

## RESOLUTION No. 15-18

### ROLL CALL

VOTING	YES	NO
<b>STEVE LEIFSON</b> Mayor (votes only in case of tie)		
<b>RODNEY DART</b> City Council member	X	
<b>RICHARD M. DAVIS</b> City Council member	X	
<b>BRANDON B. GORDON</b> City Council member	X	
<b>MIKE MENDENHALL</b> City Council member	X	
<b>KEIR A. SCUBES</b> City Council member	ABSENT	

I MOVE this resolution be adopted: Council member Mendenhall

I SECOND the foregoing motion: Council member Gordon

## RESOLUTION No. 15-18

### **A RESOLUTION AUTHORIZING AND APPROVING THE AMENDED AND RESTATED INTERLOCAL COOPERATION AGREEMENT AND THE AMENDED AND RESTATED POWER SALE AGREEMENT S-1 OF AND WITH THE UTAH MUNICIPAL POWER AGENCY; AND RELATED MATTERS.**

WHEREAS, Spanish Fork City, Utah (the "*Member*") is a member of Utah Municipal Power Agency (the "*Agency*") pursuant to the provisions of the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended (the "*Act*") and the Interlocal Cooperation Agreement Establishing Utah Municipal Power Agency, dated as of September 18, 1980, as amended by the Interlocal Cooperation Agreement Establishing Utah Municipal Power Agency as Amended, dated December 19, 1985 (collectively, the "*Original Interlocal Agreement*");

WHEREAS, the Agency and the Member have previously entered into a Power Sale Agreement S-1, dated as of November 1, 1985, as amended by Amendment No. 1 to Power Sale Agreement S-1, dated February 13, 1987 (the "*Original S-1 Agreement*");

WHEREAS, the Member and the Agency desire to amend and restate the Original Interlocal Agreement, the Original S-1 Agreement in their entirety, on the terms set forth below, in order to, among other things, extend the terms of such agreements, reflect the Agency's current operations and its intention to become an "energy services interlocal entity," as provided for (and as defined

in) the Act, and reflect certain amendments made to the Act since the respective dates of the listed agreements; and

WHEREAS, the Member, by resolution adopted June 2, 2015, previously authorized and approved certain amendments to the hereinafter defined Agreements, and desires now to authorize and approve (i) the Amended and Restated Interlocal Cooperation Agreement Establishing Utah Municipal Power Agency, dated as of January 1, 2016 (the "*Amended Interlocal Agreement*"), and (ii) the Amended and Restated Power Sales Agreement S-1, dated as of January 1, 2016 (the "*Amended S-1 Agreement*" and, together with the Amended Interlocal Agreement, the "*Agreements*"), between the Agency and the Member, in substantially the forms attached hereto, including changes to the forms of Agreements previously approved by the Member;

NOW, THEREFORE, BE IT RESOLVED by the City Council (the "*Council*") of Spanish Fork City, as follows:

*Section 1. Execution and Delivery of the Agreements; Authorized Attorneys; Member's Director and Alternate Director.* (a) The following documents are hereby authorized and approved:

(i) the Amended Interlocal Agreement, in substantially the form attached hereto as *Annex A*; and

(ii) the Amended S-1 Agreement, in substantially the form attached hereto as *Annex B*.

The Mayor is hereby authorized, empowered and directed to execute and deliver the Agreements on behalf of the Member, and the City Recorder is hereby authorized, empowered and directed to attest and countersign such execution and to affix the corporate seal of the Member to the Agreements, with such changes to the Agreements from the forms attached hereto as shall be necessary to conform to the Member's legal status, to complete the form of the Agreements or to correct any minor irregularities or ambiguities therein and as are approved by the Mayor, the execution thereof by the Mayor to constitute conclusive evidence of such approval.

(b) Responsive to Section 11-13-202.5(2), Utah Code Annotated 1953, as amended, (i) the effective date of the Amended Interlocal Agreement shall be January 1, 2016, (ii) the Council declares its intent that the creation and organization of the Agency as a separate legal and administrative entity be ratified, confirmed, and continued, (iii) the public purposes for which the Agency is created and organized shall be as provided in Section 3 of the Amended Interlocal Agreement, and (iv) the powers, duties, and functions of the Agency shall be as provided in Section 4 of the Amended Interlocal Agreement.

(c) Pursuant to Section 11-13-202.5(3), Utah Code Annotated 1953, as amended, S. Junior Baker is hereby authorized to approve the Amended Interlocal Agreement.

(d) Pursuant to Section 11-13-209, Utah Code Annotated 1953, as amended, the Member shall cause the Amended Interlocal Agreement to be filed with the records of the City Recorder of the Member.

(e) The appointments of Steve Leifson to serve as a member (a "Director") of the Board of Directors of the Agency (the "Board") and of Kelly Peterson to serve as alternate member of the Board (an "Alternate Director") are hereby confirmed. Such Director (or, in his or her absence, the Alternate Director) is hereby delegated full authority to act in the stead of the Member and participate in the affairs of the Agency as provided in the Agreements.

*Section 2. Miscellaneous; Effective Date.* (a) This resolution shall be and remain irrevocable until the expiration or termination of the Agreements in accordance with its terms.


(b) All previous acts and resolutions in conflict with this resolution or any part hereof are hereby repealed to the extent of such conflict.

(c) In case any provision in this resolution shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(d) This resolution shall take effect immediately upon its adoption and approval.

ADOPTED AND APPROVED this 15th day of December, 2015.

SPANISH FORK CITY by:

  
\_\_\_\_\_  
STEVE LEIFSON, Mayor

Attest:

  
\_\_\_\_\_  
Kent R. Clark, City Recorder



ANNEX A

[ATTACH AMENDED INTERLOCAL AGREEMENT]

**AMENDED AND RESTATED  
INTERLOCAL COOPERATION AGREEMENT  
ESTABLISHING  
UTAH MUNICIPAL POWER AGENCY**

This AMENDED AND RESTATED INTERLOCAL COOPERATION AGREEMENT ESTABLISHING UTAH MUNICIPAL POWER AGENCY, dated as of January 1, 2016 (the “*Agreement*”), is made and entered into by and among the parties listed in *Schedule I* (the “*Members*”).

**R E C I T A L S :**

WHEREAS, the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended (the “*Act*”), provides that a Utah “public agency,” as defined in the Act (a “*Public Agency*”), may exercise and enjoy jointly with any other Utah Public Agency any power, privilege or authority exercised or capable of exercise separately by each of such Public Agencies;

WHEREAS, the Act further provides that any two or more Utah Public Agencies may enter into an agreement to approve the creation of a Utah interlocal entity to accomplish the purpose of their joint or cooperative action, including undertaking and financing facilities or improvements to provide the service contemplated by such agreement;

WHEREAS, each of the Members is a Public Agency and is authorized by law to exercise separately the powers, privileges and authority to be exercised by Utah Municipal Power Agency (the “*Agency*”), as the Utah interlocal entity created by this Agreement;

WHEREAS, the Agency was previously created pursuant to the provisions of the Act by the Interlocal Cooperation Agreement Establishing Utah Municipal Power Agency, dated as of September 18, 1980, as amended by the Interlocal Cooperation Agreement Establishing Utah Municipal Power Agency as Amended, dated December 19, 1985 (collectively, the “*Original Agreement*”);

WHEREAS, the Agency, by resolution of its Board of Directors, has elected to become an “energy services interlocal entity,” as defined in the Act (an “*Energy Services Interlocal Entity*”);

WHEREAS, the Members and the Agency desire to amend the Original Agreement in its entirety, effective as of the hereinafter defined Effective Date, on the terms set forth below, in order to, among other things, extend the term of the Original Agreement, reflect the Agency’s current operations and status as an Energy Services Interlocal Entity, and reflect certain amendments made to the Act since the date of the Original Agreement;

WHEREAS, the governing body of each Member has, by resolution duly adopted,

(a) determined that, by becoming a party hereto, such Member will be permitted to make the most efficient use of its powers by enabling it to cooperate with other localities on a basis of mutual advantage and thereby provide services and facilities in a manner that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities and provide the benefit of economy of scale, economic development and utilization of natural resources for the overall promotion of the general welfare of the State;

(b) authorized and approved this Agreement and directed the execution and delivery of this Agreement by an appropriate official of such Member and directed the filing of a copy of this Agreement with the keeper of records of such Member; and

(c) authorized its attorney to review this Agreement as to proper form and compliance with applicable law;

NOW, THEREFORE, it is agreed by and between the parties, in consideration of the premises and the mutual agreements herein contained, as follows:

*Section 1. Definitions.* Certain terms are defined in the Recitals to this Agreement. In addition, the following terms, when used in this Agreement, shall have the following meanings:

(a) “*Board*” means the Board of Directors of the Agency.

(b) “*Capacity Purchase Agreements*” means, collectively, the Amended and Restated Capacity Purchase Agreements, dated as of January 1, 2016, between the Agency and the Town of Levan, Manti City, Nephi City and Provo City, Utah, respectively.

(c) “*Dedicated Facilities*” means facilities dedicated by Members under the Capacity Purchase Agreements for use by the Agency in providing S-1 Electricity to the Members.

(d) “*Director*” means a member of the Board.

(e) “*Effective Date*” has the meaning set forth in Section 10(a) of this Agreement.

(f) “*Member Project*” means the acquisition, construction, execution, or implementation by the Member of facilities, contracts or programs providing for the generation, transmission, distribution, or management of electric power and energy, including, but not limited to, in-system distributed generation facilities, demand-side management programs, conservation measures, and renewable energy facilities, for the purpose of meeting a portion of the load of the Member’s electric system. “*Member Projects*” do not include S-1 Resources or Dedicated Facilities.

(g) “*Power Sale Agreements S-1*” means, collectively, the Amended and Restated Power Sale Agreements S-1, dated as of January 1, 2016, between the Agency and the Members.

(h) “*S-1 Contracts*” has the meaning set forth in the Power Sale Agreements S-1.

(i) “*S-1 Electricity*” has the meaning set forth in the Power Sale Agreements S-1.

(j) “*S-1 Facilities*” has the meaning set forth in the Power Sale Agreements S-1.

(k) “*S-1 Resources*” means, collectively, the S-1 Contracts and the S-1 Facilities.

(l) “*State*” means the State of Utah.

*Section 2. Creation of Agency.* The creation and organization of Utah Municipal Power Agency pursuant to the Original Agreement as a separate legal and administrative entity is hereby ratified and confirmed and continued pursuant to this Agreement. The Agency is and shall be (a) a political subdivision of the State and (b) an Energy Services Interlocal Entity.

*Section 3. Purpose.* The purpose of the Agency is to provide electric power and energy to the Members and other Public Agencies to provide the benefit of economy of scale, economic development and utilization of natural resources for overall promotion of the general welfare of the State by undertaking and financing facilities, improvements and services relating to the generation, transmission and distribution of electric power and energy or taking such other action, or any combination thereof, as will accomplish the foregoing.

*Section 4. Powers.* In order to accomplish the purpose of the Agency, the Agency shall have the following powers:

(a) enter into the Power Sale Agreements S-1 for full requirements service to the Members; enter into the S-1 Contracts; enter into the Capacity Purchase Agreements and develop, maintain, operate, improve and manage the related Dedicated Facilities; and otherwise make and execute contracts and other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions;

(b) develop, maintain, operate, improve and manage S-1 Facilities and otherwise create, acquire, construct, extend, operate, maintain and repair, or cause to be created, acquired, constructed, extended, operated, maintained and repaired, either by itself or jointly or otherwise in cooperation with others, facilities, improvements and contracts for the generation, transmission and distribution of electric power and energy, or interests therein, or any combination of the foregoing;

(c) buy, sell and exchange, and contract to buy, sell and exchange, electric power and energy and any other service, output or other benefits provided by the Agency to (i) Public Agencies inside or outside the state; and (ii) with respect to any excess services, output or benefits, any person on terms that the Agency considers to be in the best interest of the Members.

(d) exercise all powers granted under the Act to Energy Services Interlocal Entities, including the power to:

(i) own, acquire, and, by itself or by contract with another, construct, operate, and maintain a facility or improvement for the generation, transmission, and transportation of electric energy or related fuel supplies;

(ii) enter into a contract to obtain a supply of electric power and energy and ancillary services, transmission, and transportation services, and supplies of natural gas and fuels necessary for the operation of generation facilities;

(iii) enter into a contract with Public Agencies, investor-owned or cooperative utilities, and others, whether located in or out of the state, for the sale of wholesale services provided by the Agency; and

(iv) adopt and implement risk management policies and strategies and enter into transactions and agreements to manage the risks associated with the purchase and sale of energy, including forward purchase and sale contracts, hedging, tolling and swap agreements, and other instruments;

(e) create, acquire, construct, extend, operate, maintain and repair or cause to be created, acquired, constructed, extended, operated, maintained and repaired, and to own, lease or otherwise hold, either by itself or jointly or otherwise in cooperation with others, land, plants, buildings, works, machinery, supplies apparatus, equipment, mineral rights, water rights and other property, real or personal, tangible or intangible, as shall be deemed necessary, desirable or appropriate by the Board to carry out the powers and accomplish the purposes of the Agency;

(f) create, construct, or otherwise acquire facilities or improvements to render services or provide benefits in excess of those required to meet the needs or requirements of the Members, if it is determined by the Board to be necessary to accomplish the purposes and realize the benefits of this Agreement;

(g) acquire real or personal property, or an undivided, fractional, or other interest in real or personal property, necessary or convenient for the purposes contemplated in this Agreement and sell, lease, or otherwise dispose of that property;

(h) directly or by contract with another, own and acquire facilities and improvements or an undivided, fractional, or other interest in facilities and



improvements; construct, operate, maintain, and repair facilities and improvements; and provide the services contemplated in this Agreement;

(i) borrow money, incur indebtedness, and issue revenue bonds, notes, or other obligations; secure payment of such obligations by an assignment, pledge, or other conveyance of all or any part of the revenues and receipts from the facilities, improvements, or services of the Agency; offer, issue, and sell warrants, options, or other rights related to the bonds, notes, or other obligations issued by the Agency;

(j) exercise the power of eminent domain to carry out its powers and accomplish its purposes;

(k) sue and be sued; and

(l) adopt, amend, and repeal rules, bylaws, policies, and procedures for the regulation of its affairs and the conduct of its business.

The Agency is hereby delegated authority to exercise the power of each of the Members with respect to the foregoing.

*Section 5. Governing Body.* (a) The governing body of the Agency shall be a Board of Directors comprised of a number of Directors equal to the number of Members. Each Member shall appoint one Director and one alternate member of the Board (“*Alternate Director*”), as provided in the Bylaws. Each Director and each Alternate Director shall serve at the pleasure of the governing body of its Member. The successor to any Director or Alternate Director shall be appointed by the governing body of the Member which appointed such Director or Alternate Director.

(b) In accordance with Section 206(2) of the Act, members of the Board that are appointed by Utah Public Agencies shall hold a majority of the voting power of the Board.

(c) Except as provided in the next two sentences, decisions of the Board shall be by majority vote, and each Director shall have one vote. Decisions of the Board with respect to (i) the approval of the Agency’s annual budget, (ii) the addition of new power supply resources to the Agency’s power supply portfolio, (iii) the issuance of bonds, or (iv) other financial transactions in excess of \$5 million, shall be made by weighted vote. In addition, any Director may call for a weighted vote on any other matter that comes before the Board for decision. For purposes of a weighted vote, (A) each Director shall have the same number of votes as the number of megawatt hours sold by the Agency to the Member appointing such Director in the last fiscal year for which Agency sales data is available, and (B) the decision of the Board shall require the affirmative vote of (1) a majority of such megawatt hours sold and (2) at least three Directors. More than one-half of the Directors shall constitute a quorum.

(d) The Board shall annually select one Director to serve as its Chairman. The Board may appoint officers, who may but need not be Directors, to assist it in carrying out its duties.

(e) The Board shall adopt bylaws, which it may from time to time amend, setting forth the procedures for exercising the powers of the Agency, the procedures to be followed by the Directors in carrying out their duties, establishing the rights, privileges and immunities, if any, of the Directors and establishing the duties, rights, powers, privileges and immunities of the officers which it shall appoint and setting forth the procedures to be followed by such officers (the “Bylaws”).

*Section 6. Budget and Financing.* The budget for the Agency shall be established and maintained by the Board in accordance with the Bylaws and the Power Sale Agreements S-1. The operations of the Agency shall be financed from its own revenues and any moneys received by it from other sources. No Member shall be required to contribute money, services or properties to the Agency except as it may otherwise agree with the Agency.

*Section 7. Withdrawal.* Any Member, with approval of the Board, may withdraw from the Agency and cease to be a party to this Agreement, but such withdrawal and cessation shall not affect the liability of such Member to the Agency under any other agreement with the Agency. Such Member shall not be entitled to any of the properties or assets of the Agency, or any interest therein, upon such withdrawal or cessation except pursuant to an agreement authorized by Section 8. Notwithstanding this Section 7, no Member shall be permitted to withdraw if such withdrawal would cause the Agency’s existence to terminate or otherwise cause the Agency to be in violation of any contractual obligation set forth in any indenture, contract or other agreement with any party.

*Section 8. Disposition of Properties Upon Partial or Complete Termination.* The Agency may, with the unanimous approval of the Board, enter into an agreement with any one or more Members, to pay or provide for payment to such Member or Members, upon or after withdrawal from the Agency, an amount not to exceed the Member’s beneficial interest in the net assets of the Agency, determined in accordance with the related Capacity Purchase Agreements and the Power Sale Agreements S-1, as applicable, and as specified in such agreement. When this Agreement shall terminate, each Member shall be entitled to receive its beneficial interest in the assets of the Agency remaining after provision for all liabilities and obligations of the Agency, determined in accordance with the Capacity Purchase Agreements and the Power Sale Agreements S-1, as applicable, or as otherwise determined by the Board.

*Section 9. Beneficial Interest.* Each Member’s beneficial interest in the properties and assets of the Agency shall be determined by or in accordance with the Capacity Purchase Agreements and Power Sale Agreements S-1, as applicable.

*Section 10. Term of Agreement and Effective Date.* (a) The Effective Date of this Agreement shall be the later of (i) January 1, 2016 and (ii) the date on which all Members shall have duly executed and delivered this Agreement and copies thereof have been filed with the keeper of records of each of the Members, *provided* that an authorized attorney has determined that this Agreement is in proper form and compatible with the laws of the State and has approved this Agreement.

(b) The term of this Agreement shall extend to the later of:

- (i) 50 years after the date of the latest amendment of this Agreement,
- (ii) five years after the Agency has fully paid or otherwise discharged all of its indebtedness,
- (iii) five years after the Agency has abandoned, decommissioned, or conveyed or transferred all of its interest in its facilities and improvements, or
- (iv) five years after the facilities and improvements of the Agency are no longer useful in providing the service, output or other benefit of the facilities and improvements, as determined under any agreements governing the sale of the service, output or other benefit.

*Section 11. Additional Members.* With Board approval, one or more Public Agencies may be added as Members under this Agreement after the date on which this Agreement shall become effective.

*Section 12. Applicable Law.* This Agreement is made under and shall be governed by the law of the State.

*Section 13. Counterparts.* This agreement may be executed in any number of counterparts, which together shall constitute one agreement.

*Section 14. Severability; Prior Agreements Not Affected.* In the event that any of the provision of this Agreement shall be held invalid by any court having jurisdiction in the premises, the remainder of this Agreement shall not be affected by such holding. All prior contracts, agreements, bonds, notes, and other obligations undertaken, issued, or incurred by the Agency remain its legal, valid and binding obligations and are not affected by the effectiveness of this Agreement.

IN WITNESS WHEREOF, the Member named below has caused this Agreement to be duly authorized, executed and delivered by its duly authorized officers and approved by a duly authorized attorney and has caused its corporate seal to be affixed hereunto.

[NAME OF MEMBER]

By \_\_\_\_\_  
Title: \_\_\_\_\_

[SEAL]

ATTEST AND COUNTERSIGN:

By \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVAL OF AUTHORIZED ATTORNEY:

The undersigned attorney has been authorized by the Public Agency entering into the foregoing Agreement to approve the same and hereby approves the Agreement as being in proper form and in compliance with applicable law.

\_\_\_\_\_  
[Name of Counsel to Member]

## **SCHEDULE I**

### **MEMBERS**

The term “Members” means, as of the Effective Date, the following Public Agencies:

Provo City

Spanish Fork City

Salem City

Nephi City

Town of Levan

Manti City

ANNEX B

[ATTACH AMENDED S-1 AGREEMENT]

**AMENDED AND RESTATED  
POWER SALE AGREEMENT S-1**

This AMENDED AND RESTATED POWER SALE AGREEMENT S-1 (the “*Agreement*” or the “*Power Sale Agreement S-1*”), dated as of January 1, 2016, is entered into between UTAH MUNICIPAL POWER AGENCY (the “*Agency*”), an entity created under the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended (the “*Act*”), and SPANISH FORK CITY, UTAH, a municipal corporation of the State of Utah (the “*Member*” and, collectively with the Agency, the “*Parties*”).

**WITNESSETH:**

WHEREAS, the Agency was created pursuant to the provisions of the Act by the Interlocal Cooperation Agreement Establishing Utah Municipal Power Agency, dated as of September 18, 1980, as amended by the Interlocal Cooperation Agreement Establishing Utah Municipal Power Agency as Amended, dated December 19, 1985, and the Amended and Restated Interlocal Cooperation Agreement Establishing Utah Municipal Power Agency, dated as of January 1, 2016 (the “*Interlocal Agreement*”) among the Member and the Utah public agencies that are members of the Agency (collectively, the “*Members*”);

WHEREAS, the Agency has been appointed by the Members to act as their agent for the purchase of electric power and energy from the United States Department of Energy’s Western Area Power Administration (“*WAPA*”), and the Agency has entered into the CRSP Agreement with WAPA for the purchase of electric power and energy from the Colorado River Storage Project (“*CRSP Power*”) for resale to the Members;

WHEREAS, the Agency and the Member have previously entered into a Power Sale Agreement S-1, dated as of November 1, 1985, as amended by Amendment No. 1 to Power Sale Agreement S-1, dated February 13, 1987 (the “*Original Agreement*”);

WHEREAS, the Agency has entered into the S-1 Contracts and has acquired the S-1 Facilities for the purpose of providing S-1 Electricity to the Members;

WHEREAS, the Agency proposes to acquire, from time to time, additional S-1 Resources to provide S-1 Electricity to the Members;

WHEREAS, the Agency and the Member desire to amend and restate the Original Agreement in its entirety, effective as of the date hereof, on the terms set forth below; and

WHEREAS, the Agency has entered into agreements for the sale of electric power and energy with provisions similar to those contained in this Agreement with the other Members, each of which owns and operates an electric utility system (this Agreement and such other agreements, as the same may hereafter be amended, modified or extended, being referred to collectively herein as the “*Power Sale Agreements S-1*”);

NOW, THEREFORE, in consideration of the mutual undertakings herein contained the Parties hereto agree as follows:

*Section 1.1. Definitions.* Certain terms are defined in the Recitals to and the body of this Agreement. In addition, the following terms, when used in this Agreement, shall have the following meanings:

(a) “*Board*” means the Board of Directors of the Agency.

(b) “*Capacity Purchase Agreements*” means, collectively, the Amended and Restated Capacity Purchase Agreements, dated as of January 1, 2016, between the Agency and the Town of Levan, Manti City, Nephi City and Provo City, Utah, respectively.

(c) “*CRSP Agreement*” means the Integrated Contract for Electric Service, between the Agency and WAPA, as amended from time to time, including by the Replacement Purchase Options Amendment.

(d) “*Dedicated Facilities*” means facilities dedicated by Members under the Capacity Purchase Agreements for use by the Agency in providing S-1 Electricity to the Members.

(e) “*FERC*” means the Federal Energy Regulatory Commission or any successor federal agency having comparable regulatory authority and responsibilities over electric utilities.

(f) “*Member,*” when used herein in the singular, shall mean the Member and, when used herein in the plural, shall mean the Member and other Public Agencies which are parties to Power Sale Agreements S-1.

(g) “*Member Project*” means the acquisition, construction, execution, or implementation by the Member of facilities, contracts or programs providing for the generation, transmission, distribution, or management of electric power and energy, including, but not limited to, in-system distributed generation facilities, and renewable energy facilities, for the purpose of meeting a portion of the load of the Member’s electric system. “*Member Projects*” do not include (i) S-1 Resources, (ii) Dedicated Facilities or (iii) Qualifying Facilities that are not (A) developed or owned by a Member or (B) otherwise undertaken by a Member as a Member Project for purposes of this Agreement.

(h) “*Point of Delivery*” means the delivery points listed on *Exhibit A*; *provided that* the Point of Delivery for S-1 Electricity generated by a Dedicated Facility owned by the Member shall be the point of interconnection or demarcation specified in the Capacity Purchase Agreement between the Agency and the Member.

(i) “*Public Agency*” means a “public agency,” as defined in the Act.



(j) “*PURPA*” means the Public Utility Regulatory Policies Act of 1978, particularly 16 U.S.C. §824a-3.

(k) “*Qualifying Facility*” has the meaning assigned to such term in the FERC regulations adopted under PURPA, 18 C.F.R. Part 292.

(l) “*S-1 Contracts*” means, collectively, the following agreements, as such agreements may be supplemented or amended from time to time:

(i) the CRSP Agreement;

(ii) the Wholesale Power Contract, dated May 23, 2002, between the Agency and Deseret Generation & Transmission Co-Operative;

(iii) the Capacity Purchase Agreements;

(iv) the power supply agreement, dated January 1, 1996, as amended and restated on July 1, 2002, between the Agency and PacifiCorp;

(v) any agreement entered into by the Agency for the purchase of electric power and energy from a “*Qualifying Facility*” under PURPA, as provided in Section 15; and

(vi) such other agreements as the Agency may enter into from time to time, pursuant to which the Agency acquires electric power and energy or transmission services for the purpose of providing S-1 Electricity to the Members.

(m) “*S-1 Electricity*” means all electric power and energy required by the Member to meet the loads on its electric system, except electric power and energy derived by the Member from a Member Project approved by the Board (subject to Section 3(b) of this Agreement).

(n) “*S-1 Facilities*” means, collectively, (A) the Agency’s interest in the coal-fired electric generating facility designated as Bonanza Unit 1 and related transmission and other facilities and (B) any additional facilities acquired or constructed by the Agency from time to time to provide S-1 Electricity to the Members.

(o) “*S-1 Rate Schedule*” means the S-1 Rate Schedule established and revised by the Board from time to time pursuant to Section 6. The current S-1 Rate Schedule is attached as *Exhibit B*.

(p) “*S-1 Resources*” means, collectively, the S-1 Contracts and the S-1 Facilities.

(q) “*Technical Committee*” means the Technical Committee of the Agency established pursuant to the Amended and Restated Bylaws of the Agency, dated as of January 1, 2016.

(r) “*Transmission Agreements*” means the Transmission Service and Operating Agreement between the Agency and PacifiCorp and such other transmission contract, agreement or tariff that may be used or entered into from time to time for the delivery of S-1 Electricity to the Members.

*Section 1.2 Construction.* The preamble and recitals set forth above and all Exhibits to this Agreement are incorporated into this Agreement by this reference for all purposes. References herein to Articles, Sections, and Exhibits are references to the corresponding Articles, Sections, and Exhibits of this Agreement. References to the singular are intended to include the plural and vice versa. The headings used in this Agreement are inserted for reference purposes only and shall not be construed or considered in interpreting the terms and provisions of any Section or Article or the Agreement as a whole. The word “include” and its derivations, when following any general statement shall not be construed to limit such statement to the specific items or matters set forth following such word, but shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement.

*Section 2. Term.* This Agreement shall become effective as of the date hereof and shall remain in effect for 50 years from such date, *provided, however*, that the term of this Agreement shall, without further action by the agency or the Member, automatically extend until the latest of the date on which the Agency shall have (a) fully paid or otherwise discharged all of its bonds and other indebtedness, (b) fully performed all contracts to which it is a party, and (c) decommissioned and fully retired all of the S-1 Facilities.

*Section 3. Sale of Power; Member Projects.* (a) The Agency shall sell and deliver or cause to be delivered, and the Member shall purchase and receive, at the Point(s) of Delivery (as specified in *Exhibit A*), S-1 Electricity during the term of this Agreement.

(b) A Member may, in consultation with the Technical Committee, undertake one or more Member Projects for the purpose of meeting a portion of the load of the Member’s electric system; *provided, however*, that (i) the electric energy derived by the Member from all Member Projects shall not at any time constitute more than five percent of the total energy requirements of the Member’s electric system; (ii) the Member shall mitigate any adverse economic or operational impacts on the Agency and the other Members; (iii) the Board may exempt from the five percent limitation electric energy derived from, or reductions to the Member’s load resulting from, specific Member Projects for industrial and large institutional customers that receive electricity at substation voltages of 46 kV or above; and (iv) the Board may in specific circumstances increase the five percent limitation to up to ten percent of the Member’s total energy requirements. For purposes of this paragraph, a Member’s electric energy requirements shall be its requirements for the Agency’s most recent complete fiscal year of operations.

*Section 4. Electric Characteristics; Points of Delivery and Measurement; Risk of Loss.*  
(a) Electric power and energy to be furnished hereunder shall be alternating current, three phase,

sixty hertz. The Member shall make and pay for all connections between the system of the Member and the system of, or available to, the Agency at the Point(s) of Delivery. The Point(s) of Delivery, Point(s) of Measurement, delivery voltage, and special conditions of service (including special charges and credits) shall be as set forth in *Exhibit A* attached hereto, which Exhibit may be amended from time to time as may be agreed upon by the Agency and the Member.

(b) Title to the electric energy delivered hereunder and risk of loss shall pass from the Agency to the Member at the Point(s) of Delivery. As between the Parties to this Agreement, the Agency shall be deemed to be in exclusive control and possession of the electric energy delivered hereunder, and responsible for any loss, damage, liability or injury caused thereby, prior to the time such electric energy shall have been delivered to the Member at the Point(s) of Delivery. After delivery of electric energy to the Member at the Point(s) of Delivery, the Member shall be deemed to be in exclusive control and possession thereof and responsible for any loss, damage, liability or injury caused thereby. The Agency assumes all liability for, and shall indemnify, defend and hold harmless the Member from, any claims, losses or liabilities, including death of persons, arising from any act or incident occurring when the Agency is deemed to have control and possession of the electric energy delivered hereunder. All costs and expenses incurred by the Agency under the foregoing indemnity shall constitute an item of operation and maintenance costs. The Member assumes all liability for, and shall indemnify, defend and hold harmless the Agency and the other Members from, any claims, losses or liabilities, including death of persons, arising from any act or incident occurring after control and possession of the electric energy delivered hereunder has been transferred to the Member at the Point(s) of Delivery.

*Section 5. Transmission Beyond Points of Delivery.* In the event that the Point(s) of Delivery is not on the Member's electric system, the Member shall be responsible for transmission of electric power and energy made available under this Agreement at the Point(s) of Delivery to its system, including the installation and maintenance of any facilities required for the Member to receive such electric power and energy into its system. Where the Point(s) of Measurement is not at the Point(s) of Delivery, the measurement(s) shall be adjusted to reflect the losses from the Point(s) of Delivery to the Point(s) of Measurement as specified in the S-1 Rate Schedule.

*Section 6. Rate; Payments.* (a) As part of the Agency's budget process, the Board will review and, if necessary, revise the S-1 Rate Schedule. The Member shall pay the Agency for all S-1 Electricity furnished at the Point(s) of Delivery hereunder, whether or not such S-1 Electricity is taken or received by the Member, at the rates and on the terms and conditions set forth in the Agency's S-1 Rate Schedule. The Agency shall provide a copy of the current S-1 Rate Schedule to the Members with the annual budget that is provided to the Members pursuant to Section 18.

(b) The obligation of the Member to make payments to the Agency under this Agreement shall constitute an operating expense of the Member's electric system, and a cost of purchased electric power and energy, payable solely from monies derived from its electric utility system. The payment obligations of the Member under this Agreement shall not be construed to

create an indebtedness or liability of the Member within the meaning of any constitutional or statutory debt restriction or provision.

(c) The Member shall not issue bonds, notes, or other indebtedness payable from a lien on the revenues derived from the operation of its electric system that is prior to the payment of operating expenses of its electric system (including payments to be made under this Agreement).

(d) Payments made pursuant to this Agreement shall be in addition to, and not in substitution for, any other amounts whether on account of dues or otherwise which are owed by the Member to the Agency. The obligation of the Member to make such payments shall not be subject to any right of setoff, recoupment or counterclaim which the Member may otherwise have against the Agency, including by reason of any default by the Agency in the performance of its obligations under this Agreement. Subject to the provisions of Section 23 of this Agreement, nothing contained herein shall be construed to prevent or restrict the Member from asserting any rights which it may have against the Agency under this Agreement or under any provision of law, including the institution of legal proceedings for specific performance or recovery of damages, but the same shall not release the Member from its obligation to make payment to the Agency under this Agreement.

(e) The Agency shall establish and maintain rates contained in the S-1 Rate Schedule, which will provide revenues which are sufficient, but only sufficient, to meet the estimated revenue requirements of the Agency, which revenue requirements shall, to the extent that other revenues of the Agency have not actually been applied to meet such requirements, consist of:

(i) the cost to the Agency incurred in connection with any electric power and energy purchased by the Agency for resale under the Power Sale Agreements S-1, including all payments under the S-1 Contracts, and the cost of transmission service for delivery of electric power and energy provided under the Power Sale Agreements S-1 to the Point(s) of Delivery;

(ii) the cost to the Agency of operation and maintenance of facilities, including fuel costs and the costs of any hedging or similar transactions with respect to fuel supplies, owned or operated by the Agency for the acquisition, generation or transmission of electric power and energy provided under the Power Sale Agreements S-1;

(iii) the cost to the Agency of renewals and replacements of facilities owned or operated by the Agency for the acquisition, generation or transmission of electric power and energy provided under the Power Sale Agreements S-1 and the costs of establishing allowances for working capital, liquidity and rate stabilization reserves, and other reasonable reserves for contingencies deemed necessary by the Agency in order to carry out its obligations thereunder;

(iv) the cost to the Agency of decommissioning, salvaging, discontinuing or otherwise disposing of facilities that the Board determines shall no longer be used to provide S-1 Electricity, including, but not limited to, all accrued costs and liabilities

resulting from the acquisition, construction, operation, and maintenance of, and renewals and replacements to, the facilities;

(v) the costs to the Agency of permits, approvals, and compliance with regulatory and environmental requirements;

(vi) wages, salaries and benefits for employees of the Agency and other costs to the Agency of administration, general overhead and power supply planning and development required to meet the Agency's obligations under the Power Sale Agreements S-1;

(vii) additional amounts, if any, which must be realized by the Agency to meet the requirements of any rate covenant or any obligation under the S-1 Contracts;

(viii) scheduled payments of principal and interest on all bonds, notes and other obligations of the Agency issued in connection with its obligations under the Power Sale Agreements S-1, without regard to any acceleration provision that would cause all principal and interest to be immediately due and payable, and payments which the Agency is required to make into any debt service reserve fund or account under the terms of any bond or note resolution or other contract with holders of such bonds or notes;

(ix) the establishment and maintenance of additional reserves as may be required by the terms of any bond or note resolution or other contract with holders of such bonds or notes; and

(x) additional amounts, if any, which must be realized by the Agency in order to meet the requirements of any rate covenant with respect to coverage of debt service on such bonds or notes under the terms of any bond or note resolution or other contract with holders of such bonds or notes plus such additional amounts deemed desirable to facilitate marketing bonds and notes of the Agency on favorable terms.

(f) At such intervals as it shall determine appropriate, but in any event not less frequently than once each calendar year, the Board shall review and, if necessary, shall revise the S-1 Rate Schedule to insure that the rates thereunder continue to cover its estimate of all of the foregoing revenue requirements. In providing for the foregoing revenue requirements, the S-1 Rate Schedule shall include the Power Cost Adjustment (as defined in the S-1 Rate Schedule) or such other cost recovery mechanism as the Board shall approve.

(g) In connection with any revision of the S-1 Rate Schedule, the Agency shall cause a notice in writing to be given to all Members taking service under the Power Sale Agreements S-1. Such notice shall set out any proposed revision of the S-1 Rate Schedule and the effective date thereof, which shall be not less than thirty days after the date of the notice, and shall be accompanied by an analysis of the estimated revenue requirements for which the S-1 Rate Schedule is proposed to be revised. Any revision in the S-1 Rate Schedule shall be determined from time to time by the Board. The Member shall pay for electric power and energy made

available by the Agency to it hereunder after the effective date of any revisions in accordance with such revised S-1 Rate Schedule.

*Section 7. Covenants of the Agency.* (a) After first satisfying, to the extent provided for therein, the S-1 Electricity requirements of all Members under the Power Sale Agreements S-1, as such requirements are established from time to time, the Agency shall endeavor to market and dispose of, under the most economically advantageous terms and conditions reasonably obtainable, all surplus electric power and energy which it obtained from its power supply resources, and which, in the sole judgment of the Agency, can be disposed of without adversely affecting the Agency's ability to meet its obligations under this Agreement or under any agreements, indentures or instruments relating to any bonds, notes or other indebtedness of the Agency, subject to any limitations under the Internal Revenue Code of 1986, as amended, and applicable regulations and rulings thereunder (the "Code") applicable to the maintenance of the tax-exempt or tax-advantaged status of obligations issued by the Agency pursuant to the Code.

(b) The Agency shall enforce the provisions of the Power Sale Agreements S-1 and duly perform its covenants and agreements thereunder.

*Section 8. Covenants and Agreements of the Member.* (a) The Member shall maintain rates for electric power and energy to its customers which shall provide to the Member revenues sufficient to meet its obligations to the Agency under this Agreement and the S-1 Rate Schedule, as the same may be revised from time to time, and to pay all other obligations payable from, or constituting a charge or lien on, such revenues.

(b) The Member acknowledges and agrees that provisions of the Code relating to bonds, notes or obligations issued by the Agency as tax-exempt or tax-advantage obligations under the Code impose limitations on the use of the capacity or output of the financed facilities. The Member agrees to use the electricity it acquires under the Agreement in a manner that will not adversely affect the tax status of bonds issued by the Agency and comply with any instructions provided by the Agency regarding compliance with such tax requirements and limitations. The Member intends to sell the electric power and energy delivered to it hereunder to its retail customers for their consumption and will not sell such electric power and energy to its customers for resale unless such sale is specifically approved in writing by the Agency.

(c) The Member shall provide prompt written notice to the Agency of any new load in excess of three megawatts that is anticipated to be added to the Member's electric system. The Parties agree to cooperate with each other and exchange information regarding Member service to new loads.

(d) The Member acknowledges that it is familiar with the provisions of the CRSP Agreement, and agrees to comply with such agreement or any similar agreement entered into by the Agency relating to the acquisition of CRSP Power for the Members, as amended from time to time by WAPA upon notice thereof provided to the Member by WAPA or the Agency.

(e) The Member acknowledges the Agency must comply with its ownership, contractual, financial and regulatory obligations with respect to the S-1 Facilities, the S-1

Contracts, the Transmission Agreements and the FERC Waiver (as defined in Section 15), and the Member acknowledges and agrees that the performance by the Agency under the provisions of this Agreement shall be subject to such obligations.

(f) Except as otherwise provided in Section 3, the Member shall not undertake any Member Project or otherwise supply any portion of its power and energy requirements from any source other than S-1 Electricity, without prior written approval of the Agency authorized by resolution of the Board.

(g) The Member will construct, operate and maintain its electric system in an efficient and economical manner, consistent with such standards as are necessary to comply with applicable regulatory requirements and as are consistent with reasonable utility practice, including applicable specifications of the National Electrical Code and the National Electrical Safety Code of the United States Bureau of Standards. The Member shall install, operate and maintain such proper service protection equipment and other facilities as will coordinate with the protective relaying and other protective arrangements on the electric system from which electric power and energy is delivered to it.

*Section 9. Payment of Bills.* (a) Electric power and energy furnished hereunder shall be paid for at the office of the Agency in Utah or by wire transfer to the Agency at such wire transfer address as the Agency shall specify, monthly, by the due date as such date shall be established in accordance with the S-1 Rate Schedule, such bill to be provided to the Member monthly on a prompt and timely basis. If said due date is a Sunday or a legal holiday in Utah, the next following business day shall be the last day on which payment may be made without the addition of the delayed payment charge set forth in the S-1 Rate Schedule. The Agency may, whenever any amount due remains unpaid after the due date and after giving 15 days advance notice in writing of its intention to do so, discontinue service hereunder or take all steps available to it under applicable law to collect such amount and all subsequent payments which shall have become due, or both. The Agency may, whenever any amount due remains unpaid for 180 or more days after the due date and after giving 30 days advance notice in writing of its intention to do so, terminate this Agreement. No such discontinuance or termination shall relieve the Member from liability for payment for electric power and energy made available hereunder prior to the effective date of such termination.

(b) In the event the Member desires to dispute all or any part of a bill, the Member shall nevertheless pay the full amount of the bill when due and notify the Agency in writing of the grounds on which any charges in the bill are disputed and the amount in dispute. The Member must provide such notice to the Agency within 60 days after discovery of the billing error, but in no event later than 24 months after the due date of the invoice to which the amount in dispute relates. The Member will not be entitled to any adjustment on account of any disputed charges which are not brought to the attention of the Agency within the time and in the manner herein specified. Nothing in this section shall preclude the Agency from resolving billing disputes or errors at its own discretion. Any disputes that cannot be resolved by the Agency and the Member shall be resolved pursuant to Section 23.

*Section 10. Metering.* (a) The Agency shall furnish or cause to be furnished, own, install, maintain and read meters and metering equipment which shall be located at the Point(s) of Measurement on the low voltage side of any transforming equipment or at such other point(s) as may be agreed upon by the Agency and the Member and set forth in *Exhibit A*. Metering equipment shall provide a continuous record of the integrated total demand of the Member during each billing period throughout the term of this Agreement. Such records shall be available at all reasonable times to authorized agents of the Member. The Agency shall read meters or cause meters to be read at monthly intervals.

(b) The Agency shall test and calibrate meters or cause meters to be tested and calibrated by comparison with accurate standards at intervals of not less than twelve months. The Agency shall also make or cause to be made special meter tests at any time at the Member's request. The costs of all tests shall be borne by the Agency; *provided, however*, that if any special meter test made at the Member's request shall disclose that the meters are recording accurately, the Member shall reimburse the Agency for the cost of such test. Meters registering not more than two percent above or below normal shall be deemed to be accurate. Upon completion of every meter test, the metering equipment shall be recalibrated, adjusted or restored in order that, to the extent practicable, 100% accuracy is maintained. The readings for any meter which shall have been disclosed by test to be inaccurate shall be corrected from the beginning of the monthly billing period immediately preceding the billing period during which the tests are made in accordance with the percentage of inaccuracy found by such test; *provided, however*, that no correction shall be made for a longer period unless the Agency and the Member mutually agree thereto. Should any meter fail to register, the electric power and energy delivered during such period of failure shall for billing purposes be estimated by the Agency from the best information available to the Agency and the Member. The Agency shall notify the Member or cause the Member to be notified in advance of the time of any meter reading or test so that the Member's representative may be present at such meter reading or test.

(c) For a fractional part of a billing period at the beginning or end of service, and for fractional periods due to withdrawals of service caused by inability of the Agency to deliver, charges hereunder shall be proportionately adjusted by the Agency by the ratio that the number of hours that electric service is furnished to the Member (in such fractional billing period) bears to the total number of hours in the billing period involved.

(d) When electric power and energy is furnished at two or more Points of Measurement and the meter readings are considered separately and the Member's system may be interconnected between Points of Measurement during emergencies, the meter readings at any Point of Measurement will be adjusted when necessary to compensate for duplication of power demand recorded by meters at alternate Points of Measurement due to energy conditions which are beyond the Member's control or temporary conditions caused by scheduled load switching or outages.

*Section 11. Right of Access.* Duly authorized representatives of the Agency and Member shall be permitted to enter the other's premises at all reasonable times in order to carry out the provisions of this Agreement.



*Section 12. Uncontrollable Forces.* Neither the Agency nor the Member shall be considered to be in default in respect to any obligation hereunder (other than the obligation of the Member to pay for electric power and energy made available hereunder) if prevented from fulfilling such obligations by reason of uncontrollable forces. The term “uncontrollable forces” for the purposes of this Agreement shall mean any cause beyond the control of the Party affected including, but not limited to, failure or threat of failure of facilities, equipment or fuel supply, acts of God, ice, flood, earthquake, storm, lightning, fire, explosion, epidemic, pestilence, war, riot, civil disturbance, labor disturbance, sabotage, national emergency, and restraint by court or public authority, which by due diligence and foresight such Party could not reasonably have been expected to avoid. Either Party rendered unable to fulfill any obligation by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

*Section 13. Power Factor.* The Member shall maintain a power factor at the Point(s) of Delivery of between 95% leading and 95% lagging, or such other power factor as may be required from time to time by the Transmission Agreements. The Member may operate at a lower power factor when conditions are such, as determined by the Agency, that a lower power factor will not adversely affect any generating or transmission facilities of or available to the Agency with which the Member is interconnected; *provided, however*, that nothing in this Agreement shall be construed to relieve the Member of any obligation to maintain minimum power factor requirements contained in any contract between the Member and or any electric utility system which is interconnected to the Member’s system. Should the power factor not be maintained within such limits, Agency shall notify Member that the power factor must be corrected within such limits. If the Member has not begun corrective action within ninety (90) days of receipt of such notice and such corrective action is not diligently pursued thereafter, Agency may take such corrective action and bill the Member for the full amount of such corrective actions.

*Section 14. Cooperation Between the Agency and the Member.* If, in the maintenance of their respective electric systems or other electric systems over which the Member may obtain delivery of electric power and energy, it becomes necessary by reason of any emergency or extraordinary condition for either the Agency or the Member to request the other to furnish personnel, materials, tools, and equipment for the accomplishment thereof, the Party so requested shall cooperate with the other and render such assistance as the Party requested may determine to be available. The Party making such request, upon receipt of properly itemized bills from the other Party, shall reimburse the Party rendering such assistance for all costs properly and reasonably incurred by it in such performance.

*Section 15. Qualifying Facilities; Compliance with FERC Waiver.* (a) On January 10, 1992, FERC issued an order in Docket No. IR-1531-000 (as it may be amended from time to time, the “*FERC Waiver*”) granting a petition filed by the Agency on behalf of itself and the Members for waiver of the Members’ obligations to purchase power directly from, and the Agency’s obligation to sell power directly to, Qualifying Facilities. The FERC Waiver is subject to certain conditions, including the conditions that:

(i) the Agency and the Members shall permit any Qualifying Facility to interconnect with their respective electric system and without duplicative charges;

(ii) the Agency shall be ready and willing to purchase energy and capacity at rates which comply with applicable FERC regulations from any Qualifying Facility from which a Member would otherwise be required to purchase and without duplicative charges or additional fees; and

(iii) the Members shall be ready and willing to provide to any Qualifying Facility supplemental, back-up and maintenance power on either a firm or non-firm basis at rates which comply with applicable FERC regulations.

(b) The Parties acknowledge and agree:

(i) they will comply with their respective obligations under the FERC Waiver and will comply with or enter into such agreements as shall be necessary and consistent with the FERC Waiver to implement the provisions thereof;

(ii) that the Agency shall be responsible for the purchase of power from any Qualifying Facility and the Member shall be responsible for supplying supplemental, back-up and maintenance power to any Qualifying Facility, in each case subject to the terms and conditions set forth in the FERC waiver;

(iii) to cooperate with one another in connection with any request they may receive for the purchase of power from, or the delivery of power to, any Qualifying Facility;

(iv) any agreement entered into by the Agency for the purchase of power from a Qualifying Facility shall be an S-1 Contract for all purposes of this Agreement.

*Section 16. Assignments.* (a) All covenants and agreements contained in this Agreement shall inure to the benefit of the Agency and the Member and their respective successors and assigns; *provided, however,* that no Party may transfer or assign its interests or rights under this Agreement except as provided below in paragraph (b).

(b) The Member agrees that it shall not assign this Agreement or sell or otherwise dispose of all or substantially all of its municipal electric utility system unless it provides at least 180 days' prior written notice to the Agency and the following conditions are met:

(i) The assignee of this Agreement and purchaser of the Member's municipal electric utility system (the "*Assignee*") shall assume all obligations of such Member under this Agreement;

(ii) The Assignee is a political subdivision, or the Agency determines to undertake remedial actions, if necessary, at the request and sole cost of the Member,

(iii) The Agency receives an opinion of bond counsel that the assignment, taking into account any remedial actions required by the Code, will not adversely affect the tax status of any obligations issued by the Agency;

(iv) The Assignee shall have a credit rating equal to or greater than (A) “A-” or “A3” from Standard & Poor’s Credit Market Services, Moody’s Investors Service, Inc. or Fitch Ratings, or (B) the ratings(s) on the Agency’s outstanding bonds, whichever is higher, and confirmation of such rating(s) shall be delivered to the Agency; and

(v) The Member and the Assignee, as applicable, agree to such changes to this Agreement, agree to such security arrangements, and provide such certificates and legal opinions as may be required by the Agency.

The Agency may modify or supplement the requirements of this paragraph (b) as applied to a specific assignment upon approval of the Board by the affirmative vote of (i) at least two-thirds of the Directors and (ii) Directors representing at least two-thirds of the megawatt hours sold in the last year for which sales figures for all Members are available.

*Section 17. Records and Accounts.* The Agency shall keep accurate records and accounts of its properties and its operation in accordance with, or so as to permit, conversion to the FERC’s Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act in effect from time to time. The Member shall have the right at any reasonable time to examine such accounts. The Agency shall cause such accounts to be audited annually by a firm of independent public accountants and shall supply copies of such audits to the Member.

*Section 18. Budget.* (a) On or before April 1 of each year, the Agency shall prepare and mail to the Member a preliminary budget for the next succeeding fiscal year of the Agency, which shall include an annual estimate of the Agency’s revenue requirements with respect to the Power Sale Agreements S-1 and the Member’s share of such revenue requirements for such fiscal year. On or before the beginning of each fiscal year of the Agency, the Agency shall prepare and mail to the Member a final annual budget approved by the Board, which shall include an annual estimate of the Agency’s revenue requirements with respect to the Power Sale Agreements S-1 and the Member’s share of such revenue requirements for such fiscal year. The Member shall, to the extent and in the manner deemed appropriate by the Member, incorporate the budget numbers shown in the Agency’s annual budget in its annual budgetary process for the Member’s electric enterprise fund.

(b) At such times as it shall deem desirable, the Board shall review the annual budget for the applicable fiscal year. In the event such review indicates that the annual budget does not or will not substantially correspond with actual receipts or expenditures, or if at any time during such fiscal year there are or are expected to be extraordinary receipts, credits or expenditures of costs substantially affecting the Agency’s revenue requirements for the year, the Agency shall prepare and provide to the Director of the Board appointed by the Member a revised annual budget approved by the Board, incorporating adjustments to reflect such receipts, credits or expenditures, which shall thereupon supersede the previous annual budget. The revised annual

budget and any written materials that accompany it shall specifically identify the changes from the annual budget that was previously in effect. As part of the Agency's budget process, the Board will review and, if necessary, revise, the S-1 Rate Schedule in accordance with Section 6.

*Section 19. Information.* The Agency and the Member will promptly furnish to each other such information as may be reasonably requested from time to time in order to carry out more effectively the intent and purpose of this Agreement or as may be reasonably necessary and convenient in the conduct of the operations of the Party requesting such information.

*Section 20. Amendment.* (a) Except as provided for expressly herein, neither this Agreement nor any other Power Sale Agreement S-1 entered into between the Agency and another Member may be amended so as to provide terms and conditions that are substantially and materially different from those herein contained, except upon written notice to, and written consent or waiver by, each of the other Members and upon a similar amendment being made to the Power Sale Agreement S-1 of any other Member requesting such amendment after receipt by such Member of notice of such amendment.

(b) In connection with any revision or amendment of the Exhibits attached hereto in accordance with the terms of this Agreement, the Agency shall promptly provide a copy of the revision or amendment to the Member.

*Section 21. Dissolution of Agency; Disposition of Assets.* (a) In accordance with Section 8 of the Interlocal Agreement, when the Power Sale Agreements S-1 shall terminate, the Member shall be entitled to receive its beneficial interest in the S-1 Facilities and Dedicated Facilities (or proceeds derived from the disposition of the S-1 Facilities or Dedicated Facilities) remaining after provision for all liabilities and obligations of the Agency. In the event of such termination of the Power Sale Agreements S-1, the Agency shall, subject to the applicable provisions of the Capacity Purchase Agreements, use its best efforts to cause the S-1 Facilities and Dedicated Facilities to be economically salvaged, decommissioned, discontinued, disposed of, or sold, in whole or in part, and the Agency shall make accounting statements for each billing period to the Member of all costs associated therewith. Such accounting statements and billing periods shall continue until all S-1 Facilities and Dedicated Facilities have been salvaged, decommissioned, discontinued or finally disposed of and provision for the payment of any outstanding costs and liabilities with respect to such facilities has been made, at which time a final accounting statement with respect thereto shall be made by the Agency at the earliest reasonable time. The costs of salvage, decommissioning, discontinuance or disposition shall include, but shall not be limited to, all accrued costs and liabilities resulting from the acquisition, construction, operation, and maintenance of, and renewals and replacements to, the facilities ("*Disposition Costs*").

(b) Proceeds from the disposition of the S-1 Facilities and Dedicated Facilities that remain after payment of all Disposition Costs shall be equitably applied by the Board, first, to the payment of the Members' respective equity interests in the Dedicated Facilities, as provided in the related Capacity Purchase Contracts, and second, to the payment of all Members, pro rata, based on the average number of megawatt hours sold during the last five fiscal years for which sales figures for all Members are available, or calculated in such other manner as the Board shall determine to be fair and equitable.

*Section 22. Contemporaneous Deliveries.* Contemporaneously with its execution and delivery of this Agreement, the Member and the Agency shall each deliver to the other Party such certificates, legal opinions and other documents as shall be reasonably requested by either Party.

*Section 23. Dispute Resolution.* In the event that Management of the Agency and the Member are not able to resolve a dispute under this Agreement, the Agency and the Member shall submit the matter in writing to the Technical Committee. If the Agency and the Member, in coordination with the Technical Committee are unable to resolve the dispute within 30 days after submitting the matter to the Technical Committee, the dispute shall then be submitted in writing to the Board. If the Agency and the Member, in coordination with the Board are unable to resolve the dispute within 60 days after submitting the matter to the Board, the dispute shall then be submitted to nonbinding mediation upon written notice to the Agency and the Member. If the Parties cannot agree on a mediator, the International Institute for Conflict Prevention and Resolution (“CPR”), at the written request of a Party, shall designate a mediator. If a dispute submitted for mediation has not been resolved within 60 days after the written notice beginning the mediation process (or such longer period, if the Parties so agree in writing), the mediation shall terminate and the dispute may, if the Parties agree, be settled by binding arbitration, or either Party may assert any rights which it may have against the Agency under this Agreement or under any applicable provision of law, including the institution of legal proceedings.

*Section 24. Notices.* Except as is otherwise specifically provided in this Agreement, any notice, request, demand, or statement provided for in this Agreement must be given in writing and delivered in person, by United States mail, overnight delivery service or facsimile or e-mail transmission to the other Party at its address shown below or at such other address as may hereafter be furnished to the other Party in writing:

MEMBER:

Correspondence, notices, billings and payments:

Spanish Fork City  
Attn: [Title]  
40 South Main Street  
Spanish Fork, UT 84660  
(801) 804-4500  
Fax: (801) 798-5005

AGENCY:

Correspondence, notices, billings and payments:

Utah Municipal Power Agency  
Attention: Chief Operating Officer/General Manager  
75 West 300 North, P. O. Box 818  
Spanish Fork Utah 84660

email: [layne@umpa.cc](mailto:layne@umpa.cc)  
Fax: (801) 798-2104

Wire Transfers:

Utah Public Treasurers' Investment Fund  
P.O. Box 142315  
Salt Lake City, UT 84114-2315  
Acct: 413-5261  
Reference: Utah Muni Power Agency Pool - PTIF

Any notice initially delivered orally as may be permitted under this Agreement shall be confirmed in writing, and any notice initially delivered by facsimile or e-mail transmission shall be followed by a hard copy sent by first-class mail or express courier within two days after transmission of the facsimile or e-mail.

*Section 25. Waivers.* Any waiver at any time by any Party hereto of its rights with respect to a default or any other matter arising in connection with this Agreement shall not be deemed to be a waiver with respect to any subsequent default or matter.

*Section 26. Applicable Law.* This Agreement is made under and shall be governed by the law of the State of Utah.

*Section 27. Severability.* In the event that any of the terms, covenants or conditions of this Agreement, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction under the circumstances, the remainder of this Agreement, and the application of its terms, covenants or conditions to such persons or circumstances shall not be affected thereby.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day, month and year first written above.

UTAH MUNICIPAL POWER AGENCY

[SEAL]

By \_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Secretary-Treasurer

SPANISH FORK CITY, UTAH

[SEAL]

By \_\_\_\_\_  
Mayor

ATTEST AND COUNTERSIGN:

\_\_\_\_\_  
City Recorder



**EXHIBIT A**

**POINT(S) OF DELIVERY,  
MEASUREMENT AND ADJUSTMENTS**

Point(s) of Delivery:

The Point(s) of Delivery at which the Agency shall cause the Member’s S-1 Power to be delivered shall be:

Location - Spanish Fork Substation  
Voltage - 138 kV

Location - Dry Creek Substation  
Voltage - 138 kV

Point(s) of Measurement and Loss Factors:

The Point(s) of Measurement at which the Agency shall cause the Member’s S-1 Power to be measured and the Loss Factors between Member’s Point(s) of Delivery and Point(s) of Measurement shall be as follows:

	<u>Location</u>	<u>Voltage</u>	<u>Loss Factors<sup>1</sup></u>
<b>Spanish Fork Substation</b>	Canyon Road Substation	46 kV	1.205
	Whitehead Substation	46 kV	1.205
<b>Dry Creek Substation</b>	Dry Creek Substation: SUVPS System Woodhouse Line	46 kV	1.205

Special Features:

Spanish Fork uses the Southern Utah Valley Power System (“SUVPS”) to deliver power from the point(s) of delivery to the point(s) of measurement. Spanish Fork is a member of SUVPS and pays SUVPS directly for transmission and transformation services between the point(s) of delivery and the point(s) of measurement.

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<sup>1</sup> Loss Factor shown is the number currently in use by SUVPS and may be adjusted as needed and as provided to UMPA.

## EXHIBIT B

### S-1 RATE SCHEDULE (FOR FISCAL YEAR 2015-16)

Availability and Applicability: This rate schedule is available and applicable to any Utah Municipal Power Agency ("Agency") member which, by execution of the Power Sale Agreement S-1 (the "Agreement"), has contracted for the purchase of electric power and energy requirements from the Agency (the "Member" or "Members").

Character of Service: Electric power and energy supplied here-under will be three phase, alternating current at a nominal frequency of sixty (60) hertz (cycles per second).

Net Monthly Rate: The net monthly billing for services provided Member shall be the sum of the charges set forth below:

Capacity Charge:	\$13.69 per kilowatt (kW) of Billing Demand
Energy Charge:	\$0.02220 per kilowatt-hour (kWh) of Billing Energy \$0.02100 Base; \$0.00120 Rate Stabilization Fund

All billings under the above rates shall be subject to the following provisions and adjustments.

Billing Demand: The Billing Demand shall be the Member's highest 30 minute integrated kW demand at the Member's Point(s) of Delivery specified in Exhibit A. For Members with multiple Point(s) of Delivery, the demands will be consolidated so as to determine Member's Billing Demand as if all electric power and energy had been supplied through a single point of delivery. The monthly Capacity Charge rate is based on service metered at Member's Point(s) of Delivery. If Member's Point(s) of Measurement specified in Exhibit A is [are] not at Member's Point(s) of Delivery, the Billing Demand will be adjusted to reflect losses between the Point(s) of Measurement and the Point(s) of Delivery by using the loss factor specified in Exhibit A, expressed as a decimal, as follows:

$$\text{Billing Demand} = \text{Measured Demand} \times [1 + \text{Loss Factor}]$$

Billing Energy: The Billing Energy shall be the Member's total kWh energy requirements at the Member's Point(s) of Delivery specified in Exhibit A. The monthly Energy Charge rate is based on service metered at Member's Point(s) of Delivery. If Member's Point(s) of Measurement specified in Exhibit A is [are] not at Member's Point(s) of Delivery, the Billing Energy will be adjusted to reflect losses between the Point(s) of Measurement and the Point(s) of Delivery by using the loss factor specified in Exhibit A (if applicable), expressed as a decimal, as follows:

$$\text{Billing Energy} = \text{Measured Energy} \times [1 + \text{Loss Factor}]$$

Power Cost Adjustment: The above Energy Charge shall be increased or decreased by the Power Cost Adjustment, which will be determined monthly as follows:

$$\text{PCA} = \frac{\text{PC} - \text{BPC}}{\text{ES}}$$

Where:

PCA = Power Cost Adjustment expressed in dollars per kilowatt-hour.

PC = Power Cost of energy production, expressed in whole dollars, consisting of the following:

- (a) Fuel costs of the generating plants owned or controlled by the Agency;
- (b) Net cost of power and energy purchased or interchanged by the Agency; and
- (c) Costs of interconnection, transmission and wheeling incurred by the Agency for delivery of electric power and energy provided under this Agreement to the Point(s) of Delivery or such other points as may be mutually agreeable to the Agency and the Member.

ES = Energy Sales, which shall be equal to the sum of the Billing Energy, expressed in kilowatt-hours, of all Members served under this S-1 Rate Schedule.

BPC = Base Power Cost, which shall be the power cost of energy production of \$0.03995 per kilowatt-hour included in the Capacity Charge and Energy Charge.

Terms of Payment: The Agency will submit bills on or about the 15th day of each month for electric service provided to the Member during the preceding month, and full payment by the Member is due and payable on the last day of the month. If the Member fails to pay any bill in full when due, a delayed payment charge of five percent (5%) of the amount unpaid shall be added to the bill. An additional interest charge of .03288% per day of any unpaid amounts shall be added to the balance outstanding on the first day of each month.

Tax Adjustments: The above rates and charges do not include an allowance for revenue, gross receipts or other taxes. In the event the Agency's revenues from this S-1 Rate Schedule should

be subject to any revenue, gross receipts or other taxes, the billing to the Member will be adjusted to include the amount of taxes to be paid by the Agency applicable to Member's bill.