

RESOLUTION NO. 18-19

**APPROVAL OF THE FIFTH AMENDMENT
TO INTERMOUNTAIN POWER AGENCY ORGANIZATION AGREEMENT**

On motion of Council member Heorn Olsen, seconded by Vice Chair Jeannie Simmonds, at a meeting of the Municipal Council of the City of Logan (the "Council"), held the 15 day of May 2018, the following Resolution was duly adopted:

WHEREAS, the City of Logan (the "Municipality") and certain other Utah municipalities (the "Members") are parties to that certain Intermountain Power Agency Organization Agreement dated as of May 10, 1977 (as amended by that certain First Amendment to Intermountain Power Agency Organization Agreement dated February 1, 1983, that certain Second Amendment to Intermountain Power Agency Organization Agreement dated as of March 26, 1990, that certain Third Amendment to Intermountain Power Agency Organization Agreement dated as of January 21, 2003, and that certain Fourth Amendment to Intermountain Power Agency Organization Agreement dated as of November 26, 2013, the "Organization Agreement" and such amendments being, collectively, the "Prior Amendments"), pursuant to which Intermountain Power Agency ("IPA") was organized and the existence of which has continued for, among other purposes, facilitating a joint and cooperative action of the Members to undertake and finance facilities to generate electricity to be known as the Intermountain Power Project (the "Project"); and

WHEREAS, at least two-thirds of the members of the IPA Board of Directors present and voting at a duly constituted meeting thereof have approved and recommended the amendment of the Organization Agreement as set forth in the Fifth Amendment to IPA Organization Agreement in the form set forth on Exhibit A attached hereto (as conformed for execution by the Municipality, the "Fifth Amendment"); and

WHEREAS, an amendment to the Organization Agreement may be effective only after the following have occurred (the date of the last to occur of the following being the "Effective Date"): (a) approval of such amendment by the affirmative vote of at least two-thirds of the members of the Board present and voting at a duly constituted meeting thereof; (b) receipt of the written approval of such amendment of not less than two-thirds of the Members following submittal of such amendment to governing bodies of the Members; (c) execution of such amendment by the authorized officers of such approving Members; and (d) filing of such amendment with the keeper of public records of each of the Members; and

WHEREAS, the IPA Board of Directors has submitted to the Council, and recommended that the Council approve, and the Council has reviewed and discussed the Fifth Amendment.

BE IT RESOLVED, that after due consideration and discussion, the Council hereby approves the Fifth Amendment; and

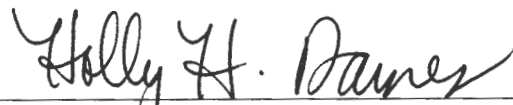
BE IT FURTHER RESOLVED, that the Council hereby approves and ratifies execution and delivery of, performance under and carrying out and consummation of the transactions contemplated by the Organization Agreement, as amended by the Prior Amendments, and as amended by, as of the Effective Date, the Fifth Amendment; and

BE IT FURTHER RESOLVED, that the Council hereby authorizes and directs the Municipality's Mayor (the "Mayor") and the Municipality's Clerk/Recorder (the "Clerk/Recorder") to execute and deliver the Fifth Amendment, to perform under the Fifth Amendment and the Organization Agreement, as amended by the Fifth Amendment, and carry out and consummate the transactions contemplated by the Fifth Amendment and the Organization Agreement, as amended by the Fifth Amendment, all on behalf of the Municipality and to take or cause to be taken such other action as may be necessary or desirable in order to make the Fifth Amendment and the Organization Agreement, as amended by the Fifth Amendment, effective and to perform under the Fifth Amendment and the Organization Agreement, as amended by the Fifth Amendment including, without limitation, filing the Organization Agreement, the Prior Amendments and the executed Fifth Amendment with the keeper of public records of the Municipality; and

BE IT FURTHER RESOLVED, that the Council hereby approves of the dating of the Fifth Amendment as of the date determined by IPA to be the date on which the conditions to the effectiveness of the Fifth Amendment were satisfied; and

BE IT FURTHER RESOLVED, that the Mayor and the Clerk/Recorder are hereby authorized and directed to execute and deliver on behalf of Municipality such documents, certificates, instruments, notices, opinions and agreements as may be deemed by the Mayor to be necessary or appropriate to give effect to the Fifth Amendment and the Organization Agreement, as amended by the Fifth Amendment, and the provisions of the Resolution.

City of Logan


By: Holly H. Daines, Mayor

ATTEST:

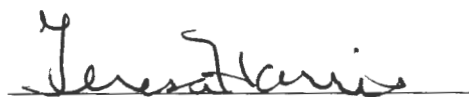
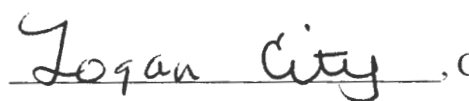


Logan City, Clerk/Recorder



Exhibit A

Fifth Amendment to Intermountain Power Agency Organization Agreement

[see attached]

**FIFTH AMENDMENT TO
INTERMOUNTAIN POWER AGENCY
ORGANIZATION AGREEMENT**

THIS FIFTH AMENDMENT TO INTERMOUNTAIN POWER AGENCY ORGANIZATION AGREEMENT, is entered into as of [May 15, 2018], by and among the parties listed on Appendix A attached hereto (such parties being, individually, a “Member” and, collectively, the “Members”) (this “Fifth Amendment”).

Recitals

A. Pursuant to the provisions of Utah Laws of 1977, Chapter 47, Section 3, as amended, the Members have entered into that certain Intermountain Power Agency Organization Agreement dated as of May 10, 1977 as such agreement has been amended by the requisite number of the Members pursuant to that certain First Amendment to Intermountain Power Agency Organization Agreement dated as of February 1, 1983 (the “First Amendment”), that certain Second Amendment to Intermountain Power Agency Organization Agreement dated as of March 26, 1990 (the “Second Amendment”), that certain Third Amendment to Intermountain Power Agency Organization Agreement dated as of January 21, 2003 (the “Third Amendment”), and that certain Fourth Amendment to Intermountain Power Agency Organization Agreement dated as of November 26, 2013 (the “Fourth Amendment” and together with the First Amendment, the Second Amendment and the Third Amendment, collectively, the “Prior Amendments,” and such agreement, as amended by the Prior Amendments, being the “Original Organization Agreement”) resulting in the valid creation and continuation of the existence of Intermountain Power Agency (“IPA”), as a legal entity for purposes of the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended (the “Act”).

B. The Board of Directors of IPA (the “Board of Directors”) has recommended that the Members amend the Original Organization Agreement to: (1) specify IPA’s authority to own, acquire, develop, finance, and/or operate the Project and Additional Facilities, including with respect to impacts of such, as permitted under the Act, and specify the Members’ rights with respect to the acquisition or development of Additional Facilities; (2) limit the ability of the Members to assign their membership in IPA without the prior written approval of the Board of Directors; (3) clarify the circumstances in which the termination of a Member’s power sales contract will terminate the membership of such Member; (4) prohibit the simultaneous service of a member of the Board of Directors on an executive committee of the board of directors or other governing body of another interlocal entity that is involved in the generation, production, sale, transmission, or distribution of electric power; (5) provide the opportunity for an individual who is the subject of a motion to be removed from the Board of Directors to be heard prior to the vote on such motion; (6) harmonize the provisions relating to vacancies on the Board of Directors with related provisions contained in IPA’s Bylaws (as defined below); (7) conform the Original Organization Agreement to the provisions of the Act by requiring that a majority of the Members must elect the members of the Board of Directors; (8) clarify the authority of the Board of Directors to indemnify, reimburse, and otherwise limit the liability of both the members of the

Board of Directors and officers of IPA consistent with the provisions of the Act; (9) specify the duties of the members of the Board of Directors; (10) provide expressly for the Board of Directors to determine the manner for financing the Project in the future; (11) permit the use of segments as authorized by the Act; (12) grant the Board of Directors certain authority to determine the capacity entitlement of each of the Members in the event of termination or dissolution of the Project; and (13) make minor technical changes to the Original Organization Agreement.

C. This Fifth Amendment does not jeopardize or adversely affect the existing contracts, notes, bonds or other evidence of indebtedness of IPA.

D. The Members desire and have determined that it is in their respective best interests to amend the Original Organization Agreement on the terms and conditions set forth below.

Agreement

NOW THEREFORE, in consideration of the foregoing recitals (which are incorporated into and made a part of this Fifth Amendment and acknowledged to be true and correct) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Members agree as follows:

1. **Amendment of Article 1.** The first paragraph of Article 1 of the Original Organization Agreement is hereby amended and restated in its entirety as follows:

The purposes of this Agreement and of the political subdivision of the State of Utah created hereunder and of the joint or cooperative action of the parties to this Agreement are to: (1) own, acquire, develop, finance, and/or operate, or cause to be owned, acquired, developed, financed, and/or operated, a facility to generate and deliver electricity to be known as the Intermountain Power Project consisting of an electric generation facility located in south central Utah and other facilities relating thereto (as such project may be described from time to time by the Board of Directors, as defined in Article 5 below, the "Project"), including without limitation: (a) transmission and other facilities located within and without the State as necessary to satisfy IPA's obligations pursuant to power sales contracts or transmission service agreements for the delivery to purchasers of energy from the Project or for the provision of capacity (including, without limitation, generation capacity and transmission capacity) in such facilities to the purchasers of such capacity; (b) facilities for the exploration, development, extraction, production, processing, delivery, transmission, transporting and storage of fuel or other sources of power generation for the Project or other inputs required for generating and delivering electric power; and (c) wells, reservoirs, and other facilities for the collection, storage and supply of water for the Project; (2) own, acquire, develop, finance, and/or operate, or cause to be owned, acquired, developed, financed, and/or operated, Additional Facilities (as hereinafter defined), if any; and (3) provide assistance to local communities in providing for facilities required for personnel involved with the construction, other development and operation of the Project and the Additional Facilities, if any, and assume responsibility for and alleviate impacts of the Project and/or the Additional Facilities and the construction, other development and operation of such, as permitted under applicable law. For purposes of this Agreement, (a) the term "acquire" means to acquire, purchase, lease, enter into common facilities or supply arrangements and/or otherwise obtain any ownership; (b) the term "develop" means to develop, undertake, study, plan, take other appropriate action as necessary or desirable to establish the legal, financial or technical feasibility of, determine participation in, engineer, design, construct, install, refurbish, enhance, modify, update, upgrade, improve, add, convert, redesign, reconstruct, restore, power, repower, retire, remediate, reclaim, replace, remove, demolish and/or decommission; (c) the term "operate" means to operate, maintain, repair, administer, manage, control and/or provide electrical service to; (d) the term "own" means to own, lease and/or otherwise hold any ownership, leasehold or

possessory interest or any other right to use, develop, operate or otherwise realize any benefit from; (e) the terms “acquisition,” “development,” “operation,” and “ownership” mean the nominal forms of acquire, develop, operate and own, respectively (as “acquire,” “develop,” “operate,” and “own” are defined, respectively, in this Agreement); and (f) the term “power sales contract” means, individually, each contract for the sale of power, capacity (including, without limitation, generation capacity and transmission capacity) and/or output with respect to which IPA is the seller, including without limitation, each power sales contract and each renewal power sales contract, as each such contract may be amended from time to time; provided that with respect to Additional Facilities that do not include generation capacity, such term also means the transmission service agreement or other agreement pursuant to which IPA sells entitlements in the capacity of such Additional Facilities.

2. **Amendment of Article 2.** Article 2 of the Original Organization Agreement is hereby amended and restated in its entirety as follows:

ARTICLE 2

EFFECTIVE DATE AND ORIGINAL PARTIES

This Agreement shall become effective on June 15, 1977. The parties to this Agreement are (such parties being referred to in this Agreement from time to time, individually, as a “Member” and, collectively, as the “Members”):

Beaver City Corporation
Bountiful, a Municipal
Corporation
City of Enterprise
Ephraim City Corporation
Fairview City Corporation
Fillmore City Corporation
Heber Light & Power Company
Holden Town Corporation
City of Hurricane
Hyrum City Corporation
Kanosh Town Corporation
Kaysville City Corporation

Lehi City Corporation
City of Logan
Meadow Town Corporation
Monroe City Corporation
Morgan City Corporation
Mt. Pleasant City Corporation
Murray City Corporation
Oak City Town Corporation
Parowan City Corporation
Price Municipal Corporation
Spring City Corporation

No Member may assign, directly or indirectly, such Member’s membership in IPA or any other right, title or interest in or to this Agreement (including without limitation, for collateral purposes) without (1) obtaining the prior written approval of the Board of Directors authorizing such assignment (the withholding of which approval shall have a rational basis), and (2) following receipt of such approval, if any, assigning simultaneously to the assignee approved by the Board of Directors all of such Member’s right, title and interest

in and to (a) this Agreement (including without limitation, such Member's membership in IPA), (b) each of such Member's power sales contracts in effect at the time of such assignment and as amended from time to time, subject to compliance with the provisions of such power sales contracts that govern the assignment of such power sales contracts, and (c) all other agreements relating to the Project and/or Additional Facilities to which such Member is a party and which are in effect at the time of such assignment, subject to compliance with the provisions of such agreements that govern the assignment of such agreements. Any attempt to assign any right, title or interest of a Member in or to this Agreement (including without limitation, such Member's membership in IPA) without such approval from the Board of Directors shall be void ab initio.

At any time following the termination of the last of a Member's power sales contracts previously remaining in effect with respect to such Member (the date as of such termination being, with respect to such Member, the "Contract Termination Date"), the Board of Directors may determine that such Member shall cease to be a party to this Agreement and shall cease to be a Member as of any date on or following such Member's Contract Termination Date as determined by the Board of Directors (the date as of which such Member shall cease to be a Member pursuant to such determination by the Board of Directors being, with respect to such Member, the "Membership Termination Date"). If the simultaneous expiration or earlier simultaneous termination of two or more power sales contracts would, but for the application of this sentence, result in the Membership Termination Date of all Remaining Members (as defined below), such expiration or termination shall not result in the Membership Termination Date of any of such Remaining Members. As of and from and after such Member's Membership Termination Date: (a) all such Member's right, title and interest in and to this Agreement shall be extinguished as of such Member's Membership Termination Date; (b) all other Members with respect to which a Membership Termination Date has not occurred (each, individually, a "Remaining Member" and, collectively, the "Remaining Members") shall constitute, collectively, one hundred percent of the members of IPA and the holders of one hundred percent of the right, title and interest in and to this Agreement; (c) for purposes of this Agreement, the term "Members" shall refer to all Remaining Members, as determined after giving effect to such Member's Membership Termination Date; and (d) without the need for any additional action, approval or consent, IPA shall be authorized to execute a modification of this Article 2 to reflect the termination of such Member's status as a Member. Notwithstanding the occurrence of a Member's Membership Termination Date, including without limitation, the termination of such Member's status as a Member, such Member shall continue to be liable for such Member's obligations to IPA under this Agreement that have accrued prior to such Member's Membership Termination Date.

3. **Amendment of Article 5.**

(a) The second paragraph of Article 5 of the Original Organization Agreement is hereby amended and restated in its entirety as follows:

The business and affairs of IPA shall be governed, controlled, directed, managed, administered and regulated by a board of directors (the "Board of Directors"). The Board of Directors shall have such duties and powers, and may take any action, as may be necessary or desirable to accomplish the purposes set forth in this Agreement, except as may be contrary to the laws of the State of Utah or this Agreement. Without limiting the foregoing, (1) the Board of Directors shall exercise on behalf of IPA all of the powers of IPA provided by this Agreement or under the laws of the State of Utah; and (2) the Board of Directors may delegate any or all of the powers of IPA to one or more committees of the Board of Directors or one or more employees, agents or contractors of IPA and may authorize one or more of such committees, employees, agents, or contractors to act for and on behalf of IPA.

(b) The third paragraph of Article 5 of the Original Organization Agreement is hereby amended and restated in its entirety as follows:

The Board of Directors shall be composed of seven persons (each, a "Director"), who shall, except as expressly provided otherwise in this Agreement, be elected by the representatives and shall serve staggered terms. For the initial term of office, one Director shall be elected for a term ending December 31, 1978, two Directors shall be elected for a term ending December 31, 1979, two Directors shall be elected for a term ending December 31, 1980, and two Directors shall be elected for a term ending December 31, 1981. Thereafter, Directors shall be elected for four-year terms and may be re-elected. To be eligible to serve as a Director, a person shall, at all times during which he holds the office of Director, be a representative and either: (a) reside within the boundaries of the Member that is represented by such representative; (b) receive electrical service at his principal residence from a municipal electric system owned by the Member that is represented by such representative; or (c) be employed by the Member that is represented by such representative on a basis such that it is reasonably expected that the representative will provide to such Member not less than 1,000 hours of paid service in each 12-month period. Unless otherwise approved by a majority of the Directors then serving on the Board, no Director may concurrently serve as a member of an executive committee (e.g., Chairman, Vice-Chairman, Secretary, or Treasurer) of the board of directors or other governing body of any interlocal entity (other than IPA, any Segment (as defined below), any Member of which such Director is a representative under this Agreement, any interlocal entity of which such Member is the sole member and any association of which IPA is a member), that is involved in any way with the generation, production, transmission, distribution or sale of electric power or that was formed as an association to advocate for or

represent electric power generators, producers, transmitters, distributors, sellers, purchasers or users of electric power. Any Director who, prior to the end of his term as a Director, ceases to qualify as a Director under any criteria set forth in this Agreement shall, upon and as of the date of a determination of the Board of Directors that he has ceased to so qualify, cease to be a Director and the directorship held by such Director shall become vacant. Any Director who is the subject of a motion to make such a determination shall be given an opportunity to be heard at the meeting of the Board of Directors at which such motion is made. Such opportunity to be heard shall be after the making of such motion but before the Board of Directors votes on such motion. Such a determination shall not be required in the event of a Director's resignation, removal by the representatives, death or incapacity.

(c) The fourth through seventh paragraphs of Article 5 of the Original Organization Agreement are hereby amended and restated in their entirety as follows:

At any duly called regular meeting or at any duly called special meeting of the representatives at which a quorum is present, any one or more of the Directors may be removed by two-thirds or more of the votes cast at such meeting and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the representatives shall be given an opportunity to be heard at the meeting at which such proposal is made. Such opportunity to be heard shall occur after the proposal is made but before the representatives take action on such proposal. Any directorship to be filled by reason of an increase in the number of Directors shall be filled by election at an annual meeting or at a special meeting of the representatives called for such purpose. Any Director may resign from the Board of Directors at any time in the manner and with the effect provided in the Bylaws (as defined below).

A vacancy on the Board of Directors caused by the resignation, disqualification, removal, death or incapacity of a Director, or for any other cause whatsoever (such Director, subject to the following exceptions, being a "Former Director"), with the exception of a vacancy caused by the removal of a Director that is concurrently filled by the election of the representatives pursuant to this Agreement or a vacancy created by an increase in the number of Directors, shall be filled on an interim basis until the next succeeding annual meeting of IPA by a person elected by the Board of Directors at a meeting of the Board of Directors held within a reasonable time following the occurrence of such vacancy and otherwise in accordance with the Bylaws; provided, however, that if such next succeeding annual meeting occurs in the same year in which the Former Director's term of office as a Director expires, then the Director selected to fill such vacancy shall continue in office until the time specified in the Bylaws and any vacancy arising at such time shall be filled as provided in the Bylaws. Any vacant position filled by the Board of Directors shall again become vacant as of the next succeeding annual meeting of IPA, except as otherwise provided in the preceding sentence. In the case of a position becoming vacant at such next

succeeding annual meeting, such position shall, at such meeting, be filled for the balance of the unexpired term, if any, by the vote of the representatives. At all times, a majority of the Directors shall have been elected, appointed, or selected by Member representatives of Utah public agencies (as defined in the Act). Notwithstanding anything to the contrary in this Agreement, if the election by the Board of Directors of a person to fill a vacancy would result in less than a majority of the Directors then in office having been elected by the Member representatives of Utah public agencies, such vacancy shall be filled by election at an annual meeting or at a special meeting of the Member representatives of Utah public agencies called for such purpose. Any directorship to be filled by reason of an increase in the number of Directors shall be filled in the manner provided in the Bylaws.

The Board of Directors may adopt, and amend from time to time, bylaws (as adopted and amended, the "Bylaws") and provide in agreements, policies or procedures consistent with the Bylaws, which Bylaws, agreements, policies and procedures, to the extent consistent with this Agreement or the laws of the State of Utah, may provide, among other things, as the Board of Directors shall determine from time to time, (i) rules governing regular meetings and special meetings of the representatives and of the Board of Directors; (ii) for the annual meeting of IPA, which shall be deemed a regular meeting of the representatives; (iii) quorum and voting requirements; (iv) for the establishment of offices; (v) for the indemnification of Directors and of officers of IPA (each, an "Officer"); (vi) for the limitation of liability of Directors and Officers to IPA or the Members or both; and (vii) for such other matters as the Board of Directors may determine.

Each Director and each Officer shall owe a fiduciary duty (as defined in the Act) to IPA. Each Director's and each Officer's fiduciary duty shall consist of the duties of such Director or such Officer under the Fiduciary Duty Policy of IPA adopted by the Board of Directors at any time and as amended from time to time; provided, however, that such Fiduciary Duty Policy, and any amendments thereto, shall become effective only upon approval of a majority of the votes cast at any duly called regular meeting or duly called special meeting of the representatives at which a quorum is present.

Notwithstanding any other provision of this Agreement but without limiting the authority granted to the Board of Directors in any other paragraph of this Article 5, (a) no Director or Officer shall be liable to IPA or any Member unless (i) the Director or the Officer breaches a fiduciary duty that the Director or the Officer owes to IPA or the Member, and (ii) such breach constitutes gross negligence, willful misconduct, or intentional infliction of harm on IPA or the Member; and (b) to the extent a Director or Officer would otherwise be liable under the foregoing clause (a), no Director or Officer shall be liable to IPA or any Member for any monetary damages, except to the extent of monetary damages arising out of: (i) a breach of the Director's or Officer's fiduciary duty; (ii) an intentional infliction of harm on IPA or the Member; (iii) improper financial

benefit; (iv) willful misconduct that constitutes an intentional violation of criminal law; or (v) any other circumstance or occurrence with respect to which, under applicable law as in effect from time to time, the limitation of a Director's or Officer's liability as provided in this paragraph is impermissible.

Neither anything in this Article 5 nor any action taken by or with respect to IPA, any Segment (as hereinafter defined), a Director or an Officer pursuant to Section 11-13-607 of the Act shall constitute a waiver of any immunity or defense available to or with respect to IPA, any Segment, a Director or an Officer under Title 63G, Chapter 7, the Governmental Immunity Act of Utah (or any successor statute) (the "Governmental Immunity Act"). Clauses (a) and (b) in the immediately preceding paragraph apply only to the extent that IPA, a Director or an Officer is otherwise subject to liability under the Governmental Immunity Act.

For purposes of this Article 5, the duties of any Director or Officer under this Agreement shall consist of the following: (a) any fiduciary duty; (b) any other duty expressly set forth in (i) this Agreement or the Bylaws, and (ii) any agreement between IPA and the Director or Officer; and (c) each duty that applies to IPA under Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act (or any successor statute).

4. **Amendment of Article 6.**

(a) Clause (1) of Article 6 of the Original Organization Agreement is hereby amended and restated in its entirety as follows:

(1) own, acquire, develop, finance, and/or operate, or cause to be owned, acquired, developed, financed, and/or operated, any facility or improvement of the Project or any Additional Facilities;

(b) The last sentence of Article 6 is hereby amended and restated in its entirety as follows:

To the extent not already provided in this Agreement, IPA shall have the power to sell, transfer, convey, lease, make available, develop and operate the Project, the Additional Facilities and/or any portion of or interest in either of the foregoing, as approved by the Board of Directors, including without limitation, to use, as approved by the Board of Directors, any fuel source or other input or technology to generate electric power at the Project.

5. **Amendment of Article 7.**

(a) The first sentence of the first paragraph of Article 7 of the Original Organization Agreement is hereby amended and restated in its entirety as follows:

The Project, including without limitation, any ownership, acquisition, development, and/or operation of the Project, (1) was initially financed by the issuance of bonds, notes and other evidence of indebtedness of IPA, and (2) may from time to time, after such initial financing, be financed, as determined by the Board of Directors, by the issuance of bonds, notes, or other evidence of indebtedness of IPA payable from and secured by the revenues, income, rents and receipts derived or to be derived from the sale of capacity and energy and transmission service and other benefits of the Project, and other available funds of IPA pledged to secure such indebtedness, including without limitation, amounts paid to IPA under power sales contracts with respect to the Project, subject, however, to the application of such revenues, income, rents, receipts, and other funds to the purposes and on the terms and conditions set forth in the bond or note resolutions of IPA securing such bonds, notes, or other evidence of indebtedness and as required by the Act.

(b) The second through sixth paragraphs of Article 7 of the Original Organization Agreement are hereby amended and restated in their entirety as follows:

If IPA engages in an Additional Facilities Undertaking (as defined below), such Additional Facilities Undertaking may be financed by the issuance of bonds, notes, or other evidence of indebtedness of IPA payable from and secured by the revenues, income, rents and receipts derived or to be derived from the sale of capacity and energy and transmission service and other benefits attributable to such Additional Facilities Undertaking, and other available funds of or financing by IPA with respect to the Additional Facilities or interest pledged to secure such indebtedness, including without limitation, amounts paid to IPA under power sales contracts with respect to any ownership interest of IPA in the Additional Facilities, subject, however, to the application of such revenues, income, rents, receipts, and other funds to the purposes and on the terms and conditions set forth in the bond or note resolutions of IPA securing such bonds, notes, or other evidence of indebtedness and as required by the Act. IPA will, prior to the commencement of construction of Additional Facilities in which it will have an ownership interest (other than Leased Facilities, as defined below), enter into power sales contracts with respect to such Additional Facilities with one or more Qualified Purchasers (as defined below) for all of the planned capacity with respect to IPA's ownership interest in the Additional Facilities on such terms as will produce sufficient revenues, income, rents, receipts, and other funds to meet and pay all operating and maintenance expenses, debt service, and reserve requirements, and all other charges or liens whatsoever payable from the revenues, income, rents, receipts, and other funds with respect to IPA's ownership interest in the Additional Facilities. For purposes of this Agreement, (x) the term "Additional Facilities Undertaking" means the ownership, acquisition, development, and/or operation, or causing the ownership, acquisition, development, and/or operation, of one or more Additional Facilities, or any interest in such Additional Facilities; and (y) the term "Qualified Purchaser" means, with respect to any Additional Facilities, each public entity, including

without limitation, each party to this Agreement that desires to obtain any contractual rights with respect to such Additional Facilities, or private entities that may qualify as purchasers of capacity and energy from such Additional Facilities under the Act and any other applicable law. In connection with any Additional Facilities Undertaking or any similar activity, the Board of Directors may utilize any statutory authority now or hereafter enacted for the purpose of facilitating the separation or segmentation of one or more assets and/or the limitation or segmentation of one or more liabilities associated with such Additional Facilities Undertaking or similar activity and may take all actions permitted under law to effect and/or that relate to such separation, limitation and/or segmentation (each such separation, limitation or segmentation being a "Segment"). A Segment shall not be governed by this Agreement to the extent determined by the Board of Directors at the time the Segment is created and the governance, operation and all other matters related to a Segment shall be as set forth in the organizing resolution of the Segment.

The price to be paid for capacity and energy and transmission service and other benefits from the Project or any Additional Facilities Undertaking allocated to any purchaser, except the participating agencies within the State, shall include the amount necessary to provide for payments of the in lieu fee provided for in the Act with respect to the Project or such Additional Facilities Undertaking, respectively and as applicable.

No party to this Agreement shall be liable for any bond, note, indebtedness or other obligation incurred by IPA, nor liable for the indebtedness of any other party to this Agreement, nor liable for any indebtedness or other obligation with respect to the Project or any Additional Facilities Undertaking other than, with respect to the Project, the obligations of such party arising under each power sales contract to which it is a party with IPA for Project capacity or output or, with respect to any Additional Facilities, the obligations of such party under any power sales contract or any other contract it may enter into with IPA with respect to such Additional Facilities.

IPA shall annually adopt a budget for the ensuing year with respect to the Project which shall set forth in reasonable detail estimates of revenues and operating and maintenance expenses of the Project; debt service and reserve requirements, payments with respect to renewals and replacements for the Project and contingency reserves therefor; and such other items and matters as shall be required pursuant to its Project power sales contracts and Project bond resolution. Such budget shall be adopted and may be amended from time to time in the manner provided in such Project power sales contracts and Project bond resolution. If IPA acquires an ownership interest in any Additional Facilities, IPA shall annually adopt a separate budget for the ensuing year with respect to such ownership interest, which shall set forth in reasonable detail estimates of revenues and operating and maintenance expenses attributable to IPA's ownership interest in the Additional Facilities; debt service and reserve requirements, payments with

respect to renewals and replacements attributable to IPA's ownership interest in the Additional Facilities and contingency reserves therefor; and such other items and matters as shall be required pursuant to its Additional Facilities power sales contracts and Additional Facilities bond resolution(s). Such budget shall be adopted and may be amended from time to time in the manner provided in such Additional Facilities power sales contracts and Additional Facilities bond resolution(s).

IPA shall be authorized to accept payments-in-aid of construction or other development for any facility of the Project or Additional Facilities Undertaking and to enter into agreements with respect thereto. No such payments-in-aid of construction or other development or agreement with respect thereto shall change or otherwise affect IPA's ownership of such facility or any of its rights and obligations with respect to such facility and any such payments-in-aid of construction or other development or agreement with respect thereto shall be in compliance with all agreements relating to the Project or Additional Facilities Undertaking, as applicable.

6. **Amendment of Article 8.** Article 8 of the Original Organization Agreement is hereby amended and restated in its entirety as follows:

ARTICLE 8

DISPOSITION OF ASSETS

Upon termination of this Agreement pursuant to Article 3 hereof, the net assets, if any, of IPA shall be distributed pro rata among the Members in accordance with their respective capacity entitlements from the Project and Additional Facilities, if any, as most recently in effect prior to such termination. For purposes of this Article 8, the term capacity entitlement shall refer to a Member's generation entitlement share identified in each of such Member's power sales contracts in effect at the time of such termination. In the event of a dispute regarding the determination of a Member's capacity entitlement for purposes of this Article 8, such dispute shall be resolved as determined by the Board of Directors so long as such determination has a rational basis in the power sales contracts to which the Members and IPA are parties.

7. **Amendment of Article 14.** Article 14 of the Original Organization Agreement is hereby amended and restated in its entirety as follows:

ARTICLE 14

ADDITIONAL FACILITIES AS SEPARATE PROJECTS

IPA is hereby authorized to conduct studies, engage in planning and take such other appropriate action as shall be necessary or desirable to establish the legal, financial or technical feasibility of, and to determine participation in, one or

more additional generating units, which, together with the generating capacity of the Project, shall not cause IPA's ownership interest in generating facilities to exceed an aggregate of 4,000 megawatts (exclusive of any increases to the initial generating capacity of any generating unit resulting from technological advances, increases in efficiency or other causes and exclusive of any Leased Facilities), and related transmission, delivery and other facilities, if any, to be located at or connected to the site of the Project (such additional generating unit(s) and facilities are referred to in this Agreement as "Additional Facilities"). If any Additional Facilities are developed, IPA may acquire ownership of all or a portion of such Additional Facilities, which may be, among other types of interest, an undivided ownership interest of a specified percentage. IPA's ownership interest in any Additional Facilities shall constitute a separate project for all purposes unless otherwise determined by the Board of Directors. For purposes of this Agreement, the term "Leased Facilities" means a third party's generating unit in which IPA has a reversionary interest under a lease, a site agreement or similar agreement and any such generating unit that IPA obtains pursuant to such reversionary interest.

8. **Addition of Article 15.** The Original Organization Agreement is hereby amended by adding a new Article 15, as follows:

ARTICLE 15

GENDER

Whenever required by the context in this Agreement, the singular shall include the plural, the plural the singular, and one gender shall include all genders.

9. **Status of Organization Agreement.** Except as amended by this Fifth Amendment, the Original Organization Agreement shall remain in full force and effect and the Original Organization Agreement, as so amended, is hereby confirmed, and all findings and determinations heretofore made by each Member relating thereto are hereby ratified and confirmed. All Prior Amendments are hereby ratified and confirmed as being in full force and effect.

10. **Counterparts.** This Fifth Amendment may be executed in any number of counterparts, each of which shall constitute an original and all of which taken together shall constitute one instrument.

11. **Capitalized Terms.** All capitalized terms, not otherwise defined in this Fifth Amendment, shall have the meanings ascribed to them in the Original Organization Agreement.

12. **Authorized Attorney.** Each Member hereby represents and warrants that such Member has submitted this Fifth Amendment to the attorney authorized to represent such Member for review as to proper form and compliance with applicable law.

13. **Governing Law.** This Fifth Amendment is made pursuant to the laws of the State of Utah, including without limitation, the Act, and shall be construed and governed in accordance with such laws.

14. **Severability.** Should any part, term or provision of this Fifth Amendment be held by the courts to be illegal or in conflict with any law of the State of Utah, or otherwise rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

15. **Effective Date.** This Fifth Amendment shall become effective upon the satisfaction of the following conditions (and the date of the satisfaction of such conditions being the “Effective Date”): (a) approval by the affirmative vote of at least two-thirds of the members of the Board of Directors present and voting at a duly constituted meeting thereof; (b) receipt of the written approval of not less than two-thirds of the Members following submittal of this Fifth Amendment to governing bodies of the Members; (c) execution of this Fifth Amendment by the authorized officers of such approving Members; and (d) filing of this Fifth Amendment with the keeper of public records of each of the Members (the certification of such filing by any such Member constituting sufficient evidence of such filing by such Member).

[Remainder of page intentionally left blank; signatures begin on following page]

IN WITNESS WHEREOF, THE CITY OF LOGAN has caused this Fifth Amendment to be executed and attested by its proper officers, thereunto duly authorized, and its official seal to be affixed hereto, pursuant to a resolution of its governing body, which execution hereby constitutes written approval of this Fifth Amendment and certification that (a) this Fifth Amendment has been filed with the keeper of its public records and (b) upon the Effective Date of this Fifth Amendment, deems itself bound by this Fifth Amendment with all other Members.

CITY OF LOGAN

Holly H. Daines
(Signature)

Mayor
(Title)

ATTEST:

Teresa Harris
Clerk/Recorder



Appendix A

Members

Beaver City Corporation
Bountiful, a Municipal
Corporation
City of Enterprise
Ephraim City Corporation
Fairview City Corporation
Fillmore City Corporation
Heber Light & Power Company
Holden Town Corporation
City of Hurricane
Hyrum City Corporation
Kanosh Town Corporation
Kaysville City Corporation

Lehi City Corporation
City of Logan

Meadow Town Corporation
Monroe City Corporation
Morgan City Corporation
Mt. Pleasant City Corporation
Murray City Corporation
Oak City Town Corporation
Parowan City Corporation
Price Municipal Corporation
Spring City Corporation