

RESOLUTION NO. 17-05

APPROVAL OF, AND AUTHORIZATION TO EXECUTE AND DELIVER THE AGREEMENT FOR SALE OF RENEWAL EXCESS POWER

WHEREAS, the CITY OF LOGAN (the "Municipality") is a party to a Power Sales Contract (the "Power Sales Contract") with Intermountain Power Agency ("IPA"), pursuant to which the Municipality acquired a portion of the generation capacity and transmission capacity of the Intermountain Power Project (the "Project") through June 15, 2027;

WHEREAS, the Municipality has adopted and approved that certain Renewal Power Sales Contract to be entered into with IPA;

WHEREAS, the Municipality desires to sell all or a portion of generation and transmission entitlements in the Project substantially on the terms and conditions set forth in that certain Agreement for Sale of Renewal Excess Power attached to the Renewal Power Sales Contract transmitted by IPA to the Municipality with the Renewal Offer Letter dated March 18 2016 (the "Agreement for Sale");

WHEREAS, the Council has reviewed and discussed the Agreement for Sale; and

WHEREAS, the Council desires to adopt and approve the Agreement for Sale.

NOW, THEREFORE, BE IT RESOLVED, that after due consideration and discussion, the Council hereby approves the Agreement for Sale and authorizes and directs the Municipality's Mayor (the "Mayor") and the Municipality's Clerk/Recorder (the "Clerk/Recorder") to execute and deliver, within forty-five (45) days of the effectiveness of the Renewal Power Sales Contract, the Agreement for Sale on behalf of the Municipality, to designate an Excess Entitlement Share (as defined in the Agreement for Sale of Renewal Excess Power) equal to _____% of the Municipality's Generation Entitlement Share under the Renewal Power Sales Contract and to take or cause to be taken such other action as may be necessary or desirable in order to make the Agreement for Sale effective, as the Agreement for Sale may be modified to reflect (i) the outcome of each of the First Round Offer, the Second Round Offer (if necessary) and the Final Offer (if necessary), as such terms are defined in the Renewal Power Sales Contract, (ii) the insertion of dates and the Municipality's address for notice (as reflected on the records of IPA or as otherwise expressly provided to IPA as the Municipality's address for notice together with the delivery of the Renewal Power Sales Contract), (iii) the modification of exhibits and appendices to complete, update or correct the Agreement for Sale, (iv) the updating of appendices and exhibits to reflect elections made under the Agreement for Sale in accordance with the terms thereof and (v) other modifications approved by the Mayor, which approval shall be conclusively established and evidenced by the execution by the Mayor of Agreement for Sale as so modified; and; and

2325

BE IT FURTHER RESOLVED, that the Mayor and the Clerk/Recorder are hereby authorized and directed to execute and deliver, or cause to be executed and delivered, on behalf of the Municipality such additional documents, certificates, instruments, notices, opinions and agreements as may be deemed by the Mayor to be necessary or appropriate to the extent consistent with this Resolution.

PASSED, APPROVED AND SIGNED February 21, 2017.

CITY OF LOGAN

Holly H. Daines
HOLLY H. DAINES, COUNCIL CHAIR

On motion of Council member Leanne Simmons, seconded by Vice Chair Tom Jensen, at a duly noticed meeting of the Municipal Council of the City of Logan (the "Council"), held the 21 day of February 2017, the above Resolution was duly adopted.

ATTEST:

Teresa Harris

Teresa Harris, City Recorder



AGREEMENT FOR SALE OF RENEWAL EXCESS POWER

1. PARTIES. This Agreement made and entered into as of the _____ day of _____, 201____, among each Seller named on Appendix B hereto (each, a "Seller" and collectively, the "Sellers"), each California Purchaser named on Appendix B hereto (each, a "California Purchaser" and collectively, the "California Purchasers"), the Department of Water and Power of the City of Los Angeles ("LADWP"), as representative of the California Purchasers, and Intermountain Power Agency ("IPA").
2. RECITALS.
 - 2.1 Each Seller and each of the California Purchasers are purchasers under certain Power Sales Contracts with IPA entered into as of September 28, 1978 (for the Sellers) and August 6, 1980 (for the California Purchasers), as amended, for the purchase of electric power and transmission capacity from the Intermountain Power Project from IPA (the "Original Power Sales Contracts"); and
 - 2.2 Certain of the Sellers and certain of the California Purchasers are parties to the Excess Power Sales Agreement, entered into as of December 1, 1980, as amended, for the purchase by such California Purchasers of certain excess electric capacity and associated energy of the Project from such Sellers during the term of the Original Power Sales Contracts; and
 - 2.3 Each of the Sellers has entered into a Renewal Power Sales Contract, dated as of _____, 201____, by and between it and IPA (together with substantially similar contracts by IPA with other participants in the Project, the "Renewal Power Sales Contracts") providing to each Seller a Generation Entitlement Share and entitling such Seller, commencing upon the expiration of the Original Power Sales Contracts, to schedule electric capacity and energy from each generating facility of the Project and to use the operating capabilities of the Northern Transmission System of the Project; and
 - 2.4 Each Seller will determine the amount, if any, of Project electric capacity and associated energy to which it is entitled pursuant to its Renewal Power Sales Contract with IPA that will be in excess of its electric requirements; and
 - 2.5 Each Seller desires to sell, and the California Purchasers desire to purchase, on the terms and conditions set forth in this Agreement any such excess Project electric capacity and associated energy of such Seller under its Renewal Power Sales Contract; and
 - 2.6 Each Seller has further determined that a portion of its Northern Transmission System capacity entitlement will be excess to its needs.

3. AGREEMENT. For and in consideration of the premises and the mutual covenants and agreements hereinafter set forth, it is agreed by and among the parties hereto as follows:
4. DEFINITIONS. In addition to the terms defined in the Recitals hereof, the following terms, whether in the singular or in the plural, when used herein and in the Appendices hereto and initially capitalized, shall have the meanings specified:
- 4.1 "Agreement": This Agreement for Sale of Renewal Excess Power, as the same may be amended from time to time in accordance with the terms hereof.
- 4.2 "Annual Budget", "Available Generating Capability", "Bond Resolution", "California Excess Power Purchasers", "Coordinating Committee", "Construction Management and Operating Agreement", "Fuel Management Practices and Procedures", "Gas Repowering", "Generation Entitlement Share", "Generation Cost Share", "General Service Requirements", "Generation Station", "Los Angeles", "Minimum Generating Capability", "Month", "Monthly Power Costs", "Northern Transmission System", "Operating Agent", "Point of Delivery", "Project", "Project Fuel", "Project Indebtedness", "Prudent Utility Practice", "Purchasers", "Switchyard", "Uncontrollable Forces", "Uniform System of Accounts" and "Willful Action" shall have the respective meanings given thereto in the Renewal Power Sales Contracts.
- 4.3 "Appendix A": The Initial Appendix A and each Revised Appendix A.
- 4.4 "Assigned Northern Transmission System Entitlement": That portion of the Northern Transmission System entitlement of each Seller (as determined pursuant to Section 10.2 of such Seller's Renewal Power Sales Contract) that is equal to fifty percent (50%) of such Seller's Excess Northern Transmission System Entitlement.
- 4.5 "Assignment Share": With respect to each Seller and a particular California Purchaser, that portion of such Seller's Assigned Northern Transmission System Entitlement determined by multiplying such California Purchaser's Purchase Percentage by such Seller's Assigned Northern Transmission System Entitlement.
- 4.6 "California Purchasers": Los Angeles and each of the other California Excess Power Purchasers so denominated on Appendix B, together with any successor to any such entity.
- 4.7 "Complete Outage": A Complete Outage shall, for purposes of this Agreement, be deemed to have occurred if during the Operational Period the condition shall exist that, for other than normal maintenance, no generating facility of the Project produces power at the high voltage side of its generating transformers in excess of its allocated General Service Requirements and any such Complete Outage shall be deemed to continue in effect until such time after the commencement thereof as a generating facility of the Project first produces power at the high voltage side

of its generating transformers in excess of its allocated General Service Requirements.

- 4.8 "Effective Date": Shall have the meaning ascribed thereto in Section 20.1 hereof.
- 4.9 "Excess Entitlement Share": As of any date of determination and for each Seller, the percentage entitlement of such Seller in the electric capacity and associated energy of each generating facility of the Project as then set forth for Summer Seasons or Winter Seasons, respectively, in Appendix A which shall have been designated by such Seller as excess to its electric requirements. Such entitlement is derived from such Seller's Generation Entitlement Share; provided, however, that at no time shall the Excess Entitlement Share for such Seller with respect to Summer Seasons or Winter Seasons exceed its Generation Entitlement Share.
- 4.10 "Excess Entitlement Share Effective Date": The date on which the Excess Entitlement Share for Summer Seasons or for Winter Seasons (or any revision of such Excess Entitlement Share in accordance with Section 5) shall become effective as provided in Sections 5.1 and 5.2 hereof.
- 4.11 "Excess Northern Transmission System Entitlement": That portion of a particular Seller's entitlement to schedule the operating capabilities of the Northern Transmission System under its Renewal Power Sales Contract, without regard to source or origin, constituting such Seller's rights to the capacity thereof, which is equal to the difference between such Seller's entitlement to capacity of the Northern Transmission System determined pursuant to Section 10.2 of its Renewal Power Sales Contract and the amount of such capacity of the Northern Transmission System required for delivery of such Seller's Generation Entitlement Share of Project capacity and associated energy to such Seller's Point of Delivery.
- 4.12 "Excess Power Obligation": At any time and as to any particular California Purchaser and as to a particular Seller, the percentage obtained by multiplying the Summer Excess Entitlement Share or Winter Excess Entitlement Share of such Seller in effect at such time as shown on the then effective Appendix A, by the Purchase Percentage (expressed as a decimal) of such California Purchaser. The Excess Power Obligation with respect to a particular California Purchaser and a particular Seller shall change each time the Summer Excess Entitlement Share or the Winter Excess Entitlement Share, as applicable, of such Seller shall change.
- 4.13 "Excess Power Supply Year": The twelve (12) Month period commencing at 12:01 a.m. on July 1 of each year during the Operational Period and ending at 12:01 a.m. on the following July 1; provided, however, that (a) if the Operational Period Commencement Date does not occur on July 1 of any year, then the first Excess Power Supply Year shall begin at 12:01 a.m. on the Operational Period Commencement Date and shall end at 12:01 a.m. on the next following July 1, and (b) if the Operational Period does not end on June 30 of any year, then the last Excess Power Supply Year shall begin at 12:01 a.m. on the July 1 immediately

preceding the last day of the Operational Period and shall end at 12:01 a.m. on the last day of the Operational Period.

- 4.14 "Initial Appendix A": The Appendix A attached to this Agreement at its Effective Date, which shall set forth the Purchase Percentage of each California Purchaser and subsequently shall set forth, as provided in Section 5.1 hereof, the Excess Entitlement Share of each of the Sellers.
- 4.15 "Operational Period": The period beginning on the Operational Period Commencement Date and ending upon the date that all Renewal Power Sales Contracts shall terminate.
- 4.16 "Operational Period Commencement Date": June 16, 2027; provided, however, that if the date upon which the Original Power Sales Contracts terminate is extended pursuant to Section 26.1 of the Original Power Sales Contracts, then the Operational Period Commencement Date shall be the date that is next succeeding the date upon which the Original Power Sales Contracts terminate in accordance with their terms.
- 4.17 "Primary Purchasers": Those entities (other than IPA) executing Renewal Power Sales Contracts, together in each case with their respective successors or assigns.
- 4.18 "Purchase Percentage": As to each California Purchaser, the percentage set forth in Appendix A with respect to such California Purchaser of the Summer Excess Entitlement Share and the Winter Excess Entitlement Share, respectively, of each Seller as in effect from time to time which such California Purchaser has agreed to purchase pursuant to this Agreement. The Purchase Percentage of each California Purchaser shall be, and shall continue to be throughout the term of this Agreement, the percentage indicated on Appendix A.
- 4.19 "Purchasers' Representative": Los Angeles which is hereby designated by the California Purchasers to carry out the duties and responsibilities set forth in this Agreement for the Purchasers' Representative.
- 4.20 "Remaining NTS Entitlement": With respect to a particular Seller, such Seller's entitlement in the Northern Transmission System, as calculated under and in accordance with Section 10.2 of its Renewal Power Sales Contract, less such Seller's Assigned Northern Transmission System Entitlement.
- 4.21 "Renewal Power Sales Contracts": The Renewal Power Sales Contracts defined in Section 2.3 hereof, together with all amendments and supplements hereafter entered into.
- 4.22 "Retained Generation Entitlement Share": means, with respect to a particular Seller, during a particular Season, such Seller's Generation Entitlement Share less its Summer Excess Entitlement Share or its Winter Excess Entitlement Share, as applicable, then in effect as set forth in Appendix A.

- 4.23 "Revised Appendix A": Shall have the meaning ascribed thereto in Section 5.2 hereof.
- 4.24 "Season": A Summer Season or a Winter Season provided, however, that (a) if the Operational Period Commencement Date does not occur on the first day of a Summer Season or a Winter Season, as the case may be, then the first Summer Season or the first Winter Season shall begin at 12:01 a.m. on the Operational Period Commencement Date and shall end at 12:01 a.m. on the last day of such Summer Season or such Winter Season, as applicable, and (b) if the Operational Period does not end on the last day of a Summer Season or on the last day of a Winter Season, then the last Summer Season or the last Winter Season, as applicable, of the Operational Period shall end at 12:01 a.m. on the last day of the Operational Period.
- 4.25 "Sellers": Each of the entities so denominated on Appendix B, together with any successor to any such entity.
- 4.26 "Summer Excess Entitlement Share": The Excess Entitlement Share then in effect for Summer Seasons.
- 4.27 "Summer Season": The four-month period commencing at 12:01 a.m. on June 1 of each Excess Power Supply Year and ending at 12:01 a.m. on October 1 of the immediately following Excess Power Supply Year; provided that the first Summer Season or the last Summer Season of the Operational Period may have less than a four-month period as provided by Section 4.24.
- 4.28 "Total Excess Entitlement Share": At any time during a Summer Season, the aggregate of the Summer Excess Entitlement Shares of all Sellers as then in effect, and at any time during a Winter Season, the aggregate of the Winter Excess Entitlement Shares of all Sellers as then in effect.
- 4.29 "Winter Excess Entitlement Share": The Excess Entitlement Share then in effect for Winter Seasons.
- 4.30 "Winter Season": The eight-month period commencing at 12:01 a.m. on October 1 of each Excess Power Supply Year and ending at 12:01 a.m. on June 1 of the same Excess Power Supply Year provided that the first Winter Season or the last Winter Season of the Operational Period may have less than an eight-month period as provided in Section 4.24.

5. APPENDIX A AND REVISIONS THERETO; DECREASE OR INCREASE OF EXCESS ENTITLEMENT SHARE.

- 5.1 At the Effective Date the Initial Appendix A attached to this Agreement shall set forth the Purchase Percentage of each of the California Purchasers; provided that, in the event that any California Purchaser or California Purchasers (excluding Los Angeles) shall terminate its or their Renewal Power Sales Contracts pursuant to Section 42 of the Renewal Power Sales Contracts, the Initial Appendix A shall be

revised by IPA so as to allocate to Los Angeles under this Agreement the terminated Purchase Percentage of such California Purchaser or the terminated Purchase Percentages of such California Purchasers, as the case may be, that shall have terminated its or their Renewal Power Sales Contracts, and copies of such revised Initial Appendix A shall be furnished to each of the Sellers and to each of the California Purchasers, including Los Angeles, that remain parties to this Agreement. At least twelve (12) Months prior to the Operational Period Commencement Date each Seller shall furnish written notice to each of the California Purchasers and IPA of such Seller's Excess Entitlement Share for each Season; and IPA shall set forth in the Initial Appendix A (as the same may have been revised as provided hereinabove) the Excess Entitlement Share of each such Seller for each Season as specified in its notice furnished as above provided. Thereupon the Excess Entitlement Share of each Seller for each Season shall become effective and IPA shall furnish copies of such Initial Appendix A to each of the Sellers and each of the California Purchasers. The Initial Appendix A shall remain in effect for purposes of this Agreement until such time as a Revised Appendix A is prepared and furnished in accordance with Section 5.2 hereof.

5.2 Subject to Sections 5.2.1, 5.2.2 and 5.2.3, on and after the Operational Period Commencement Date each Seller shall have the right to revise (whether by decreasing or increasing) its Summer Excess Entitlement Share (other than for the first Summer Season of the Operational Period) as then set forth in Appendix A, or its Winter Excess Entitlement Share (other than for the first Winter Season of the Operational Period) as then set forth in Appendix A.

5.2.1. A Seller may elect to increase or decrease its Summer Excess Entitlement Share or its Winter Excess Entitlement Share by furnishing to each of the California Purchasers and IPA a written notice specifying such increased or decreased Excess Entitlement Share. In the case of an increase or decrease of its Summer Excess Entitlement Share, Seller must furnish such notice at least twelve (12) months prior to the first day of the Summer Season for which such increased or decreased Summer Excess Entitlement Share shall become effective. In the case of the increase or decrease of its Winter Excess Entitlement Share, Seller must furnish such notice at least twelve (12) Months prior to the first day of the Winter Season for which such increased or decreased Winter Excess Entitlement Share shall become effective. Such increased or decreased Excess Entitlement Share shall become effective on the date of commencement of the Season for which such notice is given. Prior to such Excess Entitlement Share Effective Date, IPA shall prepare a revision of Appendix A (a "Revised Appendix A") which shall set forth the increased or decreased Summer Excess Entitlement Share or the increased or decreased Winter Excess Entitlement Share of such Seller with respect to which such Seller has provided timely notice pursuant to this Section 5.2.1 and furnish such Revised Appendix A to each of the Sellers and to each of the California Purchasers. On such Excess Entitlement Share Effective Date such Revised Appendix A shall replace the then current Appendix A.

and shall thereupon become effective for the purposes of this Agreement until such time as a Revised Appendix A is thereafter prepared and furnished in accordance with this Section 5.2.1.

5.2.2. If a Seller elects to decrease its Summer Excess Entitlement Share or its Winter Excess Entitlement Share, the amount of such decrease shall remain in effect for at least the three (3) consecutive twelve-month periods commencing on the Excess Entitlement Share Effective Date for such Summer Excess Entitlement Share or such Winter Excess Entitlement Share. Notwithstanding such three (3) consecutive twelve-month periods required for the amount of such decrease of the Summer Excess Entitlement Share or the Winter Excess Entitlement Share, Seller shall have the right by providing notice in accordance with Section 5.2.1 to further decrease such Summer Excess Entitlement Share or such Winter Excess Entitlement Share, as the case may be; provided that the amount of such further decrease shall remain in effect for at least the three (3) consecutive twelve-month periods commencing on the Excess Entitlement Share Effective Date with respect to such further decrease of such Excess Entitlement Share. No decrease in a Seller's Summer Excess Entitlement Share or Winter Excess Entitlement Share shall cause such Excess Entitlement Share to be less than zero.

5.2.3. (a) If a Seller elects, in accordance with Section 5.2.1, to increase its Summer Excess Entitlement Share or its Winter Excess Entitlement Share and such increase is the first increase following the commencement of the Operational Period or the first increase following any decrease in such Excess Entitlement Share, then, subject to compliance with the requirements of Section 5.2.2 with respect to the period that the amount of any decrease of an Excess Entitlement Share shall remain in effect, Seller, upon providing notice in accordance with Section 5.2.1, may increase (such increase being an "Initial Increase") such Summer Excess Entitlement Share or such Winter Excess Entitlement Share by up to fifty percent (50%) of such Seller's Retained Generation Entitlement Share that will be in effect for the next Summer Season (if such increase is to the Summer Excess Entitlement Share) or the next Winter Season (if such increase is to the Winter Excess Entitlement Share) following such notice (the first day of such next Season as of which the Retained Generation Entitlement Share is determined to be in effect being the "Retained Generation Entitlement Share Reference Date").

(b) If a Seller elects, in accordance with Section 5.2.1, to increase its Summer Excess Entitlement Share or Winter Excess Entitlement Share otherwise than as provided under (a) above (such an increase being a "Further Increase"), then, subject to compliance with the requirements of Section 5.2.2 with respect to the period that the amount of any decrease of an Excess Entitlement Share shall remain in effect, Seller, upon providing notice in accordance with Section 5.2.1, may increase such Summer

Excess Entitlement Share or such Winter Excess Entitlement Share by up to fifty percent (50%) of its Retained Generation Entitlement Share that was in effect at the most recent Retained Generation Entitlement Share Reference Date as determined pursuant to (a) above with respect to the most recent Initial Increase, so that such Initial Increase, together with such Further Increase or Further Increases of the Summer Excess Entitlement Share or Winter Excess Entitlement Share that occur after such Initial Increase and prior to the next decrease of such Summer Excess Entitlement Share or such Winter Excess Entitlement Share, shall not exceed such Retained Generation Entitlement Share of Seller that was in effect on such most recent Retained Generation Entitlement Share Reference Date as determined pursuant to (a) above.

(c) No increase in a Seller's Excess Entitlement Share shall cause such Seller's Excess Entitlement Share to exceed its Generation Entitlement Share.

6. EXCESS CAPACITY AND ENERGY ENTITLEMENTS; USE OF SWITCHYARD

6.1 Beginning with the Season that commences on the Operational Period Commencement Date, and during each Summer Season and Winter Season thereafter, (i) each Seller shall sell, assign and provide to each California Purchaser the Excess Power Obligation applicable to such California Purchaser during such Season of capacity and energy from the Project, and (ii) each California Purchaser shall purchase and take from such Seller the Excess Power Obligation applicable to such California Purchaser during such Season of the capacity and energy from the Project. Such sale and assignment by Seller to each California Purchaser with respect to Seller's Excess Power Obligation applicable to such California Purchaser shall include Seller's right under Section 9.11 of the Renewal Power Sales Contract to elect to procure its own fuel in accordance with the provisions of the Fuel Management Practices and Procedures for use in the Generation Station for the generation of its Excess Entitlement Share to the extent of such Excess Power Obligation, and such California Purchaser shall therefore have such right to elect to bring its own fuel in accordance with the Fuel Management Practices and Procedures for use in the Generation Station for generation of such Excess Power Obligation. For purposes of this Agreement, energy delivered to any California Purchaser from the Project shall be deemed to have been delivered first (up to its entitlement thereunder) pursuant to such California Purchaser's Renewal Power Sales Contract, and thereafter pursuant to this Agreement. Such California Purchaser shall pay for such capacity and energy and associated rights as provided in Section 9 hereof.

6.2 At all times on and after the Operational Period Commencement Date, each California Purchaser during a Summer Season or a Winter Season shall be entitled to schedule for its account, with respect to each Seller, capacity and energy (other than test energy) from each generating facility of the Project up to an amount equal to the product of the Available Generation Capability of such generating

facility multiplied by the Excess Power Obligation applicable to such California Purchaser and such Seller during such Season. Upon the occurrence of abnormal operating conditions on a California Purchaser's system, upon the request of such California Purchaser, the Operating Agent shall increase or decrease such California Purchaser's schedule consistent with Prudent Utility Practice. Such increase or decrease shall not cause the schedule of such California Purchaser to exceed the amounts of capacity and energy to which such California Purchaser is entitled as provided for in this Section 6.2 or in Sections 6.3, 6.4 or 6.5 hereof and shall not be detrimental to any other California Purchaser or Primary Purchaser.

- 6.3 When any Seller requests delivery during a Summer Season or a Winter Season of capacity and energy under its Renewal Power Sales Contract, and such delivery requires the start-up of a generating facility of the Project, each California Purchaser shall, unless otherwise agreed, schedule for its account an amount of capacity and energy at least equal to the product obtained by multiplying its Purchase Percentage (expressed as a decimal) by the Total Excess Entitlement Share then in effect (expressed as a decimal) and by multiplying such product times the Minimum Generating Capability established for such generating facility. At any time when such Seller has so scheduled from such generating facility an amount of capacity and energy in excess of the product of its Generation Entitlement Share and the Minimum Generating Capability of such generating facility, then each of the California Purchasers shall only be obligated to schedule for its account an amount of capacity and energy equal to the product obtained by multiplying (a) the remaining unscheduled amount of Minimum Generating Capability times (b) the Total Excess Entitlement Share then in effect (expressed as a decimal) times (c) the ratio which its Purchase Percentage bears to the sum of the Purchase Percentages of all California Purchasers.
- 6.4 When a Primary Purchaser (other than a Seller) requests delivery during a Summer Season or a Winter Season of capacity and energy under its Renewal Power Sales Contract, and such delivery requires the start-up of a Project generating facility, each California Purchaser shall, unless otherwise agreed, schedule for its account an amount of capacity and energy at least equal to the product obtained by multiplying its Purchase Percentage (expressed as a decimal) by the Total Excess Entitlement Share then in effect (expressed as a decimal) and multiplying such product times the Minimum Generating Capability established for such generating facility. At any time when a Primary Purchaser has so scheduled from such generating facility an amount of capacity and energy in excess of the product of its Generation Entitlement Share and the Minimum Generating Capability of such generating facility, then each of the California Purchasers shall only be obligated to schedule for its account an amount of capacity and energy equal to the product obtained by multiplying (a) the remaining unscheduled amount of Minimum Generating Capability times (b) the Total Excess Entitlement Share then in effect (expressed as a decimal) times (c) the ratio which its Purchase Percentage bears to the sum of the Purchase Percentages of all California Purchasers.

- 6.5 When a California Purchaser requests delivery during a Summer Season or a Winter Season of capacity and energy under this Agreement, and such delivery requires the start-up of a generating facility of the Project, each other California Purchaser and each Seller shall, unless otherwise agreed, schedule for their respective accounts an amount of capacity and energy equal to (i) in the case of each such other California Purchaser, the product obtained by multiplying its Purchase Percentage (expressed as a decimal) by the Total Excess Entitlement Share then in effect (expressed as a decimal) and multiplying such product times the Minimum Generating Capability established for such generating facility and (ii) in the case of each Seller, the product obtained by multiplying the difference between its Generation Entitlement Share and its Excess Entitlement Share then in effect (expressed as a decimal) by the Minimum Generating Capability established for such generating facility. At any time when such requesting California Purchaser has so scheduled from such generating facility an amount of capacity and energy in excess of the product of its Purchase Percentage (expressed as a decimal) and the Total Excess Entitlement Share then in effect (expressed as a decimal) and the Minimum Generating Capability of such generating facility, then (x) each other California Purchaser shall only be obligated to schedule for its account an amount of capacity and energy equal to the product obtained by multiplying the remaining unscheduled amount of Minimum Generating Capability times the Total Excess Entitlement Share then in effect (expressed as a decimal) times the ratio which its Purchase Percentage bears to the sum of the Purchase Percentages of all such other California Purchasers and (y) each Seller shall only be obligated to schedule for its account an amount of capacity and energy equal to the product obtained by multiplying the remaining unscheduled amount of Minimum Generating Capability times the ratio which the difference between its Generation Entitlement Share then in effect and its Excess Entitlement Share then in effect bears to the difference between the total of the Generation Entitlement Shares of all Sellers and the Total Excess Entitlement Share then in effect.
- 6.6 Operation of any generating facility of the Project shall be subject to scheduled outages or curtailments, operating emergencies and unscheduled outages or curtailments of such facility.
- 6.7 The capacity and energy of the Generation Station shall be controlled in a manner which shall not diminish the rights of any California Purchaser to receive its entitlement of capacity and energy under this Agreement.
- 6.8 Each California Purchaser shall be obligated during a Summer Season or a Winter Season to the extent of its Purchase Percentage (expressed as a decimal) times the Total Excess Entitlement Share in existence during such Season to provide for capacity and energy requirements for starting up and shutting down each generating facility in compliance with procedures approved pursuant to the Renewal Power Sales Contracts.

- 6.9 The point of delivery of each California Purchaser's capacity and energy under this Agreement shall be the Generation Station bus. It is the obligation of each California Purchaser to arrange for transmission of its capacity and energy from such point to its system.
- 6.10 Each Seller and each California Purchaser shall furnish to IPA and the Operating Agent, as applicable, such notices, instructions or advice and take such other action as shall be necessary to give effect to this Agreement.
- 6.11 Notwithstanding anything to the contrary contained herein, (i) a California Purchaser shall be entitled to schedule with the Operating Agent the aggregate of the capacity and energy to which it is from time to time entitled hereunder, as opposed to having to individually schedule with respect to each Seller the capacity and energy to which such Purchaser is entitled from such Seller and (ii) the Purchaser's Representative shall, on behalf of each California Purchaser, make all schedules and changes therein required or permitted to be made by this Agreement by such California Purchaser.
- 6.12 Seller hereby sells and assigns to each California Purchaser, and each California Purchaser shall have the right to use, the Switchyard for its Excess Power Obligation of the Available Generating Capability.
- 6.13 IPA hereby acknowledges the sale and assignment pursuant to this Agreement to each California Purchaser by each Seller of the Excess Power Obligation, applicable to such California Purchaser and such Seller of capacity and energy from the Project and the associated Switchyard rights, together with the provision by such Seller of associated Northern Transmission System rights as provided for in Section 7.1 hereof and certifies that it has made the determination with respect to such sale and assignment provided for in Section 20.2 of the Renewal Power Sales Contract with such Seller. Payments made by such California Purchaser for such Excess Power Obligation of capacity and energy and associated Switchyard rights and for such associated Northern Transmission System rights shall be in addition to and shall not affect such California Purchaser's obligations under Section 8.1 hereof or under its Renewal Power Sales Contract.
- 6.14 Except as provided in Section 17 hereof, a California Purchaser shall not sell or assign to a purchaser or assignee the Excess Power Obligation or any portion thereof, applicable to such California Purchaser and each Seller of capacity and energy from the Project and associated Switchyard rights and associated Northern Transmission System rights, except on prior written notice to such Seller and IPA; provided that (i) such California Purchaser shall remain obligated to make the payments provided in Section 9 and otherwise to comply with the applicable provisions of this Agreement, and such California Purchaser shall be discharged from such payments and otherwise relieved from such compliance only if and to the extent of such payments made and such compliance performed by such purchaser or assignee; and (ii) such sale or assignment will not adversely affect

the eligibility for exemption from Federal income taxes of the interest on Project Indebtedness then outstanding or to be incurred by IPA.

7. USE OF NORTHERN TRANSMISSION SYSTEM WITH RESPECT TO EXCESS POWER

- 7.1 Pursuant to this Agreement, each Seller having a right pursuant to its Renewal Power Sales Contract to use the Northern Transmission System hereby agrees to permit and to provide the rights to each California Purchaser to schedule from time to time, without regard to source or origin, and in accordance with the Renewal Power Sales Contracts, the use of the operating capabilities of the Northern Transmission System up to an amount equal to (i) the Excess Power Obligation in effect for such California Purchaser and such Seller at the time of such scheduling, (ii) divided by the Generation Entitlement Share of such Seller, (iii) times such Seller's Remaining NTS Entitlement. Such California Purchaser shall pay for such use of the Northern Transmission System as provided in Section 9 hereof.
- 7.2 If it is necessary to curtail scheduled power flows over all or any part of the Northern Transmission System, then each California Purchaser shall have the right to use the Northern Transmission System in an amount determined by multiplying that portion of the total amount of the Remaining NTS Entitlements of all Sellers that then remains available by the ratio (expressed as a decimal) which the Total Excess Entitlement Share at the time bears to the Total Generation Entitlement Shares of the Sellers, and by then multiplying the resultant product by the ratio (expressed as a decimal) that the aggregate of the capacity scheduled over the Northern Transmission System or part thereof by such California Purchaser pursuant to its rights provided by all the Sellers under Section 7.1 hereof bears to the aggregate of the capacity scheduled over the Northern Transmission System or part thereof by all California Purchasers pursuant to their rights provided by all the Sellers under Section 7.1 hereof.
- 7.3 Any California Purchaser desiring to schedule the use of the operating capabilities of the Northern Transmission System in excess of its rights under this Agreement may make appropriate arrangements with another California Purchaser having rights to unused transmission capability. It is the responsibility of each California Purchaser so involved to notify the Operating Agent of such arrangements and to provide for proper schedules to accommodate such arrangements. Notwithstanding anything to the contrary contained herein, each California Purchaser's right to schedule the use of the operating capabilities of the Northern Transmission System pursuant to Section 7.1 hereof and to schedule such capability in excess of its rights under the Agreement as provided in this Section 7.3 shall be limited to the extent that such California Purchaser may not act in such a manner that adversely affects the eligibility for exemption from Federal income taxes of the interest paid, or to be paid, on the Project Indebtedness outstanding or to be incurred by IPA.

- 7.4 Scheduling by the California Purchasers of the use of the operating capability of the Northern Transmission System pursuant to Sections 7.1, 7.2 or 7.3 of this Agreement shall not interfere with the use of the Northern Transmission System to transmit Generation Entitlement Shares under Renewal Power Sales Contracts of any Primary Purchaser having a Point of Delivery thereon.
8. ASSIGNMENT OF CERTAIN NORTHERN TRANSMISSION SYSTEM RIGHTS.
- 8.1 Effective from and after the Operational Period Commencement Date, each Seller hereby assigns and transfers to each California Purchaser, and each such California Purchaser hereby accepts such assignment and transfer of that portion of each such Seller's entitlement to the Northern Transmission System under Section 10.2 of its Renewal Power Sales Contract that is equal to such California Purchaser's Purchase Percentage of such Seller's Assigned Northern Transmission System Entitlement. Such assignment and transfer shall be in effect for the Operational Period under this Agreement. Each Seller shall furnish to each California Purchaser information as to the amount of Northern Transmission System costs payable each Month by such Seller under its Renewal Power Sales Contract (including such costs payable by such California Purchaser pursuant to Section 9.1.2 hereof) and any adjustments of such costs pursuant to Section 5.7 of the Renewal Power Sales Contracts. Each California Purchaser shall pay directly to IPA each Month at the time required for payment thereof by each of the Sellers under its Renewal Power Sales Contract the Assignment Share with respect to such Seller and such California Purchaser of such costs with respect to the Northern Transmission System payable by such Seller under its Renewal Power Sales Contract (including any adjustments with respect to such costs pursuant to Section 5.7 thereof). Such payments received by IPA shall be applied in discharge of such Seller's obligation under its Renewal Power Sales Contract to pay such costs, which shall be discharged only to the extent of such receipt. Except as discharged as herein provided, the obligation of each Seller to pay costs with respect to the Northern Transmission System payable by it under its Renewal Power Sales Contract shall continue and shall not otherwise be affected by the provisions of Section 8 hereof.
- 8.2 IPA hereby acknowledges the assignment and transfer pursuant to Section 8.1 hereof by each Seller to each California Purchaser of such California Purchaser's Purchase Percentage of the Assigned Northern Transmission System Entitlement with respect to such Seller and certifies that it has made the determination with respect to such assignment and transfer provided for in Section 20.2 of its Renewal Power Sales Contract with such Seller.
- 8.3 Except as provided in Section 17 hereof, a California Purchaser shall not sell, assign or transfer to any purchaser, assignee or transferee thereof the Northern Transmission System entitlement, or any portion thereof, assigned or transferred to it by a Seller under Section 8.1, except on prior written notice to such Seller and IPA; provided that (i) such California Purchaser shall remain obligated to make the payments and otherwise comply with the provisions of this Section 8

and shall be discharged from such payments and otherwise relieved from such compliance only if and to the extent of such payments shall be made and such compliance performed by such purchaser, assignee or transferee; and (ii) such sale, assignment or transfer will not adversely affect the eligibility for exemption from Federal income taxes of the interest on Project Indebtedness then outstanding or to be incurred by IPA.

9. CHARGES AND BILLINGS FOR EXCESS POWER AND NORTHERN TRANSMISSION SYSTEM RIGHTS.

9.1 The amount payable by a particular California Purchaser for any Month during an Excess Power Supply Year for the account of each Seller with respect to the minimum cost component of Monthly Power Costs shall be the sum of the following:

9.1.1. The Excess Power Obligation in effect for such Month with respect to such Seller and such California Purchaser times the minimum cost component of Monthly Power Costs for such Month associated with the Generation Station as computed under and in accordance with Section 7.1.1 of the Renewal Power Sales Contracts; plus

9.1.2. In consideration of such California Purchaser's right to schedule a portion of the entitlement of such Seller in the Northern Transmission System granted by Section 7.1 of this Agreement, an amount equal to the Excess Power Obligation in effect for such Month with respect to such California Purchaser and such Seller divided by the Generation Entitlement Share of such Seller times the amount for such Month (or portion thereof) of costs in respect of the Northern Transmission System that such Seller is obligated to pay pursuant to its Renewal Power Sales Contract (which for purposes of calculation shall include the total of the Assignment Shares of such Northern Transmission System costs payable by the California Purchasers as provided for in Section 8.1 hereof).

In the event that payments are due under this Section 9.1 for only a portion of a Month, the above computations shall be made so as to allocate the above-mentioned costs for such Month equally among the days of such Month and to take into account the number of days in such Month such Excess Power Obligation was in effect.

9.2 The amount payable by a particular California Purchaser for any Month during an Excess Power Supply Year for the account of all Sellers with respect to the variable cost component of Monthly Power Costs, shall be the product obtained by multiplying the variable cost component of Monthly Power Costs for such Month, as computed under and in accordance with Section 7.1.4 of the Renewal Power Sales Contracts, by a fraction the numerator of which is the kilowatt hours generated by the use of Project Fuel as provided in Section 4.67.2 of the Renewal Power Sales Contracts and delivered at the Project bus from the Generation

Station to such California Purchaser pursuant to this Agreement and the denominator of which is all kilowatt hours generated by the use of Project Fuel as provided in Section 4.67.2 of the Renewal Power Sales Contract and delivered at the Project bus during such Month. The amount so to be paid by such California Purchaser shall be allocated to each Seller in proportion to the ratio which its Excess Entitlement Share for such Month bears to the Total Excess Entitlement Share for such Month.

9.3 RESERVED

9.4 For billing purposes, the amount of the minimum cost component of the Monthly Power Costs to be paid by each California Purchaser each Month in amounts pursuant to Sections 9.1.1 and 9.1.2 hereof shall be billed in advance and shall be based on the then current Annual Budget. The amount of the variable cost component of the Monthly Power Costs to be paid by each California Purchaser each Month pursuant to Section 9.2 hereof shall be billed the Month following the Month such variable cost was incurred and shall be based on the cost of the Project Fuel and associated costs (determined under Section 4.67.2 of the Renewal Power Sales Contracts) during such Month.

9.5 By the fifth calendar day of each Month for which payments are required by Sections 9.1 or 9.2 hereof, IPA on behalf of the Sellers shall bill each California Purchaser for the amount of the minimum cost component of the Monthly Power Costs to be paid by such California Purchaser to each Seller hereunder for the current Month, and for the amount of the variable cost component of the Monthly Power Costs to be paid by such California Purchaser hereunder for the preceding Month (in the case of amounts payable pursuant to Section 9.2 hereof) by providing such California Purchaser with a copy to each of the Sellers with a billing statement in accordance with the charges established pursuant to the provisions of this Agreement. Such billing statement shall detail the matters covered in Section 4.67.2 of the Renewal Power Sales Contracts (in the case of amounts payable pursuant to Section 9.2 hereof) and shall set forth, among other things, the amounts due for such Months by such California Purchaser with respect to the items of Monthly Power Costs set forth in Section 9.1 or Section 9.2 hereof. The amounts set forth on such billing statement shall be paid to IPA for the account of each of the Sellers by such California Purchaser on or before 20 days after receipt of such billing statement.

9.6 If a California Purchaser fails to pay any bill when due, interest shall accrue at a rate of one percent per Month on the unpaid amount of the billing statement.

9.7 Within 30 days following the submission to IPA, the California Purchasers, and each of the Sellers of the audit conducted pursuant to Section 13 hereof and no later than 150 days after the end of each Excess Power Supply Year, IPA will submit to each California Purchaser a detailed statement of the actual aggregate amounts payable hereunder by such California Purchaser for the account of each Seller, including credits thereto, for all of the Months of such Excess Power

Supply Year, and the adjustments of the aggregate Monthly Power Costs payable by such California Purchaser hereunder, if any, for any prior Excess Power Supply Year, based on the annual audit of accounts provided for in Section 13. If, on the basis of the statement submitted as provided in this Section 9.7, the actual aggregate amounts payable hereunder by a particular California Purchaser to a particular Seller for any Excess Power Supply Year exceeds the amount thereof which such California Purchaser has been billed in respect of such Seller, such California Purchaser shall promptly pay IPA for the account of such Seller the amount to which such Seller is entitled. If, on the basis of the statement submitted pursuant to this Section 9.7, the actual aggregate amounts payable hereunder for any Excess Power Supply Year by a particular California Purchaser to a particular Seller are less than the amount therefor which such California Purchaser has been billed IPA for the account of such Seller shall credit such excess against such California Purchaser's next monthly payment due in respect of such Seller.

- 9.8 If, in any billing statement received by a California Purchaser from IPA an amount shown thereon as being due by such California Purchaser to a particular Seller shall be in bona fide dispute, such California Purchaser shall pay such amount in full, and, upon determination of the correct amount, the difference between such correct amount and such amount paid, if any, including interest at one percent per Month on any overpayment, will be credited, in respect of such Seller, to such California Purchaser by IPA after such determination, provided, however that such interest shall not accrue on any overpayment that is acknowledged by IPA and returned to such California Purchaser by the fifth day following the receipt by IPA of the disputed overpayment. In the event any such amount is in dispute, IPA will give consideration to the California Purchaser's position relative thereto within 30 days following written notification by such California Purchaser of such dispute.
- 9.9 Amounts paid by the California Purchasers to IPA shall be applied as follows:
- 9.9.1. IPA shall, promptly upon receipt of the amounts payable pursuant to Section 9.1 hereof by a particular California Purchaser for the account of a particular Seller, apply such amounts for the account of such Seller.
- 9.9.2. IPA shall, promptly upon receipt of the amounts payable pursuant to Section 9.2 hereof by a particular California Purchaser, as allocated pursuant to Section 9.2 to a particular Seller, apply such allocated amount for the account of such Seller.
- 9.10 Payments made to IPA pursuant to Sections 9.9.1 and 9.9.2 hereof for the account of a particular Seller shall be applied in discharge of such Seller's obligations to pay such amounts payable by it under its Renewal Power Sales Contract, and such Seller's obligation to pay such amounts shall be discharged only to the extent of receipt thereof by IPA. Except as discharged as herein provided, the obligations

of each Seller to pay amounts under its Renewal Power Sales Contract shall continue and shall not otherwise be affected by the provisions of this Section 9.

9.11 The provisions of this Section 9 shall not be applicable to payments required by each California Purchaser to be made to IPA pursuant to Section 8.1 hereof and such payments shall be governed by the provisions of Section 8 hereof.

10. PAYMENTS. Each California Purchaser shall pay the amounts set forth in the billing statements submitted by IPA to such California Purchaser in accordance with the provisions of Section 9 hereof, whether or not the Project or any part thereof is operating or operable or its output is suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part.
11. SOURCE OF PAYMENTS. The obligation of each California Purchaser to make the payments under this Agreement to IPA for the account of each of the Sellers shall constitute a cost of purchased electric capacity and energy and an operating expense of such California Purchaser payable solely from its electric system revenue funds. Each California Purchaser will annually in each and every fiscal year of such California Purchaser during the term of this Agreement include in its power system budget, whether or not any other items are included, an appropriation from the revenues of its electric system sufficient to satisfy all the payments required to be made in such year under this Agreement until all payments required under this Agreement have been paid in full.
12. RATE COVENANT. Each California Purchaser will establish, maintain, and collect rates and charges for the electric service of its electric system so as to provide revenues sufficient, together with available electric system reserves, to enable such California Purchaser to pay all amounts payable when due under this Agreement and to pay all other amounts payable from, and all lawful charges against or liens on, the revenues of its electric system.
13. RECORDS AND ACCOUNTS. To the extent not kept pursuant to the Renewal Power Sales Contracts, IPA will keep or cause to be kept accurate records and accounts concerning the matters contemplated by this Agreement in a manner similar to the Uniform System of Accounts. Said accounts shall be audited annually by an independent firm of certified public accountants experienced in electric utility accounting and selected by IPA, which firm may be the same firm hired pursuant to the provisions of Section 5.6 of the Renewal Power Sales Contracts. Such audit shall be completed and submitted to IPA, the California Purchasers and each of the Sellers within 120 days after the close of each Excess Power Supply Year. All transactions of IPA, the California Purchasers and the Sellers relating to this Agreement with respect to each Excess Power Supply Year shall be subject to such an audit. Each California Purchaser shall have the right at its own expense to examine and copy the records and accounts referred to above on reasonable notice and during regular business hours.
14. INFORMATION AND DOCUMENTS. Each California Purchaser agrees to supply IPA and any Seller upon request, such information and documentation as IPA or such Seller shall reasonably determine to be requisite to and necessary for the accomplishment of the

matters contemplated by this Agreement including information reasonably available to allow IPA or such Seller to respond to requests for such information from any federal, state or local regulatory or other authority.

15. **METERING.** IPA will be responsible for providing or causing to be provided all necessary metering equipment for determining the quantity of energy delivered by each Seller hereunder; provided, however, that such obligation of IPA may, in IPA's discretion, be discharged by IPA's use of the meters provided pursuant to the Renewal Power Sales Contracts. Notwithstanding the foregoing, any California Purchaser may by arrangements with the Operating Agent and at its own cost check existing metering or, with approval of the Coordinating Committee, install additional metering equipment.

16. **CHARACTER AND CONTINUITY OF SERVICE.**

- 16.1 The Operating Agent may temporarily interrupt or curtail deliveries of capacity and energy under this Agreement to the California Purchasers in proportion to their respective Purchase Percentages if it determines that such interruption or curtailment is necessary in case of emergencies or in order to install equipment in or make repairs to or replacements, investigations, and inspections of or to perform other maintenance work on the Project facilities, provided, however, that such interruption or curtailment shall not relieve any California Purchaser of its obligation to make payments under this Agreement. After informing the California Purchasers regarding any such planned interruption or curtailment, giving the reason therefor, and stating the probable duration thereof, IPA on behalf of each of the Sellers will, to the best of its ability, cause the scheduling of such interruption or curtailment at a time which will cause the least interference with the operations of the California Purchasers.

- 16.2 A Seller shall not be required to provide, and shall not be liable for failure to provide, service under this Agreement when such failure or the cessation or curtailment of or interference with the service is caused by Uncontrollable Forces or by the inability of IPA, or such Seller to obtain any required governmental approvals to enable IPA or such Seller to accomplish the purposes of this Agreement, provided however that the California Purchasers shall not thereby be relieved of their obligations to make payments under this Agreement.

17. **RESTRICTIONS ON DISPOSITION.** No California Purchaser shall sell, lease or otherwise dispose of all or substantially all of its electric utility system except on 90 days prior written notice to IPA and, in any event, shall not so sell, lease or otherwise dispose of the same unless the following conditions shall be met: (i) such California Purchaser shall assign this Agreement and its rights and interest hereunder to such purchaser, lessee or transferee of said electric system, and such purchaser, lessee or transferee shall assume all obligations of such California Purchaser under this Agreement; (ii) the senior debt of such purchaser, lessee or transferee is rated in one of the two highest rating categories by at least one nationally-recognized bond rating agency; (iii) an independent engineer or engineering firm of national reputation generally recognized to be well qualified in matters relating to electric power and energy systems, selected by IPA, shall deliver an

opinion, which may be based on assumptions deemed reasonable by such engineer or engineering firm, that such purchaser, lessee or transferee is reasonably able to charge and collect rates and charges in the then current and each future year for the electric service of its electric system as shall be required to meet its obligations under this Agreement; and (iv) such California Purchaser has complied with the requirements of its Renewal Power Sales Contract with respect to such sale, lease or other disposition. IPA shall deliver to the Sellers each notice received by IPA from a California Purchaser pursuant to this Section 17 with respect to a proposed sale, lease or other disposal of such California Purchaser's electric utility system.

18. DEFAULT.

18.1 If a California Purchaser shall be unable to perform or shall default in the performance of any of its obligations under this Agreement, (i) in the event any payment due under this Agreement remains unpaid subsequent to the due date thereof, upon 120 days written notice to such California Purchaser, at the request of any Seller, IPA may cause the delivery of capacity and energy to such California Purchaser and the use of the other Project facilities by such California Purchaser under this Agreement to be discontinued during the period of such default, without reduction of the obligation of such California Purchaser to make payments under this Agreement except to the extent provided in Section 18.3 hereof, and (ii) any Seller may (a) bring any suit, action or proceeding at law or in equity as may be necessary or appropriate to enforce any covenant, agreement or obligation against such California Purchaser, or (b) take any action permitted by law to enforce its rights under this Agreement or recover damages for breach thereof.

18.2 Neither any Seller nor IPA shall be liable for nonperformance resulting from default, or from the failure to perform any of its obligations under this Agreement, except in the case of Willful Action by such Seller or IPA in which case the remedy shall include specific performance and other applicable legal or equitable remedies; provided, however, that any claim for damages shall not include loss of profits or consequential damages; and provided, further, that no such default by any Seller or IPA shall relieve any California Purchaser from its obligations to make its payments required under this Agreement.

18.3 In the event of a default by a California Purchaser and the discontinuance, pursuant to Section 18.1(i) hereof, of the delivery of capacity and energy and of the use of all other Project facilities under this Agreement, IPA, on behalf of the Sellers, shall transfer on a pro rata basis to all requesting California Purchasers which are not in default, the defaulting California Purchaser's rights to the delivery of capacity and energy and the use of all other Project facilities under this Agreement, including, without limitation, its rights under Section 6.1 hereof, which shall have been discontinued by reason of such default, and such requesting California Purchasers shall assume the defaulting California Purchaser's obligations with respect to such rights so transferred, and if any of the defaulting California Purchaser's rights with respect to the Project are not so transferred,

IPA shall, to the extent possible, dispose of such remaining portion on the best terms readily available; provided, however, that IPA may not so transfer or dispose of such defaulting California Purchaser's rights and obligations in such a manner as shall adversely affect the eligibility for tax exemption for Federal income taxes of the interest paid, or to be paid, on the Project Indebtedness of IPA, and further provided that the obligation of the defaulting California Purchaser to pay IPA for the accounts of the Sellers amounts due hereunder including the costs to IPA or any Seller related to such default, transfer and sale, shall be reduced to the extent that payments are received by IPA for the accounts of the Sellers for that portion of the defaulting California Purchaser's rights with respect to the Project which are so transferred or disposed, with any such reduction being made pro rata among all Sellers in accordance with such amounts due with respect to each Seller.

18.4 IPA shall have the remedies available under the law to enforce its rights under this Agreement.

19. **LIABILITY.** IPA, each Seller, the Purchasers' Representative and each California Purchaser shall be solely responsible and liable for performance of their respective obligations under this Agreement and for the maintenance and operation of their respective properties and each shall indemnify and save harmless the other from all liability and expense on account of any and all damages, claims, or actions, including injury to or death of persons arising from any act or accident in connection with the installation, presence, maintenance, and operation of the property and equipment of the indemnifying party and not caused in whole or in part by the Willful Action of the other party or IPA. The covenants, obligations and liabilities of the parties are intended to be several and not joint or collective and nothing herein contained shall ever be construed to create an association, joint venture, trust or partnership, or to impose a trust or partnership covenant, obligation or liability on or with regard to one or more of the parties. No party shall be under the control of or shall be deemed to control any other party. No party shall be the agent of or have a right or power to bind any other party without its express written consent, except as expressly provided in this Agreement.

20. **EFFECTIVE DATE AND TERM; EARLY TERMINATION.**

20.1 This Agreement shall become effective on the date (the "Effective Date") as to each Seller, IPA, the Purchasers' Representative, and each of the California Purchasers (i) when it has been duly executed and delivered by and among IPA, the Purchasers' Representative, each California Purchaser and each Seller, (ii) each such party shall have received all required governmental regulatory approvals, and (iii) the Renewal Power Sales Contracts shall be fully effective in accordance with their terms for one hundred percent (100%) of the Generation Entitlement Shares, Generation Cost Shares and applicable Transmission Cost Shares of the Project; provided that this Agreement shall be void and any and all energy deliveries and any other rights or services under this Agreement shall be terminated no later than the effective date of any denial of a required governmental regulatory approval including, without limitation, a decision by the

California Energy Commission. The term of this Agreement shall continue until the date upon which all Renewal Power Sales Contracts shall terminate, unless this Agreement shall be earlier terminated in accordance with its terms. For the avoidance of doubt, unless earlier terminated, this Agreement shall terminate, without any action required to be taken by any of the parties hereto, in the event that, as provided in Section 45.1 of the Original Power Sales Contracts as added by the Second Amendatory Power Sales Contracts, dated as of _____, by and among IPA and the purchasers thereunder, the Gas Repowering shall not be undertaken. This Agreement shall constitute a binding obligation of each of the Sellers, IPA, each of the California Purchasers and the Purchasers' Representative from and after the Effective Date in accordance with this Section 20.1.

20.2 Except as provided in Section 20.3 hereof, this Agreement shall terminate as soon after the earlier to occur of the following as all payments required to be made under this Agreement by the California Purchasers through the date of such occurrence have been made:

20.2.1. The last day of the Excess Power Supply Year during which a Complete Outage shall have been in effect for a period longer than 18 Months.

20.2.2. The last day of the end of the six-month period next following the Excess Power Supply Year for which Appendix A sets forth the Total Excess Entitlement Share as zero with respect to both the Summer Season and the Winter Season.

20.3 The provisions of Section 8 hereof shall survive any termination of this Agreement pursuant to Sections 20.2.1 and 20.2.2 hereof, and Section 8 hereof and the provisions of this Agreement related thereto shall terminate only upon the date upon which all Renewal Power Sales Contracts shall terminate.

20.4 Notwithstanding any other provision of this Agreement, in the event that any California Purchaser or California Purchasers (excluding Los Angeles) shall terminate its or their Renewal Power Sales Contracts pursuant to Section 42 of the Renewal Power Sales Contracts, such California Purchaser or California Purchasers, as applicable, shall be removed as a party or as parties, as the case may be, under this Agreement effective November 1, 2019 and shall no longer be entitled to any benefits or subject to any obligations under this Agreement, and the Purchase Percentage of Los Angeles shall be increased by the Purchase Percentage or Purchase Percentages, as applicable, of such California Purchaser or California Purchasers that shall terminate its or their Renewal Power Sales Contracts pursuant to Section 42 thereof.

21. SEVERABILITY. In case any one or more of the provisions of this Agreement shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, it is the intention of each of the parties hereto that such illegality or invalidity shall not affect any other provision hereof, but this Agreement shall be construed and enforced as if such

illegal or invalid provision had not been contained herein unless a court holds that the provisions are not separable from all other provisions of this Agreement.

22. **PERFORMANCE BY IPA.** IPA provides such services, takes such actions and performs its other obligations under this Agreement as part of its duties and responsibilities under its Renewal Power Sales Contracts with the Primary Purchasers, and IPA shall not be deemed to act, and nothing in this Agreement shall be deemed to provide that IPA shall act, as the agent or a fiduciary for any of the Sellers or any other parties to this Agreement.
23. **ASSIGNMENT BY SELLERS.** This Agreement shall inure to the benefit of and shall be binding upon the Sellers and their respective successors and assigns. Any Seller may assign its respective interests in this Agreement as part of any sale or other disposition of such Seller's electric utility system or Generation Entitlement Share made in compliance with the provisions of such Seller's Renewal Power Sales Contract.
24. **COMPLIANCE WITH OTHER AGREEMENTS.** Notwithstanding anything contained in this Agreement, all scheduling, purchasing, sales, deliveries and all other actions taken pursuant to this Agreement shall be subject to, and shall comply with, the applicable provisions, limitations, requirements, priorities and restrictions contained in the Renewal Power Sales Contracts, the Bond Resolution and the Construction Management and Operating Agreement.
25. **GOVERNING LAW.** This Agreement shall be interpreted, governed by and construed under the laws of the State of Utah.
26. **ARBITRATION.** If a dispute arises between the parties under this Agreement, the parties to such dispute may submit the dispute to arbitration.
27. **NOTICES.** Notices, demands or requests shall be affected as follows:
 - 27.1 Any notice, demand, or request provided for in this Agreement shall be in writing and shall be deemed properly served, given, or made if delivered in person or sent by registered or certified mail, postage prepaid, as follows:

27.1.1. If to IPA:

Intermountain Power Agency
c/o General Manager
10653 South River Front Parkway, Suite 120
South Jordan, Utah 84095
Phone: (801) 938-1333
Fax: (801) 983-1330
E-mail: jim@ipautah.com

27.1.2. If to the Purchasers' Representative:

Senior Assistant General Manager - Power
Los Angeles Department of Water & Power

111 North Hope Street, Rm 921
Los Angeles, California 90012

27.1.3. If to a particular Seller or California Purchaser, to such Seller or California Purchaser at its address set forth on Appendix B hereto.

27.2 A party may, at any time, by written notice to each other party, designate different or additional persons or different addresses for giving of notices hereunder.

28. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered shall be an original; but such counterparts shall together constitute but one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have duly caused this Agreement to be executed as follows:

INTERMOUNTAIN POWER AGENCY

By: _____

Its: _____

**DEPARTMENT OF WATER AND
POWER OF THE CITY OF LOS
ANGELES, AS A CALIFORNIA
PURCHASER AND AS PURCHASERS'
REPRESENTATIVE**

By: _____

Its: _____

The counterpart for each Seller and, other than Department of Water and Power of the City of Los Angeles, each California Purchaser that has elected to be a party to this Agreement is attached hereto and incorporated herein by this reference.

**CALIFORNIA PURCHASER COUNTERPART TO AGREEMENT FOR
SALE OF RENEWAL EXCESS POWER**

[Name of California Purchaser]

By: _____

Its: _____

APPENDIX B
SELLERS AND CALIFORNIA PURCHASERS

[Insert Name and Address of Each Seller]

[Insert Name and Address of Each California Purchaser]