced energy sales for the City of Boise. As a result of this outcome of additional energy sales-based revenue, there is no impact on non-participants, awarding this first-step screen a “pass” rating.

22. For the second step, Idaho Power considered the cost of excess generation, using the IRP Mid-C forecast from the Company’s 2021 and 2023 IRPs.<sup>4</sup> Using both Mid-C forecasts from the two IRPs to price excess generation, the value of the excess generation created from the City of Boise’s share of Black Mesa was less than the value of additional energy sales from the first step of this impact evaluation, creating no negative financial impact on non-participants and giving this second step of the analysis a “pass” rating.

23. The Company recognizes that the outcome of this second analysis will depend on what actual market prices are in the future, with higher market prices having the potential to create a negative impact on non-participants. Mid-C actuals are unavailable for any forward-looking analysis, but to test the sensitivity of this second analysis to higher market prices, the Company also evaluated potential Mid-C prices at

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<sup>4</sup> Actual Mid-C prices are unavailable for any forecast view.

2.25x higher than the Mid-C forecasts from the 2021 and 2023 IRPs. Under this high-market cost sensitivity over 10 years, each year of the analysis showed an overall benefit (that is, the additional energy sales revenue exceeding the cost of excess generation), thus indicating that the proposed pro-rata share to the City of Boise passes the no-harm analysis in both steps of the analysis and under a high market price sensitivity scenario.

### **III. CITY OF BOISE PARTICIPATION IN BLACK MESA**

24. On February 16, 2022, Idaho Power and Black Mesa entered into a PPA for the sale and purchase of 40 MW of renewable solar electric generation from the Black Mesa project for the period of 20 years from a commercial operation date of June 1, 2023. The Commission approved the Black Mesa PPA in Order No. 35482 on August 1, 2022.

25. The City of Boise's participation in Black Mesa (that is, purchasing a share of the generation) does not modify any aspect of the existing and active PPA. The Renewable Construction Agreement that is the subject of this Application is focused entirely on the terms of the City of Boise's CEYW Construction arrangement with Idaho Power.

26. The City of Boise's stake in purchasing a share of Black Mesa would begin on September 1, 2024, a date determined to be optimal by Micron. Micron's fiscal year begins on September 1, making this a logical and efficient transition date for the City of Boise to begin its participation in the Black Mesa CEYW Construction option.

27. As stated in Section 1.6 of the Renewable Construction Agreement between the City of Boise and Idaho Power, the City will have a staggered purchase schedule of Black Mesa generation, beginning with 8 MW of nameplate capacity (or 20 percent of generation) in the first year, 9 MW of nameplate capacity (or 22.5 percent of generation)

in year two, and the maximum 10 MW of nameplate capacity (or 25 percent of generation) from year three until the contractual end date of the PPA.

28. First Amendment. On April 16, 2024, Idaho Power and the City executed the First Amendment to the Renewable Power Purchase Agreement Between Idaho Power Company and the City of Boise. The First Amendment made several clarifying corrections to the Renewable Construction Agreement to: (1) add “Project Output ” to the list of defined terms in Section 1 – Definitions and Interpretation, which is a term that is used in the Agreement but was inadvertently not included in Section 1; (2) add a definition for “Supplemental Energy”, which is erroneously noted in Section 1 of the Agreement as being defined in Exhibit 1, and correct that reference elsewhere in the Agreement; and (3) modify Exhibit 1, which sets forth the details of the all rate components and pricing under the Agreement, to incorporate language for clarity and to provide for necessary flexibility in administering the Agreement while ensuring that changes in rates are considered in a separate proceeding, per the Commission’s directives in Order Nos. 35482 and 35777.

#### **IV. MODIFIED PROCEDURE**

29. Idaho Power believes that a 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.* Additionally, as previously stated, the City of Boise’s participation in and purchase of a 25 percent share of the Black Mesa project aligns with the beginning of Micron’s fiscal year of September 1, 2024, as well as the beginning load ramp period in section 1.6 of the City’s Renewable Construction Agreement. Consequently, Idaho Power respectfully

requests the Commission consider a procedural schedule that would allow for a final Order prior to September 1, 2024.

**V. COMMUNICATIONS AND SERVICE OF PLEADINGS**

30. Communications and service of pleadings with reference to this Application should be sent to the following:

Donovan E. Walker  
Regulatory Dockets  
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1221 West Idaho Street (83702)  
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Boise, Idaho 83707  
[dwalker@idahopower.com](mailto:dwalker@idahopower.com)  
[dockets@idahopower.com](mailto:dockets@idahopower.com)

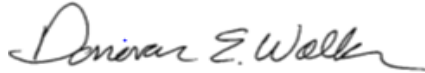
Tim Tatum  
Alison Williams  
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**VI. CONCLUSION**

31. Approval of the City of Boise’s CEYW Construction Agreement, as amended, is consistent with prior Commission orders related to CEYW and in the public interest. Idaho Power and the City of Boise have worked together to establish a contract that represents meaningful progress toward accomplishing the City’s clean energy goals, while ensuring the related pricing appropriately assigns the costs and benefits of a share of the Renewable Resource to the City. The structure presented in this case is also consistent with the elements presented in the CEYW Construction option. All costs associated with the City’s agreed-upon share of Black Mesa will be paid for by the City, which ensures other customers are not harmed by the arrangement. The City’s rates associated with service under Schedule 19 will not change, and the added rates, charges, and credits associated with the City’s Renewable Construction Agreement, as amended, and Schedule 62 are just, reasonable, and consistent with past CEYW orders.

THEREFORE, Idaho Power respectfully requests that the Commission issue an Order before September 1, 2024, approving the attached CEYW Renewable Construction Agreement and the First Amendment thereto between the City of Boise and Idaho Power.

Respectfully submitted this 23rd day of April 2024.



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DONOVAN E. WALKER  
Attorney for Idaho Power Company

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION**

**CASE NO. IPC-E-24-18**

**IDAHO POWER COMPANY**

**ATTACHMENT NO. 1**

**RENEWABLE POWER PURCHASE AGREEMENT**

**RENEWABLE POWER PURCHASE AGREEMENT**

**BETWEEN**

**IDAHO POWER COMPANY AND**

**CITY OF BOISE –**

**CLEAN ENERGY YOUR WAY “CONSTRUCTION OPTION”**

THIS RENEWABLE POWER PURCHASE AGREEMENT (“Agreement”) is executed on October 10th, 2023 (the “Execution Date”), by the CITY OF BOISE CITY an Idaho municipal corporation (“City of Boise”) and IDAHO POWER COMPANY, an Idaho Corporation (“Idaho Power”). The City of Boise and Idaho Power are hereinafter referred to as a “Party” and collectively as the “Parties”.

**WHEREAS**, the City of Boise is an existing retail customer of Idaho Power with multiple accounts, taking service under Schedules 1,7, 9, 15, 18 19, 24, 40, 41, 42 and 84 ; and

**WHEREAS**, the City of Boise desires to meet a portion of its annual energy requirements with energy generated by a Renewable Resource; and

**WHEREAS**, the City of Boise and Idaho Power have agreed that Idaho Power will procure and dedicate Buyer’s Share of Renewable Resource generation and associated Environmental Attributes from the Black Mesa Solar project as provided for herein and pursuant to Schedule 62 to assist the City of Boise in meeting a portion of the annual energy requirements for two of its Schedule 19 accounts, specifically the Boise Airport and the City of Boise – Lander Street Wastewater Treatment Facility; and

**NOW, THEREFORE**, in consideration of the promises and of the mutual covenants herein set forth, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the City of Boise and Idaho Power, each intending to be legally bound, agree as follows:



## **SECTION 1. – DEFINITIONS AND INTERPRETATION**

1.1 Defined Terms. Unless otherwise required by the context in which any term appears, initially capitalized terms used herein have the meanings set forth in this Section 1.

1.2 “Applicable Law” means all (a) constitutions, treaties, statutes, laws, codes, ordinances, rules, regulations, judgments, decrees, injunctions, writs, orders, decisions, interpretations and requirements of any Governmental Authority; and (b) rules, listing requirements, decisions and interpretations of any stock exchange or trading market on which securities issued by Idaho Power or any of their respective Affiliates are listed or quoted.

1.3 “Applicable Program” means any mandatory or voluntary domestic or international Renewable Portfolio Standard or other program, scheme or organization, with respect to a market, registry or reporting for Environmental Attributes that applies to Environmental Attributes that Idaho Power has agreed to transfer and retire pursuant to this Agreement. As of the Execution Date, WREGIS is an Applicable Program. If the State of Idaho develops or becomes subject to a Renewable Portfolio Standard, then the “Applicable Program” also shall be the program applicable to such standard.

1.4 “Bankruptcy Proceeding” occurs, with respect to any Person, if: (a) such Person shall institute a voluntary case seeking liquidation or reorganization under the United States Bankruptcy Code, or shall acquiesce to the institution of an involuntary case thereunder against it; (b) such Person shall file a petition or shall otherwise institute any similar proceeding under any other Applicable Law, or shall acquiesce thereto; (c) such Person shall apply for the appointment, or by consent or acquiescence there shall be an appointment, of a receiver, liquidator, sequestrator, trustee or other Person with similar powers for itself or any substantial part of its assets; (d) such Person shall make an assignment for the benefit of its creditors; (e) such Person shall admit in writing its inability to pay its debts generally as they become due; (f) such Person has an involuntary case commenced against it seeking liquidation or reorganization of such Person under the United States Bankruptcy Code or any similar proceedings shall be commenced against

such Person under any other Applicable Law, and (i) the petition commencing the involuntary case is not timely controverted, (ii) the petition commencing the involuntary case is not dismissed within thirty (30) Days of its filing, (iii) an interim trustee is appointed to take possession of all or a portion of the property, and/or to operate all or any part of the business, of such Person and such appointment is not vacated within thirty (30) Days, or (iv) an order for relief shall have been issued or entered therein; (v) a decree or order of a court having jurisdiction in the subject assets for the appointment of a receiver, liquidator, sequestrator, trustee or other Person having similar powers, of such Person or all or a part of its property shall have been entered, or any other similar relief shall be granted against such Person under any Applicable Law; or (vi) such Person has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed, or restrained, in each case within thirty (30) Days thereafter.

1.5 “Billing Demand” means the kilowatts supplied to the City of Boise Facilities during the coincident 15-consecutive-minute period of maximum use during the monthly billing period, adjusted for power factor, as measured by the metering equipment located at the Points of Delivery.

1.6 “Buyer’s Share” means up to 25%. All generation and Environmental Attributes from the Black Mesa Renewable Resource PPA will be allocated up to a 75% - 25% basis according to the ramp referenced below in this Section, 25% representing the Buyer’s Share and 75% representing the share of another Idaho Power customer. The initial Buyer’s Share, effective September 1, 2024, shall be up 8 MW or 20%. Effective September 1, 2025, Buyer’s Share shall be 9 MW or 22.5%. Effective September 1, 2026, and each year thereafter, Buyer’s Share shall be 10 MW or 25%.

1.7 “Business Day” means any Day other than a Saturday, Sunday or federal holiday.

1.8 “City of Boise Facilities” means the two (2) City of Boise Schedule 19 accounts taking service at 3201 W Airport Way #1000, Boise, Idaho 83705 and 790 Lander Street, Boise, Idaho 83703.

1.9 “Claim” means any claim, demand, action, duty, suit, controversy, or dispute of any kind or nature, whether threatened or filed, and whether groundless, false or fraudulent, and including, without limitations, any claim regardless of how or when it is brought (e.g., as an initial claim, counterclaim, cross-claim, interpleading, or third-party claim).

1.10 “Claiming Jurisdiction” means any jurisdiction or balancing authority area (other than Idaho Power in Idaho Power’s balancing authority area) that will claim or purport to claim for the importer, recipient, or jurisdiction, through compliance mechanisms or otherwise, the carbon or greenhouse gas characteristics of the energy or capacity so delivered, or create a circumstance that could lead to retirement or questioning the non-retirement of RECs, for example in the nature of the Oregon Department of Energy’s June 23, 2017, request for stakeholder comment.

1.11 “Commercial Operation” means “Commercial Operation” as defined in the applicable Renewable Resource PPA.

1.12 “Commercially Reasonable Efforts” means a level of effort which, in the exercise of reasonable judgment in light of facts known or which should be known with the exercise of reasonable care and the circumstances existing at the time a decision is made, can be expected to accomplish the desired result at a reasonable cost to the Party which is obligated to exercise “Commercially Reasonable Efforts.”

1.13 “Contingency Fund” is defined in Section 8.1(a).

1.14 “Costs” means, with respect to the Non-Defaulting Party, (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement entered into pursuant to this Agreement or entering into new arrangements which replace this Agreement and (b) all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

1.15 “Credit Rating” means for any Person, the senior unsecured and long term debt rating of such Person by Moody’s or S&P.

1.16 “Developer” means Black Mesa Energy LLC and Redwood Energy, a third-party who owns or controls the Project, its Metered Output and Environmental Attributes, and is the counterparty to Idaho Power in the Renewable Resource PPA.

1.17 “Energy Imbalance Market” or “EIM” means the California Independent System Operator’s Western Energy Imbalance Market.

1.18 “Environmental Attributes” means the environmental and other attributes as may exist from time to time that differentiate the Project or its Metered Output from energy generated by fossil fuel or nuclear powered generating units, and any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its displacement of conventional energy generation, or resulting from the avoidance of any gas, chemical, or other substance to the air, soil or water. Environmental Attributes include but are not limited to: (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and other pollutants designated; (b) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), or other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change or any Governmental Authority to contribute to the actual or potential threat of altering the earth’s climate by trapping heat in the atmosphere, (c) and Emissions Reductions Credits; (d) any cryptocurrency, blockchain, and similar or related matters, items commodities, tokens, or anything of actual, potential, or theoretical value related to, measured by, or associated with anything produced by the Project’s Metered Output and (e) credits, benefits or allowances resulting from the compliance of the Project or its Metered Output with the laws, rules and standards of the United Nations Framework Convention on Climate Change (the “UNFCCC”) or the Kyoto Protocol of the UNFCCC or crediting “early action” with a view thereto. Environmental Attributes do not include (i) the ITC or any other Tax Credits, or any other tax incentives existing now or in the future associated with the construction, ownership or operation of the Project, (ii) matters

designated by Idaho Power as sources of liability, or (iii) adverse wildlife or environmental impacts.

1.19 “Environmental Attribute Reporting Rights” means the exclusive right of a purchaser of Environmental Attributes to report ownership of Environmental Attributes in compliance with federal or state Applicable Law, if applicable, and to federal or state agencies or other parties at such purchaser’s discretion, and includes reporting under Section 1605(b) of the Energy Policy Act of 1992, or under any mandatory or voluntary present or future, domestic, international, or foreign emissions trading program or Renewable Portfolio Standard.

1.20 “Execution Date” is defined in the preamble to this Agreement.

1.21 “FERC” means the Federal Energy Regulatory Commission, or its success in function.

1.22 “Final Regulatory Approval” means the approvals of this Agreement and the Renewable Resource procurement by the IPUC and OPUC pursuant to orders the terms of which are fully satisfactory to both Idaho Power and City of Boise.

1.23 “Force Majeure” means any event or circumstance that prevents a Party from performing its obligations under this Agreement, which event or circumstance (a) is not reasonably foreseeable as of the Execution Date, (b) is not within the reasonable control of, or the result of the negligence of, the Party affected and (c) such Party is unable to overcome or avoid or cause to be avoided by the exercise of due diligence. Force Majeure shall include the following to the extent the foregoing conditions are met: acts of God, riot, insurrection, war (declared or not); explosion fire, civil disturbance, labor dispute, labor or material shortage, vandalism, sabotage, act of the public enemy, terrorism, pandemic, civil disturbances, strike, labor disturbances, work slowdown or stoppage, blockades, sabotage, national emergency, and any action or restraint by court order or public or Governmental Authority (so long as the affected Party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action). Force Majeure under this Agreement shall also include a valid claim

of Force Majeure (or a similar term) by Developer pursuant to any Renewable Resource PPA that prevents Idaho Power from performing its obligations under this Agreement. Notwithstanding the foregoing, under no circumstances shall the following constitute an event of Force Majeure: (i) any increase of any kind in any cost; (ii) delays in or inability of a Party to obtain financing or changes in market conditions or other economic hardship of any kind affecting the economics of either Party; (iii) the COVID-19 pandemic or the effects or impacts of the COVID-19 pandemic; and (iv) general constraints on the global supply chain.

1.24 “Force Majeure Notice” is defined in Section 9.2.

1.25 “FTC” means the Federal Trade Commission.

1.26 “Gains” means, with respect to a Non-Defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement, determined in a commercially reasonable manner.

1.27 “Governmental Authority” means (a) any federal, state, local, municipal or other government, including the IPUC, OPUC and any other Idaho regulatory body with jurisdiction over a Party or (b) any other governmental, quasi-governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, policy, regulatory or taxing authority or power, including FTC, FERC, NERC and any applicable regional reliability entity, and any successor entity with applicable jurisdiction; provided, however, that “Governmental Authority” shall not in any event include either Party.

1.28 “Green Guides” means the FTC’s “Green Guides,” 77 Federal Register 62122, 16 Code of Federal Regulations, Part 260, relating to communications concerning Environmental Attributes (currently 16 C.F.R. §260.15).

1.29 “Hour” means a sixty (60) minute period coinciding with a clock hour in the pertinent time zone.

1.30 “Installed Nameplate Capacity” means, as of any date of measurement, the nameplate capacity of all PV Modules installed, interconnected, operating and capable of producing the Metered Output at the Project.

1.31 “IPUC” means the Idaho Public Utilities Commission.

1.32 “IRP” means the most recent Integrated Resource Plan acknowledged by the IPUC.

1.33 “Line Losses” means electrical energy consumed or lost in the transmission of electrical energy and/or electrical energy which is not available for useful purposes at the intended points of final consumption.

1.34 “Losses” means, with respect to a Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement, determined in a commercially reasonable manner, including any above-market costs of the Renewable Resource PPA in the case of Idaho Power as the Non-Defaulting Party and the cost of a replacement resource (including Replacement Environmental Attributes) in the case of City of Boise as the Non-Defaulting Party

1.35 “Metered Output” means the electrical output and capacity of the Project delivered to Idaho Power by the Renewable Resource, multiplied by Buyer’s Share.

1.36 “Monthly Payment” for any Month during the Term is the net sum for such Month of all charges and credits owed by the City of Boise to Idaho Power as provided under Exhibit 1 and listed in Schedule 19. In the event that the net sum of bill amounts for any Month result in a net credit owed by Idaho Power to the City of Boise, such amounts will be reflected as a financial credit to be applied as an offset to a future Monthly Payment. In no event will Idaho Power make payment to the City of Boise for any net credit amounts unless the net credit is associated with the Termination Payment.



1.37 “Mutual Nondisclosure Agreement” means that certain Mutual Nondisclosure Agreement by and between Idaho Power and the City of Boise dated as of October 15, 2021.

1.38 “NERC” means the North American Electric Reliability Corporation.

1.39 “Non-Defaulting Party” is defined in Section 14.1.

1.40 “OPUC” means the Oregon Public Utility Commission.

1.41 “Person” means an individual, corporation, limited liability company, voluntary association, joint stock company, business trust, partnership, Governmental Authority or other entity.

1.42 “Points of Delivery” means the locations specified in paragraph 1.8 and 3.3 where the electrical facilities owned by the City of Boise are interconnected to the electrical facilities owned by Idaho Power and where power and energy are delivered by the City of Boise Facilities.

1.43 “Project” means the Black Mesa Energy LLC solar generation facility located in Elmore County, Idaho, with an expected nameplate capacity of 40 MW (up to 10 MW representing Buyer’s anticipated share of the expected nameplate capacity), the Metered Output and Environmental Attributes of which is purchased as a simultaneously bundled product by Idaho Power under the Renewable Resource PPA.

1.44 “Prudent Electrical Practices” means those practices, methods, and equipment that are commonly and ordinarily used in electrical engineering and utility operation to operate electrical equipment and deliver electric power and energy with safety, dependability, efficiency and economy.

1.45 “Qualified Issuer” means a U.S. commercial bank or the U.S. branch office of a foreign bank with a Credit Rating of “A-” (or future equivalent) or higher by S&P or “A3” (or future equivalent) or higher by Moody’s.

1.46 “Qualified Reporting Entity” is defined in the WREGIS Operating Rules.



1.47 “RECs” means (a) the Environmental Attributes associated with Metered Output, together with (b) the Environmental Attribute Reporting Rights associated with such energy and Environmental Attributes, however commercially transferred or traded under any of these or other product names, such as “Renewable Energy Credits,” “Renewable Energy WREGIS Certificates,” “Green-e Certified,” “Green Tags,” WREGIS Certificates, or otherwise.

1.48 “Renewable Portfolio Standard” or “RPS” means any Applicable Law that requires a Person to deliver to load, or to serve load with, a minimum percentage or quantity of electricity generated from resources that include a Renewable Resource.

1.49 “Renewable Resource” means (a) an electric generating facility utilizing solar photovoltaic (PV), wind, energy storage or other mutually-agreed technology, or combination thereof from which Idaho Power purchases the bundled Metered Output and Environmental Attributes bundled under a Renewable Resource PPA with a Developer, and that will be newly constructed and made operational after the Renewable Resource PPA execution date.

1.50 “Renewable Resource Contract Price” means the total price of Metered Output and Environmental Attributes under the Renewable Resource PPA.

1.51 “Renewable Resource PPA” and “Black Mesa Renewable Resource PPA” means the February 16, 2022, power purchase agreement entered into between Idaho Power and Black Mesa Energy LLC, a third-party Developer, for the purpose of acquiring Metered Output and Environmental Attributes in connection with this Agreement.

1.52 “Renewable Resource PPA Default” is defined in Section 7.2(a).

1.53 “Replacement Environmental Attributes” means, Western Electricity Coordinating Council (WECC) RECs from a solar Renewable Resource and other Environmental Attributes of the type and quality as the Project would be capable of producing but for the Idaho Power Renewable Resource PPA Default or the Event of Default, as applicable.

1.54 “Sanctions” means any economic or trade sanctions administered or enforced by any Government Authorities of the United States, (including the Office of Foreign Assets Control of the U.S. Department of the Treasury (“OFAC”) and the U.S. Department of State), the United Nations, the European Community or, Her Majesty’s Treasury or any, and each other sanctions authority which has jurisdiction in respect of any Party or the Project.

1.55 “Sanctioned Person” means any person (a) that is the target of Sanctions or owned or controlled by any such person(s), or (b) located, organized or resident in, or directly or indirectly owned or controlled by the government of any Sanctioned Territory.

1.56 “Schedule 19” means the then-current Idaho Power tariff schedule of rates applicable to City of Boise on file with the IPUC.

1.57 “Schedule 62” means the then-current Idaho Power tariff schedule for Clean Energy Your Way on file with the IPUC.

1.58 “Supplemental Energy” is defined in Exhibit 1 hereto.

1.59 “Term” is defined in Section 2.1.

1.60 “Termination Payment” means, with respect to the Non-Defaulting Party, the net sum of the Losses or Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of the liquidation of this Agreement.

1.61 “Third Party Market Expert(s)” means a Person whose primary business is assessing the value of environmental commodities mutually acceptable to both Parties; provided, however, if the Parties are unable to agree upon two Third Party Market Experts as required by Section 14.2, then each Party may select a Third Party Market Expert meeting the foregoing requirements.

1.62 “Total Supply Obligation” means the full capacity and energy requirements of the City of Boise Facilities adjusted for Line Losses.

1.63 “WREGIS” means the Western Renewable Energy Generation Information System, or its successor organization, or other renewable energy tracking program mutually agreeable to Idaho Power and City of Boise.

1.64 “WREGIS Certificate” means a “WREGIS Certificate” as defined by the WREGIS Operating Rules.

1.65 “WREGIS Operating Rules” means the operating rules of WREGIS.

1.66 Interpretation. Unless the context otherwise requires:

a. Words singular and plural in number shall be deemed to include the other, and pronouns having masculine or feminine gender shall be deemed to include the other.

b. Any reference in this Agreement to any Person includes its successors and permitted assigns and, in the case of any Governmental Authority, any Person(s) succeeding to its functions, authority, and capabilities.

c. Any reference in this Agreement to any section, subsection, attachment, article, schedule, or exhibit means and refers to the section or article contained in, or attachment, schedule, or exhibit attached to, this Agreement. All attachments, schedules, and exhibits referred to herein are hereby incorporated by reference.

d. Other grammatical forms of defined words or phrases have corresponding meanings.

e. A reference to writing includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words, figures or symbols in a lasting and visible form, including writing communicated electronically.

f. A reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed unless the text indicates otherwise.

g. A reference to a Party includes that Party's successors and permitted assigns.

h. A reference to a document or agreement, including this Agreement, includes a reference to that document or agreement (including any attachments, schedules, and exhibits thereto) as novated, amended, supplemented, restated, or replaced from time to time.

i. Unless otherwise expressly provided herein, any consent, acceptance, satisfaction, cooperation or approval required of a Party under this Agreement shall not be unreasonably withheld or delayed.

j. Unless otherwise expressly provided herein, "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term.

k. The words "hereof," "herein," "hereunder," and other words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

l. The words "shall" and "will" mean "must," and shall and will have equal force and effect and express an obligation.

m. References to "or" are disjunctive but not necessarily exclusive; unless the context dictates otherwise, "or" is to be interpreted as "and/or" rather than "either/or".

n. References to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified, or reenacted, and include references to all bylaws,

instruments, orders, and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires.

## **SECTION 2. – TERM OF AGREEMENT**

2.1 The term of this Agreement (the “Term”) shall commence on the Execution Date and, unless terminated in accordance with the terms hereof, shall continue in full force and effect until the expiration or termination of the Renewable Resource PPA.

## **SECTION 3. – SALE OF ENERGY**

3.1 Sale and Delivery of Energy. During the Term and in each Hour of the Term, Idaho Power shall, on the terms and conditions set forth in this Agreement, furnish to City of Boise the Total Supply Obligation for such Hour. Idaho Power shall satisfy the Total Supply Obligation energy requirement first with Metered Output, but if the Metered Output during any hour is less than the Total Supply Obligation energy requirement for such Hour, Idaho Power shall provide Supplemental Energy in the amount of such deficit. Idaho Power and the City of Boise intend for Idaho Power to provide Metered Output and Environmental Attributes from the Black Mesa Renewable Resource PPA to supply the Total Supply Obligation as further described herein.

3.2 Idaho Power will dedicate and convey the entire Metered Output to Buyer and will convey title to and risk of loss of the Metered Output, free and clear of any liens or encumbrances, to Buyer at each of the Points of Delivery.

3.3 Points of Delivery. Electric power and energy shall be delivered by Idaho Power to the City of Boise’s Facilities (each, a “Point of Delivery”).

3.4 Description of Electric Service. Idaho Power shall supply electric service consistent with the terms and conditions of Schedule 19 electric service.

## **SECTION 4. – CHARGES TO BE PAID BY CITY OF BOISE TO IDAHO POWER**

4.1 Rates and Charges. The rates and charges for electrical power, energy and other service provided by Idaho Power to the City of Boise Facilities are set forth in the pricing attached as Exhibit 1 and are identified by component in Schedule 62-1.

## **SECTION 5. – PAYMENT OF BILLS/SETTLEMENTS**

5.1 Billing Data. City of Boise shall pay Idaho Power the Monthly Payment as consideration for all services provided under this Agreement. Invoices for payment of the Monthly Payment shall be prepared and submitted by Idaho Power to City of Boise monthly. All invoices or bills shall contain such data as may be reasonably required to substantiate the Monthly Payment, including statements of the meter reading at the beginning and end of the billing period and consumption during the billing period. Such invoice shall also include an itemized summary of the Metered Output and Environmental Attributes delivered onto the Idaho Power system by the Project on an Hourly basis during the Month immediately preceding the applicable invoice.

5.2 Payment Procedure. The Monthly Payment owed by City of Boise to Idaho Power hereunder shall be due and payable within fifteen (15) days following City of Boise's receipt of the monthly invoice from Idaho Power. Payment will be made by electronic transfer of funds. Idaho Power shall provide City of Boise with current ASA routing numbers and any other necessary instructions to facilitate the electronic transfer of funds.

## **SECTION 6. – ENVIRONMENTAL ATTRIBUTES**

6.1 Environmental Attributes.

a. Idaho Power shall, or shall cause the Developer to, as soon as practicable but in any case on or before March 31 of each calendar year, retire, on City of Boise's behalf, all Environmental Attributes associated with Metered Output through the Applicable Program. If any Environmental Attributes have not been received by Idaho Power from a Developer, Idaho Power, following consultation with City of Boise, shall enforce its contractual rights against the Developer in accordance with such Renewable

Resource PPA. The Parties shall execute all additional documents and instruments reasonably requested by City of Boise in order to further document the transfer of the Environmental Attributes to City of Boise or its designees. Idaho Power will cooperate with City of Boise in the transfer of such Environmental Attributes. City of Boise acknowledges that Idaho Power does not own or control the Project and cannot control or optimize the ability of the Project to generate Environmental Attributes beyond the rights set forth in the Renewable Resource PPA.

b. Clean Title. Idaho Power represents and warrants that, at the time of delivery or retirement of any Environmental Attributes, (i) Idaho Power has good and marketable title to such Environmental Attributes, (ii) such Environmental Attributes have not been sold to any other Person or used to meet compliance requirements of any other regulatory or voluntary renewable energy program or standard, including any greenhouse gas reduction requirements, and (iii) Idaho Power has transferred to City of Boise all right, title to and interest in such Environmental Attributes, free and clear of any liens or other encumbrances.

6.2 Exclusive Right to Environmental Attributes. Idaho Power represents that it has not claimed and agrees that it will not hereafter claim any Environmental Attributes, or “renewable energy,” “clean energy,” “green energy,” or similar attributes from the Project or associated with the Metered Output as belonging or attributable to Idaho Power or any Project generation or facilities, and agrees it will report to City of Boise any such claims made by third parties of which Idaho Power becomes aware. As of the Execution Date and the date of entry into a Renewable Resource PPA, Idaho Power represents that it is not actually aware of any such claims made by third parties. To the extent that any such public communication is allowed hereunder, in any public communication concerning the Project, Metered Output, or Environmental Attributes, Idaho Power must at all times be fully compliant with the applicable requirements of the Green Guides. Idaho Power must not claim in any public communication, or under any Applicable Program, that any of the Environmental Attributes associated with the Metered Output purchased by Idaho Power belong to any Person other than City of Boise. In no event will Idaho Power permit any other Idaho Power customer to claim ownership or use of any Environmental Attributes,

or make any claim that contravenes City of Boise's exclusive rights of ownership of the Environmental Attributes. If Idaho Power or Idaho Power's Affiliates originate any marketing claim, public statement or representation that City of Boise reasonably determines may diminish the value, marketability or use of the Environmental Attributes, City of Boise will have the right to require Idaho Power (or Idaho Power's Affiliates) to cause any public statement to be retracted, removed, ceased, revised, corrected, or updated from or on any public forum promptly upon written notice to Idaho Power to avoid a double counting claim. Idaho Power will work in good faith with City of Boise to mitigate any damages to, or rehabilitate, Environmental Attributes that are impaired by such Idaho Power (or Idaho Power's Affiliates) statements. Idaho Power will not dispute or interfere with City of Boise's ability to claim that City of Boise, and only City of Boise, catalyzed and caused the additionality of Buyer's Share of the Project. Idaho Power shall include in the Renewable Resource PPA a representation and covenant from the Developer that the Developer has not and will not claim any Environmental Attributes as belonging to the Developer.

6.3 Attestations. Without limiting the generality of Section 6.1, Idaho Power shall, on or before March 31 of each calendar year deliver to City of Boise an Environmental Attributes Attestation and Bill of Sale in the form attached as Exhibit 2 for all Environmental Attributes received by Idaho Power under a Renewable Resource PPA and retired on behalf of City of Boise in the preceding year, along with any attestation that is then-current with the Applicable Program.

6.4 Warranties. THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 6 AND IN THIS AGREEMENT ARE THE EXCLUSIVE WARRANTIES WITH RESPECT TO THE ENVIRONMENTAL ATTRIBUTES PROVIDED UNDER THIS AGREEMENT, AND IDAHO POWER MAKES NO OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE ENVIRONMENTAL ATTRIBUTES DELIVERED, WHETHER AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COMPLIANCE WITH ANY RENEWABLE STANDARD OR ANY OTHER MATTER.



## **SECTION 7. – RENEWABLE RESOURCE PPA ADMINISTRATION**

7.1 Administration of Renewable Resource PPA. Idaho Power shall administer the daily operation and administration of the Renewable Resource PPA consistent with Prudent Electrical Practices and Idaho Power's administration of its other non-Qualifying Facility (as defined in the Public Utility Regulatory Policies Act) renewable resource power purchase agreements. Idaho Power shall monitor the Developer's compliance with the applicable Renewable Resource PPA, and require the Developer to deliver directly to City of Boise periodic reports on Project performance and factors affecting Project performance, and other information reasonably requested by City of Boise. Idaho Power will regularly update City of Boise, and require Developer to directly update City of Boise, on major milestones in Project development and promptly notify City of Boise of the Project achieving Commercial Operation. Idaho Power shall provide City of Boise with any notices or communications received from the Developer with respect to the Renewable Resource PPA. Idaho Power will not, without the prior written consent of City of Boise, (i) sell, assign, or transfer the Renewable Resource PPA to any Person other than to City of Boise or City of Boise's designee; (ii) amend, modify, extend the term of, or change in any respect the Renewable Resource PPA; (iii) terminate the Renewable Resource PPA; (iv) waive any material performance obligation or default under the Renewable Resource PPA; (v) settle or resolve any pending or threatened proceeding with respect to the Renewable Resource PPA which would have a material impact upon City of Boise; or (vi) agree in advance to any of the foregoing. Such consent of City of Boise will not be unreasonably withheld, conditioned or delayed. City of Boise shall cooperate with Idaho Power to resolve any conflicts delaying consent where time is of the essence.

7.2 Developer Defaults Under Renewable Resource PPA.

a. If an event of default or termination event attributable to Developer, or an event or circumstance that, with the giving of notice or passage of time, would constitute an event of default or termination event attributable to Developer, however so described, occurs under a Renewable Resource PPA (a "Renewable

Resource PPA Default”), then Idaho Power shall notify City of Boise of such Renewable Resource PPA Default (a “Notice of Renewable Resource PPA Default”). Idaho Power shall not suspend performance or terminate the Renewable Resource PPA without the prior written consent of City of Boise (which consent shall not be unreasonably withheld, conditioned or delayed) unless failure to terminate or suspend performance of such Renewable Resource PPA is reasonably likely to endanger people or property. No later than fifteen (15) Business Days after receipt of a Notice of Renewable Resource PPA Default, City of Boise shall notify Idaho Power of its consent or withholding of consent to terminate or suspend the Renewable Resource PPA. Following response from City of Boise to the Notice of Renewable Resource PPA Default, Idaho Power shall enforce its contractual rights (including, if City of Boise has provided written consent, the right to suspend performance and/or terminate) in accordance with the terms of such Renewable Resource PPA and Prudent Electrical Practice. Idaho Power shall enforce the terms of the Renewable Resource PPA and collect from the Developer any Termination Payment or damages owed as a result of such Renewable Resource PPA Default; provided, that, assuming Idaho Power has used Commercially Reasonable Efforts to enforce the terms of the Renewable Resource PPA, Idaho Power shall not be obligated to pay to City of Boise termination damages due from but not paid by the Developer. Any delay damages or cover damages received from the Developer, minus any reasonable costs incurred by Idaho Power in recovering such delay damages or cover damages (including, but not limited to, the cost of all Supplemental Energy as defined in Exhibit 1 that is provided by Idaho Power in lieu of the Metered Output and Environmental Attributes), shall be forwarded by Idaho Power to City of Boise, as, when and to the extent such delay damages or cover damages are actually received by Idaho Power. If during the pendency of a Renewable Resource PPA Default, Idaho Power does not acquire the Metered Output and Environmental Attributes of the Renewable Resource PPA due to a Renewable Resource PPA Default, Idaho Power shall provide Supplemental Energy, and City of Boise shall

pay the cost of all Supplemental Energy as defined in Exhibit 1 that is provided by Idaho Power in lieu of the Metered Output.

b. Upon termination of the Renewable Resource PPA as a result of a Renewable Resource PPA Default as contemplated by Section 7.2(a): (i) Idaho Power shall calculate the Termination Payment, if any, due and owing under the Renewable Resource PPA; (ii) Idaho Power shall exercise any rights Idaho Power may have against any collateral or security posted by the Developer and held by or on behalf of Idaho Power, (iii) Idaho Power may, to the extent allowed under the terms of the Renewable Resource PPA, apply the proceeds of collateral posted by the Developer against any Termination Payment owed by the Developer, and (iv) if Idaho Power is owed such Termination Payment from the Developer, Idaho Power shall forward to City of Boise any such Termination Payment and other amounts recovered minus any reasonable and documented costs incurred by Idaho Power in recovering such Termination Payment, not to exceed the Termination Payment recovered, as, when and to the extent such Termination Payment and other amounts are actually received by Idaho Power.

7.3 Payments Subject to Reclaim. In the event that any payments received from Developer and forwarded to City of Boise, including any delay damages, cover costs or Termination Payment, must subsequently be returned to Developer or any Person acting in the Developer's or its creditor's interest or is reclaimed by any Governmental Authority as a preference or upon a fraudulent transfer action, then unless such requirement to return or such reclamation is the result of an act or omission of Idaho Power, such amount shall be returned by City of Boise to Idaho Power.

7.4 No Greenhouse Gas-Specific or REC-Retiring Imports. Idaho Power will ensure that the Metered Output and Project capacity to be provided to Idaho Power is not delivered into a Claiming Jurisdiction. This includes not delivering Metered Output or Project capacity into California or into any California balancing authority area, through a sale of resource adequacy capacity to any California load serving entity, by participation in any California Independent System Operator market, participation in the Energy

Imbalance Market, as an import of “specified source” energy within the meaning of California’s Regulation for the Mandatory Reporting of Greenhouse Gas Emissions, or otherwise. Nothing in this Agreement prohibits Idaho Power from being a participating resource in EIM supplying energy to non-California, non-Claiming Jurisdiction participants. In the event that Idaho Power participates in any California Independent System Operator market, Idaho Power shall not claim any Environmental Attributes, or “renewable energy,” “clean energy,” “green energy,” or similar attributes from the Project or associated with the Metered Output as belonging or attributable to Idaho Power or any Project generation or facilities, and agrees it will report to City of Boise any such claims made by third parties of which Idaho Power becomes aware.

## **SECTION 8. – CITY OF BOISE CONTINGENCY FUND**

### **8.1 City of Boise Contingency Fund.**

a. Within fifteen (15) Business Days of the Execution Date of this Agreement, City of Boise will deposit cash into an escrow account pursuant to an escrow agreement with an Escrow Account Holder in form and substance satisfactory to City of Boise and Idaho Power in an amount of \$810,000.00 (“Contingency Fund”). Subject to 8.1(c) of this Agreement, the Escrow Account Holder will hold the full amount of funds in an interest-bearing Contingency Fund account for a period of ten (10) years from the Execution Date of this Agreement. Upon the ten (10) year anniversary of the effective date of this Agreement, if the City of Boise remains in compliance under the terms of this Agreement, the Escrow Agent will disburse 50% of the principal and accrued interest of the Contingency Fund, less any fees of the Escrow Account Holder, to the City of Boise and thereafter retain and hold the remainder of the Contingency Fund for the remaining term of this Agreement. Upon expiration of the Term of this Agreement, provided that the City of Boise has performed all of its obligations under this Agreement, the Escrow Account Holder shall distribute the remaining funds in the Contingency Fund, inclusive of accrued interest and less any fees of the Escrow Account Holder, to the City of Boise.

b. In the event of an Early Termination in which the City of Boise is the Defaulting Party, Idaho Power will recover its calculated damages suffered from the Early Termination (“Idaho Power Early Termination Damages”) from the Contingency Fund. Idaho Power must make commercially reasonable efforts to mitigate its damages from the Early Termination, and such mitigation amounts will be offset in calculating the Idaho Power Early Termination Damages recovered from the Contingency Fund. To recover the Idaho Power Early Termination Damages from the Contingency Fund, within 180 days following an Early Termination in which the City of Boise is the Defaulting Party, Idaho Power may make an application to the Escrow Agent for disbursement of the Idaho Power Early Termination Damages from the Escrow Account Holder. The application must be served upon the City of Boise and must contain a statement showing the efforts made to mitigate damages and quantifying any required mitigation offset for the Idaho Power Early Termination Damages. The City of Boise shall have thirty (30) days within which to review the escrow disbursement request and if appropriate lodge any objection with the Escrow Account Holder to disbursement of the City of Boise Contingency Fund to Idaho Power. If no objection is made within the prescribed period, the Escrow Account Holder will disburse the requested Idaho Power Early Termination Damages to Idaho Power, and the balance of any remaining funds from the Contingency Fund will be disbursed to the City of Boise. If an objection is lodged by the City of Boise, the Escrow Account Holder shall hold the disputed amount in the escrow until the dispute is resolved by the Parties.

c. If this Agreement becomes null and void pursuant to section 13.1 of this Agreement, the Escrow Account Holder will return the funds in the Contingency Fund, inclusive of accrued interest and less any fees of the Escrow Account Holder, to the City of Boise.

8.2 Adequate Assurances. The Parties agree that to the extent that Section 2-609 of the Uniform Commercial Code or any analogous common law right might apply to this Agreement: (a) the City of Boise Contingency Fund is adequate assurance of the City of

Boise's due performance, and (b) the Parties stipulate that they have considered and specifically negotiated the terms set forth herein and, except as may arise in the context of a Bankruptcy Proceeding with respect to one of the Parties, no additional security or collateral posting shall be required with respect to performance under this Agreement.

## **SECTION 9. – FORCE MAJEURE**

9.1 Force Majeure. A Party shall not be considered a Defaulting Party in the performance of any of its obligations under this Agreement when and to the extent such Party's performance is prevented by a Force Majeure that, despite the exercise of due diligence, such Party is unable to prevent or mitigate, provided the affected Party has given the Force Majeure Notice pursuant to the timelines set forth in Section 9.2. Nothing contained herein shall be construed to require a Party to settle any strike or labor dispute in which it is involved. The suspension of performance due to an event of Force Majeure shall be of no greater scope and of no longer duration than is required by such event of Force Majeure.

9.2 The Party claiming the occurrence of a Force Majeure event that prevents it from performing its obligations under this Agreement shall give the other Party notice of the Force Majeure event, including the nature, cause and date and time of commencement of such event, and the anticipated scope and duration of the delay (the "Force Majeure Notice") as soon as practicable after the affected Party becomes aware that such Force Majeure event affects its performance and in any event, no later than ten (10) days after the affected Party becomes aware that such Force Majeure event affects its performance hereunder. The affected Party shall prepare a Force Majeure cure plan describing the actions reasonably expected to be necessary to overcome the Force Majeure event and the time reasonably anticipated to perform such actions. Thereafter, such Party shall provide progress reports to the other Party at least every thirty (30) days describing actions taken to remedy the consequences of the Force Majeure event, the schedule for future actions and the expected date by which performance shall no longer be affected by the Force Majeure event. When such Party has overcome such Force Majeure event

and is ready to resume full performance under this Agreement, notice shall be provided to the other Party and full performance shall resume.

### **SECTION 10. – ASSIGNMENT**

10.1 This Agreement shall be binding upon the heirs, legal and personal representatives, successors and assigns of the parties hereto.

#### 10.2 Assignment.

a. Except as otherwise expressly set forth in this Section 10.2, neither Party may assign either this Agreement or any of its rights or obligations hereunder without the written consent of the other Party, which consent shall not be unreasonably withheld. This Agreement may not be assigned by either Party to a Sanctioned Person. Neither Party may suffer a change of ownership or control, whether direct or indirect, voluntary or by operation of law, such that the Party becomes a Sanctioned Person.

b. Non-Complying Transfers Void. Upon any assignment by either Party in accordance with the provisions of Section 10.2(a), such Party shall be relieved of and released from its obligations under this Agreement to the extent of such assignment. Except as specifically provided for in Section 10.2(a), any assignment or transfer of this Agreement or any rights, duties, or interest hereunder or any portion thereof by any Party without the prior written consent of the other Party shall be void and of no force or effect.

### **SECTION 11. – LIABILITY AND INSURANCE**

11.1 Each Party agrees to protect, defend, indemnify and hold harmless the other party and its officers, directors, and employees against and from any and all liability, suits, loss, damage, claims, actions, costs, and expenses of any nature, including court costs and attorney's fees, even if such suits or claims are completely groundless, as a result of injury to or death of any person or destruction, loss or damage to property arising in any way in connection with, or related to, this Agreement, but only to the extent such injury to or



death of any person or destruction, loss or damage to property is not due to the negligence or other breach of legal duty of such other party; provided, however, that each party shall be solely responsible for claims of and payment to its employees for injuries occurring in connection with their employment or arising out of any workman's compensation law.

11.2 Idaho Power acknowledges that City is a governmental entity as defined in the Idaho Tort Claims Act and the City's liability is at all times limited as required by Idaho law, including the Idaho State Constitution and the Idaho Tort Claims Act, Idaho Code Sections 6-901 through 6-929, inclusive, and any limitation of City's liability, indemnifications, or hold harmless provisions shall be void to the extent such provision violates applicable laws. Nothing in this agreement shall be deemed to be a waiver by City of any privilege, protection, or immunity otherwise afforded it under the Idaho Constitution, Idaho Tort Claims Act, or any other applicable law or a waiver of its sovereign immunity, which is hereby expressly retained. Furthermore, City shall at no time be liable for more than the pro rata share of the total damages awarded in favor of a claimant that is directly attributable to the negligent or otherwise wrongful acts or omissions of City or its employees.

11.3 Minimum Insurance Requirements. Idaho Power shall maintain, and specifically agrees that it will maintain, throughout the term of this Agreement, liability insurance, in which the City shall be named an additional insured in the minimum amount of one million dollars (\$1,000,000.00) per occurrence, or as specified in the Idaho Tort Claims Act set forth in Title 6, Chapter 9 of the Idaho Code, whichever is higher. Idaho Power shall provide City with a Certificate of Insurance, or other proof of insurance evidencing Idaho Power's compliance with the requirements of this paragraph and file such proof of insurance with the City. In the event the insurance minimums are changed, Idaho Power shall promptly submit proof of compliance with the changed limits.

11.4 Workers Compensation. Idaho Power shall have and maintain during the life of this Agreement, statutory workers compensation and include employer's liability with



minimum limits of: Bodily injury by accident - \$500,000.00 each accident; bodily injury by disease - \$500,000.00 each employee; bodily injury by disease - \$500,000.00 policy limit.

## **SECTION 12. – IDAHO PUBLIC UTILITIES COMMISSION JURISDICTION**

12.1 This Agreement and the respective rights and obligations of the parties hereunder, shall be subject to (a) Idaho Power's General Rules and Regulations as now or hereafter in effect and on file with the IPUC and (b) to the jurisdiction and regulatory authority of the IPUC and the laws of the State of Idaho.

12.2 The rates set forth in this Agreement and Schedules 19 and 62-1 are subject to the continuing jurisdiction of the IPUC. The rates under this Agreement are subject to change and revision by order of the IPUC upon a finding, supported by substantial competent evidence, that such rate change or revision is just, fair, reasonable, sufficient, non-preferential, and nondiscriminatory. It is the parties' intention by such provision that the rate making standards to be used in making any revisions or changes in rates, and the judicial review of any revisions or changes in rates, will be the same standards that are applicable to Idaho intrastate tariff rates.

## **SECTION 13. – REGULATORY APPROVAL**

13.1 Final Regulatory Approval. This Agreement is subject to and is expressly conditioned upon the approval by the IPUC of all terms and provisions hereof without change or condition. This Agreement shall become null and void should Idaho Power not obtain all regulatory approvals deemed appropriate by Idaho Power and City of Boise. Idaho Power will file a case seeking approval of this Agreement with the IPUC.

## **SECTION 14. – DEFAULT AND TERMINATION**

14.1 Event of Default. "Event of Default" means the occurrence of any of the following events with respect to a Party (the "Defaulting Party," and the other Party, the "Non-Defaulting Party"):

a. The failure by the Defaulting Party to make, when due, payment of any amount required under this Agreement if such failure is not remedied within fifteen (15) Business Days after written notice of such failure is given to the Defaulting Party by the Non-Defaulting Party;

b. The failure by the Defaulting Party to perform or observe any material obligation or covenant set forth in this Agreement (other than obligations which are otherwise specifically covered in this Section 14.1 as a separate Event of Default), and such failure is not cured within thirty (30) Days after written notice of such default is given by the Non-Defaulting Party to the Defaulting Party;

c. Any representation or warranty of the Defaulting Party pursuant to this Agreement shall prove to have been false or misleading in any material respect when made or deemed made unless (i) the fact, circumstance or condition that is the subject of such representation or warranty is made true within fifteen (15) Days after notice thereof has been given to the Defaulting Party; and (ii) such cure removes any adverse effect on the Non-Defaulting Party of such fact, circumstance or condition being otherwise than as first represented;

d. City of Boise shall become subject to a Bankruptcy Proceeding;

e. Idaho Power shall become subject to a Bankruptcy Proceeding and, at any time during the pendency of such Bankruptcy Proceeding, Idaho Power shall fail to deliver the Total Supply Obligation or Environmental Attributes required to be delivered under this Agreement in circumstances where such failure was not excused by Force Majeure;

f. The Defaulting Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Applicable Law or pursuant to an agreement reasonably satisfactory to the other Party;

g. With respect to Idaho Power, Idaho Power knowingly (i) sells Environmental Attributes from the Project to a Person other than City of Boise in breach of this Agreement and does not permanently cease such sale, (ii) otherwise fails to transfer Environmental Attributes from the Project to City of Boise as required by this Agreement, or (iii) makes a public statement or otherwise takes an action that any Governmental Authority or the administrators of an Applicable Program determine is a retirement, double counting, double sale, double use or double claim of Environmental Attributes, and upon notice by City of Boise, does not permanently cease the making of such public statement or action;

h. Either Party is or becomes a Sanctioned Person;

i. City of Boise fails to maintain the Contingency Fund required by Section 8.1 of this Agreement. Remedies. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, then the Non-Defaulting Party shall have all rights and remedies available at law or in equity, including the right, but not the obligation, to take one or more of the following actions: (a) designate a Day, no earlier than the Day such notice is effective and no later than twenty (20) Days after such notice is effective, as an early termination date ("Early Termination Date") to terminate this Agreement and (i) settle and bring current all outstanding amounts owing between the Parties as of the Early Termination Date (whether or not such amounts have been previously invoiced), without regard to whether such amounts are owing to or from the Non-Defaulting Party, which amount shall be payable within fifteen (15) Business Days after notice of the amount is effective, and (ii) as of such Early Termination Date, accelerate all amounts owing between the Parties and calculate a single liquidated Termination Payment in accordance with Section 1.6, (b) withhold any payments due to the Defaulting Party under this Agreement, (c) suspend performance, and (d) in the case of City of Boise as the Non-Defaulting Party, if City of Boise is not receiving Environmental Attributes from a Project as a result of the Event of Default, then in lieu of termination of this Agreement and demand for payment of the Termination Payment, demand that Idaho Power either (i) no later than sixty

(60) days after the end of each calendar year, deliver to City of Boise Replacement Environmental Attributes in an amount equal to the number of RECs from the applicable project at such project's 8760 generation profile that would have been delivered to City of Boise hereunder and other Environmental Attributes from the applicable project that would have been delivered to City of Boise hereunder but for the Event of Default, or (ii) if Idaho Power has used commercially reasonable efforts to provide Replacement Environmental Attributes in accordance with clause (i) above but has been unable to do so within sixty (60) days after the end of any calendar year, then, no later than ninety (90) days after the end of such calendar year, pay to City of Boise liquidated damages in an amount equal to the market value of such quantity of RECs and other Environmental Attributes, in each case, as of the last day of such calendar year; provided that such market value of RECs and Environmental Attributes shall be the average of the market value determined by two Third Party Market Experts. In the case of clause (d), such remedy shall apply until the earlier of (1) the end of the Term, and (2) the date on which Idaho Power recommences the delivery of all Environmental Attributes from the applicable Project to City of Boise.

14.3 Termination Payment. If this Agreement is terminated as a result of an Event of Default, the Termination Payment shall be calculated by the Non-Defaulting Party as of the Early Termination Date. The Termination Payment, if any, shall be paid only to the Non-Defaulting Party and shall be due only from the Defaulting Party. If the City of Boise is the Non-Defaulting Party, it may, in addition to pursuing any and all other remedies available at law or in equity, proceed against collateral or other security held by the Defaulting Party in whatever form to reduce any amounts arising from such Event of Default. If City of Boise is the Defaulting Party, Idaho Power may proceed against the collateral held in the Contingency Fund; subject to Section 16.12.

14.4 Notice of Termination Payment. As soon as practicable, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment. Such notice shall include a written statement explaining in reasonable detail

the calculation of such amount. The Termination Payment, if any, shall be made by the Defaulting Party within fifteen (15) Business Days after such notice is effective.

14.5 Disputes with Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within fifteen (15) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute.

14.6 Closeout Setoff. After calculation of a Termination Payment in accordance with Section 14.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to set off against such Termination Payment, and all outstanding amounts due to the Defaulting Party as of the Early Termination Date, any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under this or any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

14.7 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use Commercially Reasonable Efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance hereof.

## **SECTION 15. – REPRESENTATIONS AND WARRANTIES**

15.1 Mutual Representations and Warranties. As of the Execution Date, or as of such other date as set forth below, each Party represents, covenants, and warrants to the other that:

- a. Organization. It is duly organized and validly existing under the laws of its State of organization.

b. Authority. It has the requisite power and authority to enter hereinto and to perform according to the terms hereof.

c. Corporate Actions. It has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance hereof and the consummation of the transactions contemplated hereby.

d. No Contravention. The execution, delivery, performance and observance by it of its obligations hereunder do not (a) contravene any provision of, or constitute a default under, (i) any indenture, mortgage, security instrument or undertaking, or other material agreement to which it is a party or by which it is bound, (ii) any valid order of any court, or any regulatory agency or other body having authority to which it is subject, or (iii) any material Applicable Law presently in effect having applicability to it, or (b) require the consent or approval of, or material filing or registration with, any Governmental Authority or other Person other than such consents or approvals that are not yet required but expected to be obtained in due course or as contemplated by this Agreement.

e. Valid and Enforceable Agreement. This Agreement is a valid and legally binding obligation of it, enforceable against it in accordance with its terms, except as the enforceability hereof may be limited by general principles of equity or bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies, and subject to all approvals of Governmental Authorities contemplated by this Agreement.

f. Litigation. No litigation, arbitration, investigation or other proceeding is pending or, to the best of such Party's knowledge, threatened against such Party or any Affiliate with respect hereto and the transactions contemplated hereunder that would reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Agreement or the enforceability of this Agreement against it.

g. No Brokers. No broker, finder, or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with this Agreement based upon any agreements or arrangements or commitment, written or oral, made by or on behalf of the Party.

h. Bankruptcy Eligible. It is an entity eligible to file as a debtor under Chapter 7 and/or Chapter 11 of the United States Bankruptcy Code;

i. No Proceedings. There are no Bankruptcy Proceedings pending or being contemplated by it or, to its knowledge, threatened against it;

j. Full Understanding. It has entered into this Agreement with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks;

k. Own Judgment. It has made the decision to enter into this Agreement based upon its own judgment and upon any advice from such advisors as it has deemed necessary;

l. No Assurances. Other than as set forth in the terms of this Agreement with respect to its own performance hereunder, such Party has not given to the other Party any assurances as to the expected economic outcome of entering into this Agreement; and

m. Not a Sanctioned Person. It is not a Sanctioned Person.

## **SECTION 16. – MISCELLANEOUS PROVISIONS**

16.1 Notices. All notices, requests, statements or payments shall be made to the addressee specified on Exhibit 3. Notices shall, unless otherwise specified herein, be in writing and delivered by hand, certified United States mail (return receipt requested), reputable overnight courier service or email. For all notices delivered by a method other than email, the Party giving notice shall, at the time of sending such notice, send an email copy of the notice to the email addresses provided for such addressee in Exhibit 3. Notice



by email or hand delivery shall be effective when received, if received during business hours on a Business Day, and otherwise shall be effective on the next Business Day; provided that email notice shall not be effective unless and until acknowledged by the recipient. Notice by overnight United States mail or courier shall be effective upon receipt or rejection, as specified in the return receipt or tracking report, as applicable. A Party may change its addresses by providing notice thereof in accordance with this Section.

16.2 Cooperation. Each Party acknowledges that the satisfactory performance and operation of its various obligations under this Agreement will often require the cooperation of the other Party. To that end, each Party will make good faith efforts to bring to the attention of the other Party, or its Affiliates any condition or circumstance that it believes the other Party is unaware of that may materially impact such Party's performance hereunder; provided, however, that under no circumstance shall any alleged failure to comply with the requirements of this Section 16.2 provide the basis for an Event of Default under Section 14 or an indemnity Claim under Section 11.

16.3 Entirety. This Agreement constitutes the entire agreement between the Parties. There are no prior or contemporaneous agreements or representations affecting the same subject matter other than those herein expressed.

16.4 Waivers; Remedies Cumulative. No failure or delay on the part of a Party in exercising any of its rights under this Agreement or in insisting upon strict performance of provisions of this Agreement, no partial exercise by either Party of any of its rights under this Agreement, and no course of dealing between the Parties shall constitute a waiver of the rights of either Party arising under this Agreement or otherwise. Any waiver shall be effective only by a written instrument signed by the Party granting such waiver, and such shall not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith. Except as otherwise provided herein, the remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

16.5 Severability. If any term, provision or condition of this Agreement is held to be invalid, void or unenforceable by a Governmental Authority and such holding is subject to no further appeal or judicial review, then such invalid, void, or unenforceable term,



provision or condition shall be severed from this Agreement and the Parties shall negotiate in good faith to replace such invalid, void or unenforceable provisions with valid and enforceable provisions which achieve the benefit of the bargain intended by the Parties to the greatest extent permitted by Applicable Law.

16.6 Confidentiality. Any information disclosed by one Party to the other Party in connection with this Agreement shall be subject to the Mutual Nondisclosure Agreement, and the terms and conditions of the Mutual Nondisclosure Agreement are hereby incorporated herein.

16.7 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same original instrument. A signature in "PDF" format or electronic signature to this Agreement shall be deemed an original and binding upon the Party against which enforcement is sought.

16.8 Modification/Amendment. This Agreement may not be modified or amended except by a written instrument signed by each of the Parties hereto.

16.9 Exhibits. The Exhibits attached hereto shall form a part of this Agreement and are hereby incorporated into this Agreement by reference as if fully set forth herein.

16.10 Time. Time is of the essence to the performance of the terms and conditions of this Agreement; provided, however, that if the final date of any period which is set for a time provision under this Agreement falls on a Day that is not a Business Day, in such event the time of such period shall be extended to the next Business Day.

16.11 Governing Law. Unless otherwise expressly provided herein, the terms and conditions of this agreement shall be governed by, controlled, construed and enforced in accordance with the laws and decisions of the state of Idaho applicable to agreements to be made and to be performed in Idaho without regard to principles of conflicts of law.

16.12 Limitations of Remedies, Liability, and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS

AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR SUCH BREACH UNLESS OTHERWISE STATED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE (EXCEPT TO THE EXTENT THAT AN INDEMNIFYING PARTY PURSUANT TO THE PROVISIONS OF SECTION 11 HEREOF IS OBLIGATED TO INDEMNIFY AGAINST THIRD PARTY CLAIMS FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES OR LOST PROFITS OR BUSINESS INTERRUPTION DAMAGES); PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATION SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT NOR LIMIT A PARTY'S RIGHT TO ANY DAMAGES PURSUANT TO THE MUTUAL NON-DISCLOSURE AGREEMENT. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. THE PROVISIONS OF THIS SECTION 16.12 SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT WILL THE CITY OF BOISE BE LIABLE FOR DAMAGES IN EXCESS OF THE

BOISE CONTINGENCY FUND FOR ANY BREACH OR TERMINATION OF THIS AGREEMENT.

16.13 Third Party Beneficiaries. This Agreement is not intended to, and does not, confer upon any Person other than the Parties hereto and their respective successors and permitted assigns, any rights or remedies hereunder.

16.14 No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or between any Party and the other Party's Affiliates or members, Idaho Power or to impose any partnership obligation or liability upon either Party or their Affiliates or members. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind.

16.15 No Personal Liability. Each Party acknowledges and agrees that in no event shall any Affiliate, partner, member, shareholder, owner, attorney, consultant, officer, director or employee of either Party be personally liable to the other Party for any payments, obligations, or performance due under this Agreement or any breach or failure of performance of either Party.

16.16 Further Assurances. If any Party reasonably determines or is reasonably advised that any further instruments or any other things or actions are necessary or desirable to carry out the terms of this Agreement, then the other Party shall perform and execute and deliver, or cause to be performed, executed and delivered, all such further actions, instruments and things reasonably necessary and proper to carry out the terms of this Agreement.

16.17 Event of Non-Appropriation. If the City Council of the City of Boise fails or declines to appropriate funds for this Agreement for any City Fiscal Year during the Term of this Agreement, this Agreement shall terminate on the last day of the City Fiscal Year for which funds have been appropriated, which shall also be the Early Termination Date. Such event shall be an Event of Default under Section 14 of this Agreement. The City of Boise staff managing this Agreement will make reasonable efforts to obtain an

appropriation from the City Council in the full amount required under this Agreement, including the submission of budget requests each year that are sufficient to cover the City of Boise’s payment obligations under this Agreement for the next City fiscal year.

16.18 Anti-Boycott. Pursuant to Idaho Code § 67-2346, Idaho Power certifies that it is not currently engaged in and will not for the duration of this Agreement engage in, a boycott of goods or services from Israel or territories under its control.

16.19 Government of China Certification. Idaho Power certifies that it is not currently owned or operated by the government of China and will not, for the duration of this Agreement, be owned or operated by the government of China.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by the duly authorized representatives as of the date first set forth above.

**CITY OF BOISE**

By: *Lauren McLean*  
Name: Lauren McLean 10/10/2023  
Title: Mayor



**[CITY CLERK ATTEST]**

**IDAHO POWER COMPANY**

By: *Adam Richins*  
Name: Adam Richins  
Title: COO

**EXHIBIT 1**  
**to**  
**Renewable Power Purchase Agreement**  
**between Idaho Power Company**  
**and**  
**City of Boise**  
**dated**  
**October 3, 2023**

**PRICING**

**Definitions**

“Administrative Charge” is equal to 5 percent of the portion of the Excess Generation Credit and/or the Monthly Adjusted Renewable Energy Facility Credit that is recovered through the Power Cost Adjustment and that Idaho Power allocates to the State of Idaho. The Administrative Charge will be determined and applied monthly.

“Annual Renewable Energy Facility Credit” means the product of the Renewable Capacity Contribution and the Renewable Energy Facility Credit Rate.

“Capacity Contribution Factor” is based on the capacity contribution methodology and preferred portfolio resource addition timing of the most recently acknowledged IRP, is set at the time of execution of the Renewable Resource PPA or the Parties’ agreement to procure or construct the Idaho Power-owned Renewable Resource, as applicable, and remains the same value for the duration of the term of the Renewable Resource PPA or the period of time during which the Idaho Power-owned Renewable Resource will provide Project Output to City of Boise, as applicable.

“Excess Generation” means the amount for each Hour by which energy from the Project(s) exceeds the Total Supply Obligation energy requirement.

“Excess Generation Credit” means the total amount of Excess Generation times the Excess Generation Price.

“Excess Generation Price” means the lower of (1) 85 percent of the hourly Mid-Columbia price forecast used in Idaho Power’s most recently IPUC acknowledged IRP, with a non-firm adjustment applied to each Hour’s price, or (2) the actual heavy or light load hour (as applicable) Mid-Columbia market price for each hour of Excess Generation delivered. The non-firm adjustment will be based on the rate contained within Schedule 86 or its successor schedule. The Excess Generation Price will become effective the month following IPUC acknowledgement of the corresponding IRP until IPUC acknowledgement of the subsequent IRP.

“Fixed Cost Component of the Retail Energy Charge” means the per kilowatt hour rate of cost-of-service classified fixed costs pursuant to the Fixed Cost Component of the Retail Energy Charge as stated in Schedule 62.

“Monthly Adjusted Renewable Energy Facility Credit” is the product of the Monthly Unadjusted Renewable Energy Facility Credit and the Performance Ratio Adjustment Factor. The Monthly Adjusted Renewable Energy Facility Credit will be provided to City of Boise monthly, starting the month of the respective Project’s Renewable Capacity Credit Eligibility Date or the month following the commercial operation date of the applicable Project, whichever is later, and will remain in effect for the duration of the term of the Renewable Resource PPA or the period of time during which the Idaho Power-owned Renewable Resource will provide Project Output to City of Boise, as applicable.

“Monthly Unadjusted Renewable Energy Facility Credit” is the monthly payment available to City of Boise with respect to a Renewable Resource PPA based on the Annual Renewable Energy Facility Credit if all performance expectations are met by the applicable Renewable Resource. The Monthly Unadjusted Renewable Energy Facility Credit will be determined at time of execution of the Renewable Resource PPA or the Parties’ agreement to procure or construct the Idaho Power-owned Renewable Resource, as applicable, and will be subject to IPUC approval.

“Performance Ratio Adjustment Factor” is the adjustment to be applied to the Monthly Unadjusted Renewable Energy Facility Credit when performance expectations are not met. The Performance Ratio Adjustment Factor methodology is determined at time of execution of the Renewable Resource PPA or the Parties’ agreement to procure or construct the Idaho Power-owned Renewable Resource, as applicable, and will be subject to IPUC approval.

“Renewable Capacity Contribution” means the Project MW AC nameplate capacity multiplied by the Capacity Contribution Factor.

“Renewable Energy Facility Credit Rate” is based on the Avoided Levelized Capacity Costs of the lowest-cost selectable resource from the most recently acknowledged IRP, is set at the time of execution of the Renewable Resource PPA or the Parties’ agreement to procure or construct the Idaho Power-owned Renewable Resource, as applicable, and remains the same value for the duration of the term of the Renewable Resource PPA or the period of time during which the Idaho Power-owned Renewable Resource will provide Project Output to City of Boise, as applicable.

“Renewable Energy Facility Credit Adjustment” will be determined at time of execution of the Renewable Resource PPA or the Parties’ agreement to procure or construct the Idaho Power-owned Renewable Resource, as applicable, be subject to IPUC approval, and include any adjustment necessary to ensure no cost shift to other customers.

“Renewable Energy Facility Cost” represents the Renewable Resource Contract Price and any additional costs incurred by Idaho Power not included in the Renewable Resource Contract Price, which are necessarily incurred to certify Environmental Attributes pursuant to the Agreement.

“Renewable Energy Facility On-Site Usage” means the amount of energy output from all Projects in any Hour that meets any portion of the Total Supply Obligation energy requirement for such Hour.

### Source and Timing of Updates to Pricing Components

Pricing components will be updated at the following intervals:

<u>Schedule 19 Rates</u>	<u>Excess Generation Price</u>	<u>Renewable Energy Facility Credit Rate</u>
General Rate Case  Other Revenue Requirement Filing	Upon IPUC IRP acknowledgment and/or based on actual Mid-Columbia heavy or light hourly prices	Execution of the Renewable Resource PPA or the Parties' agreement to procure or construct the Idaho Power-owned Renewable Energy Facility, as applicable, subject to IPUC approval

### Renewable Energy Facility Credit

<b>TABLE 1: RENEWABLE ENERGY FACILITY CREDIT</b>							
		(a)	(b)	(c)	(d)	(e)	(f)
Project	Most Recently Acknowledged IRP	Project Nameplate (kW AC) <sup>1</sup>	Capacity Contribution Factor	Renewable Capacity Contribution (a * b)	REF Credit Rate (\$/kW-yr)	REF Credit Adjustment	Annual REF Credit** (c*d*e)
Black Mesa Energy LLC	2019	10,000	0.3642	14,568	\$121.19	1.0	\$441.373.98

\*Table 2 denotes the Monthly Unadjusted Renewable Capacity Credit at 10 MW Buyer's Share.

<b>TABLE 2: MONTHLY UNADJUSTED RENEWABLE ENERGY FACILITY CREDIT BY MONTH</b>									
	Jan	Feb	June	July	Aug	Sept	Oct	Nov	Dec
Black Mesa Energy LLC <sup>2</sup>	\$23,170	\$23,170	\$77,240	\$154,480	\$77,240	\$19,860	\$19,860	\$23,170	\$23,170

+Table 3 denotes each project's date of eligibility for the Annual Renewable Energy Facility Credit.

<b>TABLE 3: ELIGIBILITY DATE FOR RENEWABLE ENERGY FACILITY CREDIT</b>
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<sup>1</sup> Represents Buyer's Share of Project Nameplate capacity.

<sup>2</sup>Amounts to be adjusted by the Performance Ratio Adjustment Factor, which is calculated pursuant to the methodology detailed in Case No. IPC-E-22-06, Attachment 1 to Idaho Power Company's Compliance Filing dated December 23, 2022, as approved in Order No. 35735 (Apr. 12, 2023), to determine the Monthly Adjusted Renewable Capacity Credit. Amounts shown are for a Buyer's Share of 10 MW and will be adjusted for each month that Buyer's Share is less than 10 MW.



Project	PPA Execution Date	Capacity Deficiency Year	Renewable Energy Facility Credit Eligibility Date
Black Mesa Energy LLC	2/16/2022	2026	7/1/2026

**EXHIBIT 2**  
**to**  
**Renewable Power Purchase Agreement**  
**between Idaho Power Company**  
**and**  
**City of Boise**  
**dated**  
**October 3, 2023**

**ENVIRONMENTAL ATTRIBUTES ATTESTATION AND BILL OF SALE**

**I. Idaho Power Information**

Name of Idaho Power: \_\_\_\_\_

Address of Idaho Power: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_  
 Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email Address: \_\_\_\_\_

**II. Declaration**

I, (print name and title) \_\_\_\_\_ declare that the Environmental Attributes listed below were sold exclusively from: (name of Idaho Power) ("Idaho Power") to [\_\_\_\_\_] ("City of Boise").

# MWs Environmental Attributes Transferred	Period of Generation (mm/yy)

I further declare that:

- 1) all the Environmental Attributes (including any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water) represented by the Environmental Attributes listed above were generated by Idaho Power;



- 2) to the best of my knowledge, the Environmental Attributes were not sold or marketed to, or otherwise claimed by, a third party;
- 3) Idaho Power transferred the Environmental Attributes only once, to City of Boise;
- 4) the Environmental Attributes were not used to meet any federal, state or local renewable energy requirement, renewable energy procurement, renewable portfolio standard, or other renewable energy mandate by Idaho Power, nor, to the best of my knowledge, by any other entity;
- 5) all of the Environmental Attributes transferred to City of Boise (as listed above) were generated at the [\_\_\_\_\_] facility, a [\_\_\_\_]-powered generation facility located in [County, State]; and
- 6) Environmental Attributes transferred to City of Boise include RECs which shall be registered and eligible under the [registration program] specified in the Renewable Energy Purchase Agreement.

As an authorized agent of Idaho Power, I attest that the above statements are true and correct.

\_\_\_\_\_  
Signature  
Place of Execution \_\_\_\_\_

\_\_\_\_\_  
Date

**EXHIBIT 3**  
**to**  
**Renewable Power Purchase Agreement**  
**between Idaho Power Company**  
**and**  
**City of Boise**  
**dated**  
**October 3, 2023**

**NOTICES INFORMATION**

If to Idaho Power:

Idaho Power Company  
ATTN: Vice President of Regulatory Affairs  
1221 West Idaho Street (83702)  
P.O. Box 70  
Boise, Idaho 83707  
tel: 208-388-5515  
fax: 208-388-6936  
email: ttatum@idahopower.com

If to City of Boise: City of Boise  
150 N. Capital Blvd.  
Boise, ID 83702  
Attn: Steve Hubble  
Email: [shubble@cityofboise.org](mailto:shubble@cityofboise.org)

With a copy to: City of Boise  
150 N. Capital Blvd.  
Boise, ID 83702  
City Attorney  
Attn: Ed Jewell  
Email: [ejewell@cityofboise.org](mailto:ejewell@cityofboise.org)

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION**

**CASE NO. IPC-E-24-18**

**IDAHO POWER COMPANY**

**ATTACHMENT NO. 2**

**FIRST AMENDMENT TO THE RENEWABLE  
POWER PURCHASE AGREEMENT**

**FIRST AMENDMENT TO THE  
RENEWABLE POWER PURCHASE AGREEMENT  
BETWEEN  
IDAHO POWER COMPANY AND  
CITY OF BOISE –  
CLEAN ENERGY YOUR WAY “CONSTRUCTION OPTION”**

This First Amendment to the Renewable Power Purchase Agreement (“First Amendment”) is executed on April 16, 2024 (the “Execution Date”), by the CITY OF BOISE, an Idaho municipal corporation (“City of Boise”), and IDAHO POWER COMPANY, an Idaho Corporation (“Idaho Power”). The City of Boise and Idaho Power are hereinafter referred to individually as a “Party” or collectively as the “Parties”.

**WHEREAS**, the City of Boise is an existing retail customer of Idaho Power with multiple accounts, taking service under Schedules 1,7, 9, 15, 18 19, 24, 40, 41, 42 and 84; and

**WHEREAS**, as a result of the City of Boise’s desire to meet a portion of its annual energy requirements with energy generated by a Renewable Resource, the Parties entered into a Renewable Power Purchase Agreement (“Agreement”) on October 10, 2023, pursuant to which Idaho Power agreed to procure and dedicate Buyer’s Share of Renewable Resource generation and associated Environmental Attributes from the Black Mesa Solar project pursuant to Schedule 62 to assist the City of Boise in meeting a portion of the annual energy requirements for two of its Schedule 19 accounts, specifically the Boise Airport and the City of Boise – Lander Street Wastewater Treatment Facility; and

**WHEREAS**, the Parties now desire to enter into this First Amendment to the Agreement (“First Amendment”) to: 1) add “Project Output” to the list of defined terms in Section 1 – Definitions and Interpretation, which is a term that is used in the Agreement but was inadvertently not included in Section 1; 2) add a definition for “Supplemental Energy”, which is erroneously noted in Section 1 of the Agreement as being defined in Exhibit 1, and correct that reference elsewhere in the Agreement; and 3) modify Exhibit 1, which sets forth the details of the various

rate component monthly charges and pricing under the Agreement, to incorporate language for clarity and to provide for necessary flexibility in administering the Agreement while ensuring that changes in rates are considered in a separate proceeding, and hereby submits the same for the Commission's approval.

**NOW, THEREFORE**, in consideration of the promises and of the mutual covenants herein set forth, and other good and valuable consideration, the receipt, sufficiency, and adequacy of which are hereby acknowledged, the City of Boise and Idaho Power, each intending to be legally bound, agree as follows:

**1. Incorporation of Recitals.** The above-stated recitals are incorporated into and made a part of this First Amendment by this reference.

**2. Amendments.**

**A. Section 1 – Definitions and Interpretation**

- i. Section 1 of the Agreement is hereby amended by adding the following new term and definition in appropriate alphabetical order:

“Project Output” means the Metered Output and Environmental Attributes, as a simultaneously bundled product, of a Project, either owned by Idaho Power or to be purchased by Idaho Power in accordance with a Renewable Resource PPA.

- ii. Paragraph 1.58 of the Agreement is hereby amended as follows (new language is underlined, deleted language uses ~~strikethrough~~):

1.58 “Supplemental Energy” is defined in Exhibit 1 hereto means the amount for each Hour by which the Buyer’s Share of Project Output is less than the Total Supply Obligation energy requirement, the cost of which is determined by the tariff schedule of rates in Schedule 19.

**B. Section 7 – Renewable Resource PPA Administration**

- i. Paragraph 7.2 of the Agreement is hereby amended as follows (deleted language uses ~~strikethrough~~):

7.2 Developer Defaults Under Renewable Resource PPA.

a. If an event of default or termination event attributable to Developer, or an event or circumstance that, with the giving of notice or passage of time, would constitute an event of default or termination event attributable to Developer, however so described, occurs under a Renewable Resource PPA (a “Renewable

Resource PPA Default”), then Idaho Power shall notify City of Boise of such Renewable Resource PPA Default (a “Notice of Renewable Resource PPA Default”). Idaho Power shall not suspend performance or terminate the Renewable Resource PPA without the prior written consent of City of Boise (which consent shall not be unreasonably withheld, conditioned or delayed) unless failure to terminate or suspend performance of such Renewable Resource PPA is reasonably likely to endanger people or property. No later than fifteen (15) Business Days after receipt of a Notice of Renewable Resource PPA Default, City of Boise shall notify Idaho Power of its consent or withholding of consent to terminate or suspend the Renewable Resource PPA. Following response from City of Boise to the Notice of Renewable Resource PPA Default, Idaho Power shall enforce its contractual rights (including, if City of Boise has provided written consent, the right to suspend performance and/or terminate) in accordance with the terms of such Renewable Resource PPA and Prudent Electrical Practice. Idaho Power shall enforce the terms of the Renewable Resource PPA and collect from the Developer any Termination Payment or damages owed as a result of such Renewable Resource PPA Default; provided, that, assuming Idaho Power has used Commercially Reasonable Efforts to enforce the terms of the Renewable Resource PPA, Idaho Power shall not be obligated to pay to City of Boise termination damages due from but not paid by the Developer. Any delay damages or cover damages received from the Developer, minus any reasonable costs incurred by Idaho Power in recovering such delay damages or cover damages (including, but not limited to, the cost of all Supplemental Energy ~~as defined in Exhibit 1~~ that is provided by Idaho Power in lieu of the Metered Output and Environmental Attributes), shall be forwarded by Idaho Power to City of Boise, as, when and to the extent such delay damages or cover damages are actually received by Idaho Power. If during the pendency of a Renewable Resource PPA Default, Idaho Power does not acquire the Metered Output and Environmental Attributes of the Renewable Resource PPA due to a Renewable Resource PPA Default, Idaho Power shall provide Supplemental Energy, and City of Boise shall pay the cost of all Supplemental Energy ~~as defined in Exhibit 1~~ that is provided by Idaho Power in lieu of the Metered Output.

### **C. Exhibit 1: Pricing**

- i. Exhibit 1 to the Agreement is hereby replaced in its entirety with the **First Revised Exhibit 1** included in the Attachment hereto, which is incorporated by reference as if set forth fully.

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

**4. Effect of Amendment.** Except as expressly amended by this First Amendment, the terms and conditions of the Agreement remain unchanged.

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

**6. Scope of Amendment.** This First 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 hereof.

**7. Authority.** Each Party represents and warrants that as of the Execution 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 First Amendment.

**8. Counterparts.** This First 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. A signature in "PDF" format or an electronic signature to this First Amendment shall be deemed an original and binding upon the Party against which enforcement is sought.

**9. Governing Law.** Unless otherwise expressly provided herein, the terms and conditions of this First Amendment shall be governed by, controlled, construed, and enforced in accordance with the laws and decisions of the state of Idaho applicable to agreements to be made and to be performed in Idaho without regard to principles of conflicts of law.

*[Signatures appear on the following page]*

IN WITNESS WHEREOF, the Parties hereto have caused this First Amendment to the Agreement to be duly executed as of the date set forth above.

**CITY OF BOISE**

By: *Lauren McLean*  
Name: Lauren McLean 4/16/2024  
Title: Mayor



ATTEST *Lynda Lowry*  
By: *Lynda Lowry*  
Name: Lynda Lowry 4/16/2024  
Title: City Clerk

**IDAHO POWER COMPANY**

By: *Adam Richins*  
Name: Adam Richins  
Title: COO



**Attachment to**  
**First Amendment to the Renewable Power Purchase Agreement**  
**Between Idaho Power Company and City of Boise**  
**Dated April 2024**  
**FIRST REVISED EXHIBIT 1**  
**PRICING**

Definitions

“Administrative Charge” is equal to 5 percent of the portion of the Excess Generation Credit and/or the Monthly Adjusted Renewable Energy Facility Credit that is recovered through the Power Cost Adjustment and that Idaho Power allocates to the State of Idaho. The Administrative Charge will be determined and applied monthly.

“Annual Renewable Energy Facility Credit” means the product of the Renewable Capacity Contribution and the Renewable Energy Facility Credit Rate.

“Capacity Contribution Factor” is based on the capacity contribution methodology and preferred portfolio resource addition timing of the most recently acknowledged IRP, is set at the time of execution of the Renewable Resource PPA or the Parties’ agreement to procure or construct the Idaho Power-owned Renewable Resource, as applicable, and remains the same value for the duration of the term of the Renewable Resource PPA or the period of time during which the Idaho Power-owned Renewable Resource will provide Buyer’s Share of Project Output to City of Boise, as applicable.

“Excess Generation” means the amount for each Hour by which energy from the Project(s) exceeds the Total Supply Obligation energy requirement.

“Excess Generation Credit” means the total amount of Excess Generation times the Excess Generation Price.

“Excess Generation Price” means the lower of (1) 85 percent of the hourly Mid-Columbia Forecast, with a non-firm adjustment applied to each Hour’s price, or (2) the actual heavy or light load hour (as applicable) Mid-Columbia market price for each hour of Excess Generation delivered. The non-firm adjustment will be based on the rate contained within Schedule 86 or its successor schedule.

“Fixed Cost Component of the Retail Energy Charge” means the per kilowatt hour rate of cost-of-service classified fixed costs pursuant to the Fixed Cost Component of the Retail Energy Charge as stated in Schedule 62.

“Mid-Columbia Forecast” means the hourly Mid-Columbia price forecast from the Company’s most recently filed IRP. The proposed Mid-Columbia Forecast will be filed with the IPUC following submission of each IRP filing.

“Monthly Adjusted Renewable Energy Facility Credit” is the product of the Monthly Unadjusted Renewable Energy Facility Credit and the Performance Ratio Adjustment Factor. The Monthly Adjusted

Renewable Energy Facility Credit will be provided to City of Boise monthly, starting the month of the respective Project's Renewable Capacity Credit Eligibility Date or the month following the commercial operation date of the applicable Project, whichever is later, and will remain in effect for the duration of the term of the Renewable Resource PPA or the period of time during which the Idaho Power-owned Renewable Resource will provide Buyer's Share of Project Output to City of Boise, as applicable.

"Monthly Unadjusted Renewable Energy Facility Credit" is the monthly payment available to City of Boise with respect to a Renewable Resource PPA based on the Annual Renewable Energy Facility Credit if all performance expectations are met by the applicable Renewable Resource. The Monthly Unadjusted Renewable Energy Facility Credit will be determined at time of execution of the Renewable Resource PPA or the Parties' agreement to procure or construct the Idaho Power-owned Renewable Resource, as applicable, and will be subject to IPUC approval.

"Performance Ratio Adjustment Factor" is the adjustment to be applied to the Monthly Unadjusted Renewable Energy Facility Credit when performance expectations are not met. The Performance Ratio Adjustment Factor methodology is determined at time of execution of the Renewable Resource PPA or the Parties' agreement to procure or construct the Idaho Power-owned Renewable Resource, as applicable, and will be subject to IPUC approval.

"Renewable Capacity Contribution" means the Project MW AC nameplate capacity multiplied by the Capacity Contribution Factor.

"Renewable Energy Facility Credit Rate" is based on the Avoided Levelized Capacity Costs of the lowest-cost selectable resource from the most recently acknowledged IRP, is set at the time of execution of the Renewable Resource PPA or the Parties' agreement to procure or construct the Idaho Power-owned Renewable Resource, as applicable, and remains the same value for the duration of the term of the Renewable Resource PPA or the period of time during which the Idaho Power-owned Renewable Resource will provide Buyer's Share of Project Output to City of Boise, as applicable.

"Renewable Energy Facility Credit Adjustment" will be determined at time of execution of the Renewable Resource PPA or the Parties' agreement to procure or construct the Idaho Power-owned Renewable Resource, as applicable, be subject to IPUC approval, and include any adjustment necessary to ensure no cost shift to other customers.

"Renewable Energy Facility Cost" represents the Renewable Resource Contract Price and any additional costs incurred by Idaho Power not included in the Renewable Resource Contract Price, which are necessarily incurred to certify Environmental Attributes pursuant to the Agreement.

"Renewable Energy Facility On-Site Usage" means the amount of energy output from all Projects in any Hour that meets any portion of the Total Supply Obligation energy requirement for such Hour.

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## Source and Timing of Updates to Pricing Components

Pricing components will be updated at the following intervals:

Schedule 19 Rates	Mid-Columbia Forecast	Renewable Energy Facility Credit Rate
General Rate Case	Following submission of each IRP filing	Execution of the Renewable Resource PPA or the Parties' agreement to procure or construct the Idaho Power-owned Renewable Energy Facility, as applicable, subject to IPUC approval
Other Revenue Requirement Filing		

## Renewable Energy Facility Credit

**TABLE 1: RENEWABLE ENERGY FACILITY CREDIT**

		(a)	(b)	(c)	(d)	(e)	(f)
Project	Most Recently Acknowledged IRP	Project Nameplate (kW AC) <sup>1</sup>	Capacity Contribution Factor	Renewable Capacity Contribution (a * b)	REF Credit Rate (\$/kW-yd)	REF Credit Adjustment	Annual REF Credit** (c*d*e)
Black Mesa Energy LLC	2019	10,000	0.3642	14,568	\$121.19	1.0	\$441.373.98

\*Table 2 denotes the Monthly Unadjusted Renewable Capacity Credit at 10 MW Buyer's Share.

+Table 3 denotes each project's date of eligibility for the Annual Renewable Energy Facility Credit.

**TABLE 2: MONTHLY UNADJUSTED RENEWABLE ENERGY FACILITY CREDIT BY MONTH**

	Jan	Feb	June	July	Aug	Sept	Oct	Nov	Dec
Black Mesa Energy LLC <sup>2</sup>	\$23,170	\$23,170	\$77,240	\$154,480	\$77,240	\$19,860	\$19,860	\$23,170	\$23,170

**TABLE 3: ELIGIBILITY DATE FOR RENEWABLE ENERGY FACILITY CREDIT**

Project	PPA Execution Date	Capacity Deficiency Year	Renewable Energy Facility Credit Eligibility Date
Black Mesa Energy LLC	2/16/2022	2026	7/1/2026

<sup>1</sup> Represents Buyer's Share of Project Nameplate capacity.

<sup>2</sup> Amounts to be adjusted by the Performance Ratio Adjustment Factor, which is calculated pursuant to the methodology detailed in Case No. IPC-E-22-06, Attachment 1 to Idaho Power Company's Compliance Filing dated December 23, 2022, as approved in Order No. 35735 (Apr. 12, 2023), to determine the Monthly Adjusted Renewable Capacity Credit. Amounts shown are for a Buyer's Share of 10 MW and will be adjusted for each month that Buyer's Share is less than 10 MW.