

## MUTUAL NON-DISCLOSURE AGREEMENT

THIS MUTUAL NON-DISCLOSURE AGREEMENT (“Agreement”) is made and entered into as of this [\_\_\_\_\_] day of [\_\_\_\_\_] 2023 (“Effective Date”), by and between Intermountain Power Agency, a political subdivision of the State of Utah (“IPA”), and [\_\_\_\_\_] a [\_\_\_\_\_] organized and existing under the laws of the State of [\_\_\_\_\_] (“Company”). This Agreement will be administered on behalf of IPA by the Los Angeles Department of Water and Power, a department of the City of Los Angeles, a municipal corporation of the State of California (“LADWP”) as project manager for IPA. IPA and Company sometimes may be referred to in this Agreement individually as a “Party”, and collectively as the “Parties”.

### RECITALS

A. The Parties desire to discuss or exchange certain Confidential Information (defined below) in order to assess the feasibility of establishing a business or contractual relationship between the Parties to manage natural gas fuel supply and assets for Intermountain Power Project (“Possible Transaction”).

B. Representatives (defined below) of each Party plan to have discussions to examine the feasibility of the Possible Transaction. In connection with such discussions, IPA (acting through LADWP) or Company (as applicable, “Disclosing Party”) may disclose or may have disclosed to the other Party (as applicable, “Receiving Party”) and certain Affiliates and Representatives (each defined below) of Receiving Party, either orally, in writing or otherwise, certain Confidential Information that might be helpful in evaluating the Possible Transaction.

C. Disclosing Party is willing to provide to Receiving Party such Confidential Information, but only on the terms and subject to the conditions contained in this Agreement.

### AGREEMENT

NOW, THEREFORE, based upon the foregoing and the terms and conditions contained in this Agreement, and intending to be legally bound hereby, each of the Parties agrees as follows:

1. Definitions. In addition to the terms otherwise defined in this Agreement, the following terms have the following meanings:

“Affiliate” means, with respect to (a) Company, a person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, Company, where “control” (including the terms “controlling,” “controlled by,” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract, or otherwise; and (b) IPA, the Intermountain Power Service Corporation, a Utah non-profit corporation, LADWP, and the IPP Coordinating Committee and its subcommittees its and their respective members and the IPP Renewal Contract Coordinating

Committee and its subcommittees and its and their respective members, in each case in respect of the IPP.

“Confidential Information” means all non-public, confidential or proprietary information, data and knowledge, whether in the form of Documents or similar media, or received orally, visually, through observation, by inspection or any other form, and whether or not marked as “confidential,” “proprietary,” or words of similar import, including, but not limited to, the terms and conditions of this Agreement; research, developmental, engineering, manufacturing, technical, marketing, sales, financial, operating, performance, cost, business and process information or data; forecasts; budgets; trade secrets; know-how; discoveries (whether or not patentable); methods; processes; ideas; designs; diagrams; specifications; schematics; blueprints; data; source code; object code; computer programs, firmware, software and systems and software techniques; and all notes, reports, analyses, interpretations, compilations, studies and evaluations thereof that are generated or prepared by or on behalf of Receiving Party using Confidential Information of Disclosing Party relating, directly or indirectly, to the Possible Transaction, provided by or on behalf of Disclosing Party to Receiving Party or its Affiliates or its or their respective Representatives; *provided* that Confidential Information of Disclosing Party shall not include information, data and knowledge, as shown by contemporaneous written records, that (a) is in the possession of Receiving Party prior to disclosure thereof by or on behalf of Disclosing Party to Receiving Party without obligation of secrecy, (b) is or becomes generally available to the public, other than as a result of a breach of this Agreement by Receiving Party, its Affiliates or its or their respective Representatives, (c) becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party that is not under a confidentiality or non-disclosure obligation with Disclosing Party, (d) lawfully enters into the public domain through no violation of this Agreement after disclosure by or on behalf of Disclosing Party to Receiving Party or its Affiliates, or its or their respective Representatives, or (e) is independently developed by or on behalf of Receiving Party or its Affiliates; *provided further* that detailed information provided to Receiving Party or its Affiliates, or its or their respective Representatives, by or on behalf of Disclosing Party shall not be encompassed as part of the foregoing exclusions merely because it relates to more general information excluded from confidentiality pursuant to such exclusions.

“Document” means, without limitation, any writing, agreement, letter, memorandum, report, study, telex, facsimile, cable, electronic mail or other form of electronic communication (including, but not limited to, .pdf files), tape, disk or other electronic, magnetic, laser or other recording, chart, graph, blueprint, picture, or financial statement, or data in whatever form or medium.

“Representative” means, with respect to a Party or its Affiliates, its and their respective directors, board members, officers, employees, members, partners, shareholders, managers, committee members, subcommittee members, representatives, agents, attorneys, accountants, or advisors.

2. Disclosure. Disclosing Party may have disclosed certain Confidential Information of Disclosing Party to Receiving Party prior to the Effective Date (the “Previously Disclosed Confidential Information”). Subject to Section 4(d) of this Agreement, any Previously Disclosed Confidential Information shall be considered Confidential Information of Disclosing Party under

this Agreement. In addition, for a period of twelve (12) months after the Effective Date (the “Disclosure Period”), Disclosing Party may disclose or otherwise make available to Receiving Party or its Affiliates, or its or their respective Representatives, certain other Confidential Information of Disclosing Party. Subject to Section 4(d) of this Agreement, any Confidential Information of Disclosing Party, whether disclosed before, on or after the Effective Date, shall be subject to the terms and conditions specified in this Agreement.

3. Ownership and Use of Confidential Information. Receiving Party shall use, and shall cause its Affiliates and its and their respective Representatives to use, the Confidential Information of Disclosing Party solely for the purpose of evaluating a Possible Transaction and for no other purpose whatsoever. Each Party agrees that Confidential Information of Disclosing Party received from Disclosing Party, its Affiliates or its or their respective Representatives, is and shall remain the sole property of Disclosing Party. Except for the express purpose of evaluating the Possible Transaction, nothing in this Agreement shall be construed to grant to Receiving Party, its Affiliates or its and their respective Representatives any ownership, license or other rights in all or any portion of the Confidential Information of Disclosing Party.

4. Nondisclosure of Confidential Information.

(a) Receiving Party shall not, and shall cause its Affiliates and its and their respective Representatives not to, disclose Confidential Information of Disclosing Party except in accordance with the provisions of this Agreement. Receiving Party shall, and shall cause its Affiliates and its and their respective Representatives to, keep the Confidential Information of Disclosing Party strictly confidential, including taking all precautions Receiving Party uses to protect its Confidential Information but in no event less than a reasonable degree of care. Confidential Information of Disclosing Party is disclosed by Disclosing Party to Receiving Party only to evaluate the Possible Transaction. Receiving Party may disclose such Confidential Information of Disclosing Party only to Receiving Party’s Affiliates and such Representatives of Receiving Party or its Affiliates who or which have a reasonable need to know such Confidential Information of Disclosing Party in order for Receiving Party to evaluate a Possible Transaction.

(b) Before disclosing any Confidential Information of Disclosing Party to any Affiliate or Representative pursuant to Section 4(a), Receiving Party shall notify such person that the disclosure and use of such Confidential Information of Disclosing Party is subject to this Agreement and that such person is subject to the confidentiality duties and obligations of Receiving Party under this Agreement. Receiving Party shall be responsible and liable for any use or disclosure of the Confidential Information of Disclosing Party by any Affiliate or Representative, or by any third party to whom or to which Receiving Party, its Affiliates, and its and their respective Representatives, provides Confidential Information of Disclosing Party in violation of this Agreement or other breach hereof.

(c) Except as contemplated by Section 4(a) of this Agreement, Receiving Party shall not, directly or indirectly, disclose to any third party any Confidential Information of Disclosing Party, and neither Party shall, directly or indirectly, disclose the terms and conditions of this Agreement or the existence of discussions between them relating to a Possible Transaction, without the other Party’s prior written consent.

(d) Nothing contained herein shall be deemed to prevent disclosure, release, copying, retention, storage, archiving or management of, or providing access to, any of the Confidential Information of Disclosing Party or the terms and conditions of this Agreement if such disclosure is required to be made pursuant to applicable open records laws, or in a judicial, administrative or governmental proceeding pursuant to an order or direction of a judicial or regulatory authority having jurisdiction over the applicable Party; *provided, however*, such applicable Party shall give the other Party reasonable prior written notice before making such disclosure, which notice shall include a description in reasonable detail of the Confidential Information of Disclosing Party to be disclosed under this Section 4(d), and, in making such disclosure, such applicable Party shall disclose only that portion of the Confidential Information of Disclosing Party or the terms and conditions of this Agreement required to be disclosed and shall take all reasonable efforts to seek a protective order or otherwise preserve the confidentiality of the Confidential Information of Disclosing Party and the terms and conditions of this Agreement.

(e) Except to the extent of IPA's express contractual obligations under this Agreement, nothing in this Agreement constitutes a waiver of any of the rights or immunities of IPA under the Utah Governmental Immunity Act, including, without limitation, rights or immunities related to tort claims.

5. No Representations and Warranties. Nothing contained in this Agreement or the Confidential Information of Disclosing Party shall be deemed to constitute a representation or warranty as to the accuracy or completeness of the Confidential Information of Disclosing Party. Receiving Party agrees, on its behalf and on behalf of its Affiliates and its and their respective Representatives, that neither Disclosing Party or its Affiliates, nor its or their respective Representatives, will have any liability to Receiving Party or its Affiliates, or its or their respective Representatives, relating to or resulting from the use of the Confidential Information of Disclosing Party, including for any conclusions derived from the Confidential Information of Disclosing Party.

6. Copies of Documents. Receiving Party shall not, and shall cause its Affiliates and its and their respective Representatives not to, make or reproduce any copies of any Document (or any portion thereof) which is part of the Confidential Information of Disclosing Party, except to deliver copies of such Documents to one or more of such Affiliates or Representatives.

7. Return of Documents. Upon the earlier to occur of (a) five (5) business days after receipt of a written request from Disclosing Party and (b) the end of the Disclosure Term (defined below), Receiving Party shall return to Disclosing Party all Documents containing Confidential Information of Disclosing Party (including all copies thereof) which have been delivered or disclosed to Receiving Party or to any person to whom Confidential Information of Disclosing Party has been disclosed pursuant to Section 4(a), or which Receiving Party has obtained, as part of the Confidential Information of Disclosing Party, and shall destroy or cause to be destroyed, and shall certify to Disclosing Party in writing that Receiving Party has destroyed or caused to be destroyed, all other Confidential Information of Disclosing Party, including, without limitation, all Documents prepared by or on behalf of Receiving Party or others utilizing or relating to any portion of the Confidential Information of Disclosing Party. Notwithstanding the foregoing, (a) Receiving Party may retain one copy of the Confidential

Information of Disclosing Party for recordkeeping purposes only; and (b) Receiving Party, its Affiliates and its and their respective Representatives may retain copies of any computer records or files containing Confidential Information of Disclosing Party that have been created pursuant to automatic archiving and backup procedures, *provided* that no attempt will be undertaken to extract such Confidential Information of Disclosing Party.

8. No Obligation Regarding a Possible Transaction. Neither Party shall have any obligation or duty to pursue any further agreement or understanding relating to the Possible Transaction, unless and until one or more definitive agreements relating thereto has been duly authorized, executed, and delivered by both Parties. Either Party may, at any time, determine not to enter into a Possible Transaction with the other Party. Upon receipt by a Party of a notice from the other Party of such a determination, the Party receiving such notice promptly shall comply with the provisions of Section 7 of this Agreement. The Parties acknowledge and agree that their discussions and evaluation of the Possible Transaction are non-exclusive and that, subject to the provisions of this Agreement, the Parties may currently or in the future discuss or evaluate with third parties transactions similar to the Possible Transaction.

9. Term. The provisions of this Agreement relating to the disclosure of Confidential Information of Disclosing Party shall terminate on the earlier of (a) the end of the Disclosure Period, and (b) the date upon which a written agreement is entered into by the Parties which, by its terms, supersedes this Agreement (“Initial Disclosure Term”). The Initial Disclosure Term may be renewed for one or more successive terms of one (1) year by mutual written agreement of the Parties. The Initial Disclosure Term and any successive renewal terms is referred to in this Agreement as the “Disclosure Term.” Notwithstanding the termination of the provisions relating to disclosure of Confidential Information of Disclosing Party in this Agreement, the confidentiality obligations in respect of the Confidential Information of Disclosing Party shall survive for a period of five (5) years after such termination.

10. Privileges. Disclosing Party does not intend to waive, or to cause any of its Affiliates or its or their respective Representatives to waive, any applicable privilege of Disclosing Party or its Affiliates, including, without limitation, the attorney-client privilege, attorney work product or other applicable privilege (as applicable, a “Privilege”) by providing any Confidential Information of Disclosing Party subject to a Privilege, and any disclosure by Disclosing Party or its Affiliates, or its or their respective Representatives, of any Confidential Information of Disclosing Party subject to a Privilege shall be deemed to be inadvertent. Accordingly, Receiving Party, on its behalf and on behalf of its Affiliates and its and their respective Representatives, acknowledges and agrees that a disclosure of Confidential Information protected by a Privilege will not constitute a waiver of any such Privilege by any person and that, on request by Disclosing Party, Receiving Party shall, and shall cause its Affiliates and its and their respective Representatives to, immediately return and/or destroy such inadvertently disclosed Confidential Information of Disclosing Party.

11. Severability. If any provision of this Agreement is invalid or unenforceable in any jurisdiction, such provision shall be fully severable from this Agreement and the other provisions hereof shall remain in full force and effect in such jurisdiction and the remaining provisions hereof shall be liberally construed to carry out the provisions and intent hereof. The invalidity or unenforceability of any provision of this Agreement in any jurisdiction shall not

affect the validity or enforceability of such provision in any other jurisdiction, nor shall the invalidity or unenforceability of any provision of this Agreement with respect to any person affect the validity or enforceability of such provision with respect to any other person.

12. Injunctive Relief. Receiving Party acknowledges and agrees that Disclosing Party would not have adequate remedies at law and would be irreparably harmed in the event that any provisions of this Agreement were not performed in accordance with their specific terms or otherwise were breached. Accordingly, Receiving Party agrees that Disclosing Party shall be entitled to seek injunctive relief to prevent breaches of this Agreement and to specifically enforce the terms and provisions thereof, without the necessity of posting a bond, in addition to any other remedy to which Disclosing Party may be entitled, at law or in equity.

13. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Utah, other than such laws, rules, regulations and case law that would result in the application of the laws of a jurisdiction other than the State of Utah. The Parties agree that the Federal courts of the United States and state courts of Utah located in Salt Lake City, Utah, shall have exclusive jurisdiction over any litigation with respect to this Agreement and, by execution of this Agreement, the Parties irrevocably submit to such jurisdiction. THE PARTIES HERETO HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN RESPECT OF ANY ACTION, SUIT, PROCEEDING, CLAIM OR COUNTERCLAIM ARISING OUT OF THIS AGREEMENT OR THE INTERPRETATION THEREOF.

14. Assignment and Transfer. Neither Party shall assign, pledge or otherwise transfer its rights or delegate its duties or obligations under this Agreement without the prior written consent of the other Party; *provided* that the Party assigning, pledging or otherwise transferring its rights, or delegating its duties or obligations, under this Agreement shall remain subject to the terms and conditions of this Agreement.

15. Entire Agreement. This Agreement constitutes the entire understanding between the Parties with respect to the subject matter thereof and supersedes all negotiations, prior discussions or prior agreements and understandings relating to such subject matter. No implied covenants shall apply to this Agreement other than those of good faith and fair dealing. Neither this Agreement nor the Parties' performance hereof shall be deemed to create any special relationship or obligations between the Parties other than those expressly set forth herein. All duties, obligations, rights, powers and remedies provided for herein are cumulative, and not exclusive, of any and all duties, obligations, rights, powers and remedies existing at law or in equity, including those arising under the Uniform Trade Secrets Act and similar statutes and rules of law pertaining to trade secrets and confidential and proprietary information.

16. Notices. All notices required under this Agreement shall be in writing and addressed to the Parties at the addresses or email addresses set forth below, or to such other addresses or email addresses of which a Party from time to time notifies the other Party.

If to IPA: Intermountain Power Agency  
c/o Los Angeles Department of Water and Power, as Project  
Manager and Operating Agent

111 North Hope Street, Room 1263  
Los Angeles, California 90012  
Attn: Project Manager  
email: ipp-renewal-project.gas@ipautah.com

If to Company: [ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
Attn: [ \_\_\_\_\_ ]  
Telephone: [ \_\_\_\_\_ ]  
email: [ \_\_\_\_\_ ]

Such notices and communications shall be deemed given upon the earlier of (a) actual receipt, (b) five (5) business days after being mailed by registered or certified mail, return receipt requested with postage prepaid, (c) when sent by email, provided the sender does not receive a message of non-delivery, and (d) one business day after being deposited with a recognized overnight courier service with charges prepaid.

17. Miscellaneous.

(a) This Agreement may not be altered or amended, nor any rights hereunder be waived, except by an instrument in writing and executed by the Party or Parties to be charged with such amendment or waiver.

(b) No waiver of any term, provision or condition of this Agreement shall be deemed to be, or construed as, a further or continuing waiver of any such term, provision or condition, or as a waiver of any other term, provision or condition of this Agreement.

(c) Neither Party shall be responsible to the other Party for consequential, incidental, special, indirect, compensatory, punitive or other similar damages, or loss of profits or opportunity, of any kind arising out of or relating to this Agreement or the use of Confidential Information of Disclosing Party.

(d) Words in the singular form in this Agreement shall be construed to include the plural, and words in the plural form in this Agreement shall be construed to include the singular, unless the context otherwise requires. The headings used in this Agreement are inserted for convenience only and shall be disregarded in construing this Agreement.

(e) As used in this Agreement, the term "person" will be interpreted broadly to include, without limitation, any individual, corporation, limited liability company, partnership, joint venture, unincorporated entity, group or other entity.

(f) This Agreement shall be binding upon the Parties hereto and their permitted respective successors and assigns.

(g) Except for the Parties, and their permitted successors and assigns, nothing in this Agreement, express or implied, is intended to confer upon any other person any benefits, rights or remedies.

(h) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

(i) This Agreement may be delivered by email, and an email evidencing execution shall be effective as a valid and binding agreement between the Parties for all purposes.

**[REMAINDER OF PAGE LEFT BLANK]**



IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives all as of the Effective Date.

**INTERMOUNTAIN POWER AGENCY,**  
a political subdivision of the State of Utah

By: Los Angeles Department of Water and Power,  
a department of the City of Los Angeles, a  
municipal corporation of the State of California, as  
Project Manager and Operating Agent

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

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