

**BOARDMAN TO HEMINGWAY TRANSMISSION PROJECT JOINT PERMIT  
FUNDING AGREEMENT**

This Boardman to Hemingway Transmission Project Joint Permit Funding Agreement (the “Agreement”) is entered into this 12th day of January, 2012 (the “Effective Date”), by and between Idaho Power Company, an Idaho corporation (“Idaho Power”), PacifiCorp, an Oregon corporation (“PAC”), and the Bonneville Power Administration (“BPA”), a United States government power marketing administration. Idaho Power, PAC, and BPA are hereinafter sometimes individually referred to as a “Funder” and collectively as the “Funders.”

**RECITALS**

WHEREAS, Idaho Power, PAC, and BPA have independent obligations to plan for and expand their respective transmission systems to provide safe, reliable and cost-effective service to their native load customers, network customers, and/or eligible customers;

WHEREAS, Idaho Power, PAC and BPA recognize the potential to fulfill their respective service obligations through the development of certain new transmission facilities;

WHEREAS, the proposed Boardman to Hemingway Transmission Project is a 500 kV single circuit transmission line located from the vicinity of Boardman, Oregon to the existing Hemingway substation near Melba, Idaho (as further described in Exhibit A, the “Boardman to Hemingway Transmission Project”), that if constructed could assist Idaho Power, PAC, and BPA in fulfilling their respective service obligations;

WHEREAS, Idaho Power, PAC, and BPA recognize that obtaining appropriate and necessary Governmental Authorizations and completing other necessary work is an essential component to developing the Boardman to Hemingway Transmission Project;

WHEREAS, Idaho Power, PAC, and BPA desire to support and contribute funds, with the intent to be joint owners subject to the terms of this Agreement, to the processes associated with obtaining the necessary Governmental Authorizations and completing other necessary work to develop, permit, site, and acquire Rights-of-Way over public lands for the Boardman to Hemingway Transmission Project;

WHEREAS, Idaho Power, PAC, and BPA are entering into this Agreement for the purposes of providing the definitive terms and conditions by which Idaho Power, PAC, and BPA will jointly support and contribute funds, with the intent to be joint owners subject to the terms of this Agreement, to permit, site and acquire Rights of Way over public lands for the development of Boardman to Hemingway Transmission Project;

WHEREAS, Idaho Power has submitted applications to the United States Department of Interior, Bureau of Land Management (“BLM”), serving as the lead permitting agency under the

National Environmental Policy Act (“NEPA”), to obtain authorizations for the Boardman to Hemingway Transmission Project to cross federal lands. The United States Forest Service, United States Department of the Navy and the United States Bureau of Reclamation are cooperating agencies with the BLM in preparing an Environmental Impact Statement (“EIS”) for the Boardman to Hemingway Transmission Project;

WHEREAS, Idaho Power has submitted its notice of intent to apply for an energy facility site certificate with the Oregon Department of Energy, Energy Facility Siting Council, to construct the portions of the Boardman to Hemingway Transmission Project located in the State of Oregon;

WHEREAS, Idaho Power, PAC, and BPA intend for the express purpose of this Agreement to facilitate the successful completion of the Project Permitting Objectives (as further defined herein);

WHEREAS, Idaho Power and PAC recognize that, although BPA is entering into this Agreement, BPA has certain obligations and responsibilities under NEPA and other federal laws that it must fulfill before it can make a decision concerning whether to participate in the development and construction of the Boardman to Hemingway Transmission Project, and BPA intends to be a cooperating agency under NEPA on the Environmental Impact Statement being prepared by the BLM and other federal agencies to facilitate completion of BPA’s obligations and responsibilities under NEPA;

WHEREAS, Idaho Power and PAC acknowledge that BPA is considering various transmission and other alternatives to meet its service obligations in eastern Idaho and that BPA’s decision whether to participate in the development and construction of the Boardman to Hemingway Transmission Project may be based on BPA’s evaluation of such alternatives;

WHEREAS, upon the completion of the Project Permitting Objectives, any of the Funders that decide to proceed with the development and construction of the Boardman to Hemingway Transmission Project intend to negotiate in good faith further agreement(s) for the purposes of providing the definitive terms and conditions by which such Funders may jointly design, engineer, procure, construct, commission, own and operate the Boardman to Hemingway Transmission Project (the “Definitive Development and Construction Agreements”); and

WHEREAS, nothing in this Agreement shall affect any other existing or proposed projects, expansions, or developments that are not a part of this Agreement.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements herein contained, the adequacy of which is hereby acknowledged, Idaho Power, PAC, and BPA agree as follows:

**ARTICLE I**  
**DEFINITIONS; RULES OF INTERPRETATION**

1.1 Definitions. As used in this Agreement, the following capitalized terms have the meanings specified in this Section 1.1:

“Advance Contribution” has the meaning set for in Section 4.2(a).

“Affected Party” has the meaning set forth in Section 9.1.

“Affiliate” means, with respect to a Person, each other Person that, directly or indirectly, controls, is controlled by or is under common control with, such designated Person; provided, however, that in the case of PAC “Affiliate” includes MidAmerican Energy Holdings Company and its direct and indirect subsidiaries. For the purposes of this definition, “control” (including with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“Agreement” has the meaning set forth in the Preamble.

“Bankrupt” means, with respect to any Person, that such Person: (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

“BLM” has the meaning set forth in the Recitals.

“Boardman to Hemingway Transmission Project” has the meaning set forth in the Recitals.

“BPA” has the meaning set forth in the Preamble.

“Business Day” means any day other than Saturday, Sunday and any day which is not a federal holiday or a day on which banking institutions in New York, New York are authorized or obligated by Governmental Requirements to close.

“Claims” has the meaning set forth in Section 11.1.

“Commercially Reasonable Efforts” means the level of effort that a reasonable electric utility would take in light of the then known facts and circumstances to accomplish the required action at a then commercially reasonable cost (taking into account the benefits to be gained thereby).

“Completion Funding Payment” has the meaning set forth in Section 3.1(a)(ii) and Exhibit B.

“Completion Notice” has the meaning set forth Section 3.3(a).

“Defaulting Funder” has the meaning set forth in Section 8.1.

“Dispute” has the meaning set forth in Section 13.1.

“Dispute Notice” has the meaning set forth in Section 13.2.

“Disputing Party” has the meaning set forth in Section 13.2.

“Definitive Development and Construction Agreements” has the meaning set forth in the Recitals.

“Effective Date” has the meaning set forth in the Preamble.

“Environmental Impact Statement” has the meaning set forth in the Recitals.

“Event of Default” has the meaning set forth in Section 8.1.

“Executives” has the meaning set forth in Section 13.3(a).

“FERC” means the Federal Energy Regulatory Commission.

“Final Environmental Impact Statement” means the Final Environmental Impact Statement for the Boardman to Hemingway Transmission Project.

“Force Majeure” has the meaning set forth in Section 9.1.

“Funders” has the meaning set forth in the Preamble.

“Funding Committee Representative” has the meaning set forth in Section 3.2(b).

“Funding Invoice” has the meaning set forth in Section 3.1(b)(i).

“Final Expense True-Up” has the meaning set forth in Section 3.1(b)(iii) and Exhibit B.

“Good Utility Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, would have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region, including those practices required by Federal Power Act section 215(d).

“Governmental Authority” means any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power, including FERC, NERC or any regional reliability council; or any court or governmental tribunal, in each case, having jurisdiction over any Funder (whether as Funder or as Permitting Project Manager) or any of its Affiliates or the development, permitting, siting, acquisition of Rights-of Way, or preliminary design of the Boardman to Hemingway Transmission Project.

“Governmental Authorizations” means any license, permit, order, approval, filing, waiver, exemption, variance, clearance, entitlement, allowance, franchise, or other authorization from or by a Governmental Authority.

“Governmental Requirements” means all laws, statutes, ordinances, rules, regulations, codes, and similar acts or promulgations or other legally enforceable requirements of any Governmental Authority.

“Idaho Power” has the meaning set forth in the Preamble.

“Joint Defense Agreement” has the meaning set forth in Section 11.1.

“Joint Defense Agreement Notice” has the meaning set forth in Section 11.2.

“Manager” has the meaning set forth in Section 13.3(a).

“Mandatory Payments” has the meaning set forth in Section 3.1(a) and Exhibit B.

“Negotiations End Date” has the meaning set forth in Section 3.3(b).

“NEPA” means the National Environmental Policy Act, as the same may be amended from time to time.

“NERC” means the North American Electric Reliability Corporation.

“Non-Defaulting Funders” means a Funder(s) that is not a Defaulting Funder(s).

“Non-Permitting Project Manager Funders” means PAC and BPA.

“Notice of Payment” has the meaning set forth in Section 3.1(b)(ii).

“PAC” has the meaning set forth in the Preamble.

“Person” means an individual, partnership, corporation, limited liability company, joint venture, association, trust, unincorporated organization, Governmental Authority, or other form of entity

“Permit Funding Committee” has the meaning set forth in Section 3.2.

“Permit Funding Payment Schedule” has the meaning set forth in Section 3.1(a)(iii) and Exhibit B.

“Permitting Interest” means, with respect to each of the Funders, their Permitting Interest as set forth in Exhibit D.

“Permitting Project” has the meaning set forth in Section 2.1.

“Permitting Project Manager” means Idaho Power.

“Private Property Interest” has the meaning set forth in Section 2.1.

“Project Costs” has the meaning set forth in Section 3.1(d)

“Project Cost Records” has the meaning set forth in Section 3.1(d).

“Project Permitting Objectives” has the meaning set forth in Section 2.2.

“Project Permitting Timetable” has the meaning set forth in Section 2.2.

“Purchase and Sale Date” has the meaning set forth in Section 3.3(c).

“Purchase and Sale End Date” has the meaning set forth in Section 3.3(c).

“Purchasing Funder” has the meaning set forth in Section 3.3(c).

“Representatives” means, in respect of a Funder or Permitting Project Manager, the directors, officers, shareholders, partners, members, employees, agents, consultants, contractors or other representatives of such Funder or Permitting Project Manager.

“Response Notice” has the meaning set forth in Section 3.3(c).

“Rights-of-Way” means all rights-of-way, easements, grants and other interests on which the Boardman to Hemingway Transmission Project is or will be constructed that are owned or to be owned by Funders or their Affiliates. Private Property Interests are expressly excluded from this Agreement.

“Selling Funder” has the meaning set forth in Section 3.3(c).

“Subchapter K” has the meaning set forth in Section 14.4(b).

“Term” has the meaning set forth in Section 6.1.

“WECC Rating Process” has the meaning set forth in Section 3.3(a)(iii)(A).

“Withdrawal Date” has the meaning set forth in Section 7.2(a).

“Withdrawal Payment” has the meaning set forth in Section 7.2(a).

“Withdrawing Funder” has the meaning set forth in Section 7.1.

1.2 Interpretation. The following rules of interpretation and construction shall apply in this Agreement:

- (a) The masculine shall include the feminine and neuter.
- (b) References to “Articles,” “Sections” and “Exhibits” shall be to articles and sections of and exhibits to this Agreement.
- (c) The Exhibits and Schedule 2.2 attached hereto are incorporated in and are intended to be a part of this Agreement.
- (d) This Agreement was negotiated and prepared by Idaho Power, PAC, and BPA with the advice and participation of counsel. Idaho Power, PAC, and BPA have agreed to the wording of this Agreement and none of the provisions hereof shall be construed against one Funder on the ground that such Funder is the author of this Agreement or any part hereof.
- (e) Each reference in this Agreement to any agreement or document or a portion or provision thereof shall be construed as a reference to the relevant agreement or document as amended, supplemented or otherwise modified from time to time with the written approval of Idaho Power, PAC, and BPA.

- (f) Each reference in this Agreement to Governmental Requirements and to terms defined in, and other provisions of, Governmental Requirements shall be references to the same (or a successor to the same) as amended, supplemented or otherwise modified from time to time.
- (g) The term “day” shall mean a calendar day, the term “month” shall mean a calendar month, and the term “year” shall mean a calendar year. Whenever an event is to be performed, a period commences or ends, or a payment is to be made on or by a particular date and the date in question falls on a day which is not a Business Day, the event shall be performed, or the payment shall be made, on the next succeeding Business Day; provided, however, that all calculations shall be made regardless of whether any given day is a Business Day and whether any given period ends on a Business Day.
- (h) Each reference in this Agreement to a Person includes its successors and permitted assigns; and each reference to a Governmental Authority includes any Governmental Authority succeeding to its functions and capacities.
- (i) In this Agreement, the words “include,” “includes” and “including” are to be construed as being at all times followed by the words “without limitation.” References to “or” shall be deemed to be disjunctive but not necessarily exclusive.
- (j) The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall, unless otherwise specified, refer to this Agreement as a whole and not to any particular provision of this Agreement.

## ARTICLE II THE PERMITTING PROJECT

2.1 Joint Permitting. The Funders desire to jointly fund and support, with the intent to be joint owners pursuant to this Agreement, the process of obtaining Governmental Authorizations and completing other necessary work directly related to the siting, permitting, preliminary designing and acquiring Rights-of-Way for the Boardman to Hemingway Transmission Project (collectively, the “Permitting Project”), in accordance with the terms of this Agreement. The planning, design, procurement, and acquisition of private rights of way, private easements, private licenses, and similar private property interests are expressly excluded from this Agreement (“Private Property Interests”). Neither the Funders nor the Permitting Project Manager shall acquire Private Property Interests for the Boardman to Hemingway Transmission Project without the written agreement, not to be unreasonably withheld, of the then current Funders. Idaho Power, BPA, and PAC will define the terms of any acquisition of Private Property Interests by



amending this Agreement in accordance with Section 14.7, entering into a separate agreement expressly for the purpose of acquiring Private Property Interests, or through the incorporation of Private Property Interests into one or more Definitive Development and Construction Agreements. The Funders intend the terms of the acquisition of Private Property Interests to be consistent with the Permitting Interests established in Exhibit D to this Agreement.

- 2.2 Project Permitting Objectives and Timetable. The objectives (the “Project Permitting Objectives”) and timetable (the “Project Permitting Timetable”) that Idaho Power, PAC, and BPA desire to achieve with respect to the Permitting Project pursuant to this Agreement are set forth in Schedule 2.2. Idaho Power, PAC and BPA agree to use Commercially Reasonable Efforts to achieve the Project Permitting Objectives and Project Permitting Timetable in accordance with Schedule 2.2.

### **ARTICLE III FUNDERS & PERMIT FUNDING COMMITTEE**

#### 3.1 Funders’ Rights & Obligations.

- (a) Payment Obligations. Subject to the provisions of Article VII and after the Effective Date:
- (i) Each Funder is required to pay the mandatory funding payments as set forth in Exhibit B (the “Mandatory Payments”). Any payment made by a Funder will accrue interest, per annum, on behalf of the Funder calculated in accordance with Idaho Power’s AFUDC rate to be credited to the Funder. Any credit shall be included in the funding invoice provided pursuant to Section 3.1(b)(i) and, as applicable, Section 3.1(b)(iii).
  - (ii) A Funder may elect, but is not required, to pay the final funding payment as set forth in Exhibit B (the “Completion Funding Payment”). A Funder that does not elect to pay the Completion Funding Payment set forth in Exhibit B consistent with Sections 3.1(b)(ii) and a Funder that pays such Completion Funding Payment but does not pay the Final Expense True-Up payment consistent with Section 3.1(b)(iii), shall be deemed a Withdrawing Funder under Article VII of this Agreement.
  - (iii) A Funder may, in its sole and absolute discretion, elect to make any of the Mandatory Payments or the Completion Funding Payment, in whole or in part, in advance of the date due identified in the Permit Funding Payment Schedule set forth in Exhibit B, in accordance with Section 3.1(b). In the event a Funder elects to make an early payment which includes an

AFUDC accumulation component, accumulation of AFUDC will cease upon receipt of the payment by the Permitting Project Manager.

- (b) Method of Payment. All payments required under the terms of this Agreement shall be made to an account or accounts designated by the Permitting Project Manager to which payment is owed by electronic transfer in immediately available funds in the lawful currency of the United States. The Permitting Project Manager shall invoice the payments set forth in Exhibit B of this Agreement as follows:
- (i) Mandatory Payments. The Permitting Project Manager shall deliver to the Funders an invoice (“Funding Invoice”) ten (10) days in advance of each of the Mandatory Payment dates as set forth in Exhibit B. The invoice shall provide a sufficient level of detail describing the activities to be performed by the Permitting Project Manager, as requested by the receiving Funder. With the exception of Mandatory Payment 1 which is due twenty (20) days after the Effective Date, Funders shall tender payments to the Permitting Project Manager within forty (40) days of receipt of the Funding Invoice. Any payment past due will accrue interest, per annum, calculated in accordance with Section 3.1(a)(i). The failure of the Permitting Project Manager to timely deliver an invoice shall not relieve any Funder of its payment obligations in respect to the Mandatory Payments or Completion Funding Payment shown on such invoice.
- (ii) Completion Funding Payment. The Permitting Project Manager shall provide the Funders with written notice of the expected date of completion of the Project Permitting Objectives and an invoice for the Completion Funding Payment within sixty (60) days after the publication of a Final Record of Decision by the BLM in the *Federal Register* for the Boardman to Hemingway Transmission Project (the “Final Payment Invoice”). The Final Payment Invoice shall provide a sufficient level of detail describing the activities performed or to be performed by the Permitting Project Manager, as requested by the receiving Funder. The Funders shall provide written notice to the Permitting Project Manager of its intent to pay the Completion Funding Payment within twenty (20) days from receipt of the Final Payment Invoice for the Completion Funding Payment (the “Notice of Payment”). Any Funder who fails to issue a Notice of Payment within such twenty (20) day period or issues a Notice of Payment within such twenty (20) day period but fails to tender payment to the Permitting Project Manager within forty (40) days of the Notice of Payment shall be deemed a Withdrawing Funder pursuant to Article VII, provided,

however, that Idaho Power may not withdraw from this Agreement pursuant to Article VII. The Funders electing to make the Completion Funding Payment shall tender payment to the Permitting Project Manager within forty (40) days of the Notice of Payment.

(iii) Final Expense True-Up Payment. Except where a Funder has withdrawn from this Agreement pursuant to Article VII, the Permitting Project Manager shall deliver to the Funders an invoice one hundred and eighty (180) days following the Notice of Payment relating to a Completion Funding Payment to include a final true up payment as provided in Exhibit B (the “Final Expense True-Up”). The Final Expense True-Up payment shall include all cost adjustments to Mandatory Payments 1, 2 and 4 approved by the Permit Funding Committee and not previously paid by the Funders to the Permitting Project Manager and any credit for any accrued interest not previously received by the Funders pursuant to Section 3.1(a)(i). The invoice shall provide the Funders sufficient level of detail describing the activities performed by the Permitting Project Manager, as requested by the receiving Funder. The Funders shall tender payment to the Permitting Project Manager within thirty (30) days of receipt of the invoice. The failure by the Permitting Project Manager to timely deliver an invoice shall not relieve any Funder of its payment obligations in respect to the Final Expense True-Up payment shown on such invoice. Any true up associated with a Funder’s withdrawal from the Agreement is subject to Article VII. In the case of any overpayment by the Non-Permitting Project Manager Funders, the Permitting Project Manager shall promptly return the amount of the overpayment to the Non-Permitting Project Manager Funder, together with interest for the period from the date of overpayment until such amount has been paid, calculated in the manner prescribed for calculating interest in Section 3.1(a).

(c) Disputed Amounts. If a Funder disputes any portion of any amount described in Exhibit B, the Funder shall pay its total amount of the invoice when due, and, if actually known at the time by the Funder, identify the disputed amount and state that the disputed amount is being paid under protest. Any disputed amount shall be resolved pursuant to the provisions of Article XIII. If it is determined pursuant to Article XIII that an overpayment or underpayment has been made by the Funder or any amount allocated to a Funder on an invoice is incorrect, then (i) in the case of any overpayment by a Funder, the Permitting Project Manager shall promptly return the amount of the overpayment (or credit the amount of the overpayment on the next invoice) to the Funder; and (ii) in the case of an underpayment by the Funder, the Funder shall promptly pay the amount of the

underpayment to the Permitting Project Manager (in each case, together with interest for the period from the date of overpayment, underpayment, or incorrect allocation, until such amount has been paid or credited against a future invoice calculated in the manner prescribed for calculating interest in Section 3.1(a)).

- (d) Audit Rights. Each Funder may, at its cost, at any time during normal business hours and with reasonable prior notice to the Permitting Project Manager and the other Funders, of not less than ten (10) Business Days, but not more often than twice in any twelve (12) month period, inspect and audit the books and records of the Permitting Project Manager and any of its Affiliates (and the Permitting Project Manager shall secure such rights for the Permitting Project Manager from its Affiliates) relating: (1) to the determination of the payments set forth in Exhibit B for which the Funders are responsible under this Agreement, including the costs set forth in Exhibit C (the “Project Costs”), within twelve (12) months prior to the date of the audit notice; and (2) directly related to and involved in formulating the Mandatory Payments, Completion Funding Payment, and any applicable true up payment pursuant to this Agreement (“Project Costs Records”). Audit findings shall be provided to each Funder to this Agreement. If any audit discloses that, during such twelve (12)-month period, an overpayment or underpayment of Project Costs has been made by the Funders or the amount of any Project Costs allocated to the Funders on an invoice is incorrect, then such overpayment, underpayment or incorrect amount shall be resolved pursuant to Article XIII. The Funders requesting the audit shall reimburse one hundred percent (100%) of all reasonable costs and expenses (including internal costs and expenses) incurred by or on behalf of the Permitting Project Manager and any of its Affiliates in complying with the provisions of this Section 3.1(d), provided, however, that such Funders shall not be required to reimburse any such costs if the audit determines that Funders, in combination, have made more than Twenty-Five Thousand Dollars (\$25,000) in overpayments of Project Costs or more than Twenty-Five Thousand Dollars (\$25,000) in Project Costs have been incorrectly allocated to Funders.
- (e) Access. The Permitting Project Manager shall, to the extent possible under any Rights-of-Ways, provide each Funder and its designees reasonable access to the Boardman to Hemingway Transmission Project sites to permit the Funders and their designees to inspect the development, preliminary design, siting, Rights-of-Way acquisition and permitting of the Boardman to Hemingway Transmission Project, provided that (i) the Funders and their designees do not interfere with the development, preliminary designing, siting, Rights-of-Way acquisition and permitting of the Boardman to Hemingway Transmission Project or any portion thereof or pose a safety hazard; (ii) the Funders and their designees comply with

any requirements of any Rights-of-Ways applicable to the Boardman to Hemingway Transmission Project; and (iii) the Funders and their designees performing the inspection comply with the Permitting Project Manager's or any other contractor's safety and security rules, notice of which the Permitting Project Manager shall provide to the Funders.

### 3.2 Permit Funding Committee.

- (a) Scope and Authority. The Permit Funding Committee shall consider, evaluate and take action with respect to mutually resolving the following matters: (1) any and all changes in the scope or schedule of the Permitting Project that directly affect the cost of the Mandatory Payments, Completion Funding Payment or the costs otherwise associated with the Permitting Project; (2) any and all proposed cost adjustments to the Mandatory Payments, Completion Funding Payment or costs otherwise described in Exhibit B; (3) any and all technical specifications and other matters related to the Permitting Project; (4) requests from and provide guidance to the Permitting Project Manager from time to time as necessary or when requested relating to the advancement of the Project Permitting Objectives and Project Timetable, or the Permitting Project; (5) general development of policy and strategy with respect to the Permitting Project; and (6) any and all direct or indirect effects of the development of other regional transmission projects (including project schedule and location of potential interconnection points), including, but not limited to, the Cascade Crossing Project and Gateway West Project, on the development and permitting of the Boardman to Hemingway Transmission Project.
- (b) Membership. The Permit Funding Committee shall be comprised of a representative of each Funder (each a "Funding Committee Representative"). Each Funder's Funding Committee Representative shall be a senior level representative or designee with authority to consider and act to resolve issues that arise between or among the Funders.
- (c) Permitting Project Manager. The Permitting Project Manager shall inform the Permit Funding Committee and the Funding Committee Representatives through formal and informal communication, of the ongoing progress and matters that impact the Governmental Authorizations or other necessary work relating to the Permitting Project. The Permitting Project Manager shall confer and communicate with the Permit Funding Committee and Funding Committee Representatives as to the matters described in Section 3.2(a) or as otherwise provided in this Agreement.

- (d) Funding Committee Meetings. The Permit Funding Committee will meet at least monthly, in person or telephonically, or as deemed necessary by the Funding Committee Representatives. Any Funding Committee Representative may request a meeting of the Permit Funding Committee at any time and for any reason. The Permitting Project Manager shall provide the Permit Funding Committee with regular statements, at least monthly, regarding the Permitting Project that include future expense projections.
- (e) Funding Committee Procedures. The Funding Committee Representatives shall work in good faith to consider, evaluate and make best efforts to mutually resolve any issues that are raised before the Permit Funding Committee. If the Funding Committee Representatives are unable to mutually resolve any issue, they shall refer the matter to the Executives that have the authority to settle the issue. If the Executives are unable to mutually resolve the issue, the Funders may move to dispute resolution as set forth in Article XIII. All communications and writings exchanged between and/or among the Permitting Project Manager, Funding Committee Representatives, and Executives in connection with the Permit Funding Committee shall be treated as Confidential Information in accordance with Article XII.
- (f) Joint Working Groups. Joint working groups may be established by the Permit Funders Committee on an ad hoc basis when the need arises to advance certain specific tasks related to the Permitting Project and the Boardman to Hemingway Transmission Project, including, but not limited to, consultation on technical specifications and other matters related to the Permitting Project.
- (g) Committee Conversion. Within sixty (60) days after one or more Funders tenders Mandatory Payment 3 and the Completion Funding Payment set forth in Exhibit B, the Funders shall amend this Agreement, or enter into a new agreement, that establishes a committee structure that is consistent with the Permitting Interests of the Funders.

### 3.3 Future Agreements

- (a) Negotiation Process
  - (i) Completion Notice. Unless this Agreement is terminated pursuant to Article VI, the Permitting Project Manager shall provide the Funders with written notice within sixty (60) days following the publication of a Final Record of Decision by the BLM in the *Federal Register* for the Boardman to Hemingway Transmission Project (the “Completion Notice”) of the expected date of completion of the Project Permitting Objectives.

Notwithstanding the foregoing, any Funder may commence negotiations pursuant to this Section 3.3 for reaching Definitive Development and Construction Agreements at any time by providing written notice of its desire to do so to the other Funders pursuant Section 14.10.

- (ii) Negotiation Period. Upon receipt of the Completion Notice, the Funders shall meet, subject to Section 3.3(a)(iii), to negotiate one or more Definitive Development and Construction Agreements for up to one hundred eighty (180) days (the “Negotiation Period”). Upon the termination of the Negotiation Period, the Funders may agree to extend the Negotiation Period for an additional period not to exceed one hundred eighty (180) days.
- (iii) Negotiations. During the Negotiation Period, the Funders will attempt, to the greatest extent possible, but subject to the other provisions of this Section 3.3(a)(iii), to keep the Definitive Development and Construction Agreements consistent with the terms and conditions of this Agreement, including the Permitting Interests set forth in Exhibit D, as may be amended from time to time by mutual agreement of the Funders pursuant to Section 14.7. In negotiating the Definitive Development and Construction Agreement the Funders shall also consider the following:
  - (A) Path Rating. The Funders acknowledge and agree that the Permitting Interest set forth in Exhibit D may be impacted by the WECC Three Phase Project Rating Process (the “WECC Rating Process”) and that each Funder’s Permitting Interest is subject to the results of the WECC Rating Process. Subject to the outcome of the WECC Rating Process, the Funders may, using the Permitting Interests set forth in Exhibit D as a baseline for allocation, mutually agree to further negotiate, revise, or adjust the Permitting Interest set forth in Exhibit D for purposes of negotiating Definitive Development and Construction Agreements, including adjustments to Mandatory Payments, the Completion Funding Payment or the Final Expense True-Up paid pursuant to this Agreement. The Funders shall cooperate and support each other in the WECC Rating Process in a manner consistent with Section 4.5.
  - (B) Alternative Analysis. BPA is considering various transmission and other alternatives to meet their service obligations in eastern Idaho. BPA’s decision whether to participate in and timing associated with participation in the development and construction of the

Boardman to Hemingway Transmission Project may be based on BPA's evaluation of such alternatives.

- (C) BPA NEPA Requirements. BPA has certain obligations and responsibilities under NEPA and other applicable Governmental Requirements that must be fulfilled before it can make a definitive decision concerning whether to participate in development and construction of the Boardman to Hemingway Transmission Project. Nothing in this Agreement shall be construed as obligating or committing BPA to enter into the Definitive Development and Construction Agreement before the NEPA review process for the Boardman to Hemingway Transmission Project has been completed and BPA has made a decision regarding how to proceed. Additionally, PAC's participation in the Boardman to Hemingway Transmission Project may be impacted by the schedule and design specifications of the Cascade Crossing Project and/or the Gateway West Project. As a result, or for other reasons, BPA or PAC may decide not to proceed further and to withdraw from this Agreement in accordance with Article VII at any time.
  - (D) Additional Materials. The Funders may request the Permitting Project Manager or other Funders to make available, and the Permitting Project Manager or other Funders will make available, on mutually agreed to terms (such agreement not to be unreasonably withheld) additional information related to the design, engineering, construction, or procurement of materials related to the Boardman to Hemingway Transmission Project that are not part of this Agreement.
- (b) Negotiation Termination. Any negotiations pursuant to this Section 3.3 shall automatically terminate, unless the Negotiation Period is extended as provided in Section 3.3(a)(ii) (the "Negotiations End Date").
  - (c) Transfer of Interest. Following the Negotiations End Date and notwithstanding Article V herein, to the extent a Definitive Development and Construction Agreement is not executed, any Funder who has made all payments pursuant to Exhibit B may issue a written notice to proceed with the development and construction of the Boardman to Hemingway Transmission Project to the other Funders (the "Notice to Proceed"). Notwithstanding anything to the contrary in Article VII, within thirty (30) days of the receipt of the Notice to Proceed, each Funder shall notify the other Funders whether it does or does not desire to proceed with the development and construction of the Boardman to Hemingway



Transmission Project (each a “Response Notice”). Within two (2) years of receipt of the last Response Notice (the “Purchase and Sale End Date”) the Funders who desire to proceed with the development and construction of the Boardman to Hemingway Transmission Project (each a “Purchasing Funder”) shall purchase and the Funders who do not desire to proceed with the development and construction of the Boardman to Hemingway Transmission Project (each a “Selling Funder”) shall sell all of the Selling Funder’s rights, title, and interests in and to the Permitting Project, including all reports, studies, and Governmental Authorizations, Rights of Way, and any other property whatsoever of whatever nature and kind, whether real or personal, tangible or intangible, acquired or perfected by the Permitting Project Manager for the benefit of the Funder(s) pursuant to the terms of this Agreement. Purchasing Funders shall select the date for the purchase and sale (the “Purchase and Sale Date”) which shall occur before the Purchase and Sale End Date, written notice of which they shall provide to the Selling Funders. On the Purchase and Sale Date, the Purchasing Funders shall pay immediately available funds pro-rata (based on their Permitting Interest after giving effect to the sale) and the Selling Funders shall receive the aggregate amount of all payments made pursuant to Exhibit B. The Funders shall execute such agreements and documents as may be reasonably required to facilitate the purchase and sale contemplated pursuant to this Section 3.3 (c).

- (d) If two or more Purchasing Funders remain pursuant to Section 3.3(c), the Purchasing Funders shall meet to negotiate one or more Definitive Development and Construction Agreements pursuant to Sectiond 3.3(a)(ii), (a)(iii), (b), (c) and (d).
- (e) In the event no Funder has issued a Notice to Proceed, the Funders retain their respective right, title and interest in the Permitting Project pursuant to this Agreement.

3.4 Other Projects. Nothing in this Agreement shall preclude a Funder from taking any action (or having its Affiliates take any action) with respect to any other transmission project, including a transmission project that may compete with the Permitting Project.

#### **ARTICLE IV PERMITTING PROJECT MANAGER**

4.1 Appointment of Permitting Project Manager.

- (a) Appointment. The Funders hereby appoint Idaho Power, and Idaho Power hereby accepts appointment, to serve as Permitting Project Manager of the Permitting

Project and will perform the obligations of the Permitting Project Manager expressly set forth in this Agreement, in accordance with the terms and conditions of this Agreement.

- (b) Duty. The Funders agree that the Permitting Project Manager shall not have any obligations, responsibilities or duties to the Funders other than as are expressly provided for in this Agreement.

#### 4.2 Authority of Permitting Project Manager.

- (a) Role of Permitting Project Manager. The Permitting Project Manager shall administer and oversee the Permitting Project and shall be responsible for the day to day activities involved in advancing the Permitting Project to achieve the Project Permitting Objectives and Project Permitting Timetable, including the responsibility for obtaining all required Governmental Authorizations, siting, and Rights-of-Way acquisition relating to the Boardman to Hemingway Transmission Project. The Permitting Project Manager will advance funds in anticipation of receiving the Mandatory Payments from Funders, as necessary, to fulfill the Permitting Project Objectives (“Advance Contributions”). Idaho Power’s Advance Contributions will accrue interest, per annum, calculated in accordance with Idaho Power’s AFUDC rate. The Advance Contributions and accrued AFUDC will be reimbursed as part of the Funder’s Mandatory Payments 2 or 4 as set forth in Exhibit B, as applicable. The Permitting Project Manager shall not collect payments other than those described in Exhibit B or as approved by the Permit Funding Committee. The Permitting Project Manager will exercise or enforce all benefits, rights and remedies under this Agreement for the benefit of the Funders pro rata (in accordance with their respective Permitting Interests) and without adverse distinction or undue discrimination between or against the Funder’s respective Permitting Interests. In furtherance and not in limitation of the immediately preceding sentence, the Permitting Project Manager agrees to transfer, assign, distribute, pay over or otherwise make available to the Non-Permitting Project Manager Funders, the Non-Permitting Project Manager Funder’s pro rata share (based on its respective Permitting Interests) in any payments or proceeds obtained pursuant to this Agreement.
- (b) Communication. The Permitting Project Manager shall have the duty to communicate the status of the Permitting Project, including the Project Permitting Objectives, on a regular basis with the Permitting Funding Committee in a manner consistent with Section 3.2(c).
- (c) Reporting. The Permitting Project Manager shall be responsible for preparing and distributing monthly reports to the Permitting Project Committee (or less

frequently if mutually required by the Permit Funding Committee) regarding (i) Project Costs paid and projected to be incurred, and, to the extent necessary, recommend to the Permit Funding Committee adjustments to the Permit Funding Schedule to satisfy expected Project Costs to be incurred in relation to the Project Permitting Objectives and (ii) activity and progress with respect to achieving the Project Permitting Objectives and the Project Permitting Timetable. The Permitting Project Manager shall be responsible for preparing and distributing reports to the Permit Funding Committee at such other times as any material change occurs or is contemplated that affects the achievement of the Project Permitting Objectives.

- (d) Project Coordination. Notwithstanding anything to the contrary contained in this Agreement, the Permitting Project Manager shall work diligently, consult with and obtain the express written approval of the Funders with respect to the location, technical design and engineering specifications relating directly to the interconnection point of the Boardman to Hemingway Transmission Project and the proposed Cascade Crossing Project and Gateway West Project.

#### 4.3 Funder's Ownership Interests.

- (a) Perfection of Existing Ownership Interests. Commencing on the Effective Date of this Agreement, the Permitting Project Manager will take all necessary and reasonable action, unless prohibited by applicable Governmental Requirements, to perfect and vest, on behalf and in the name of the Funders, in accordance with the Funders' Permitting Interest set forth in Exhibit D, an undivided ownership interest as tenants-in-common in all right, title, and interest in all reports, studies, Governmental Authorizations (including permits) and other property of whatever nature and kind, whether real or personal, tangible or intangible, purchased or acquired prior to the Effective Date by or on behalf of the Permitting Project Manager or Idaho Power for the Boardman to Hemingway Transmission Project, including all Governmental Authorizations and Rights-of-Way required for the Boardman to Hemingway Transmission Project and acquired by Idaho Power hereunder.
- (b) Perfection of Future Ownership Interests. Following the Effective Date of this Agreement, the Permitting Project Manager shall acquire, unless prohibited by applicable Governmental Requirements, on behalf and in the name of the Funders, in accordance with the Funders' respective Permitting Interests set forth in Exhibit D, an undivided ownership interest as tenants-in-common in all right, title, and interest in all reports, studies, Governmental Authorizations (including permits) and other property of whatever nature and kind, whether real or personal,

tangible or intangible, for the Boardman to Hemingway Transmission Project, including all Governmental Authorizations and Rights-of-Way required for the Boardman to Hemingway Transmission Project and acquired by the Permitting Project Manager hereunder. The Funders and the Permitting Project Manager agree that any reports, studies and Governmental Authorizations shall be issued in the names of all Funders. Notwithstanding any provision to the contrary contained in this Agreement, the Permitting Project Manager shall make all applications for Government Authorizations, and shall obtain all such Government Authorizations, reports, and studies, in the name of the Funders, to the extent permitted by applicable Governmental Requirements. In the event a Governmental Authorization, report or study is not issued in the name of all Funders, the Funders and Permitting Project Manager agree to take all necessary and reasonable actions to perfect and vest, on behalf and in the name of the Funders, in accordance with the Funders' respective Permitting Interests, an undivided ownership interest as tenants-in-common in all right, title and interest in all such Governmental Authorizations, reports, and studies.

- (c) Forfeiture of Ownership Interests. In the event any Funder elects not to make all of the payments set forth in Exhibit B, or otherwise withdraws from this Agreement pursuant to Article VII, the Withdrawing Funder shall convey to the remaining Funders all right, title, and interest in this Agreement, as well as all right title and interest in all reports, studies, Governmental Authorizations (including permits), Rights of Way, and any other property whatsoever of whatever nature and kind, whether real or personal, tangible or intangible, acquired or perfected by the Permitting Project Manager for the benefit of the Funders pursuant to the terms of this Agreement pursuant to Section 7.2. If and to the extent the right, title, or interest in any permit or Governmental Authorization is by its terms or pursuant to applicable law not assignable, the Withdrawing Funder shall execute such reasonable agreements, licenses, or other instruments as shall be deemed reasonably necessary by the remaining Funders to otherwise convey all use and enjoyment of the Withdrawing Party's right, title, and interest in such permit or Governmental Authorization.

- 4.4 Standard of Work. The Permitting Project Manager shall perform all of its obligations under this Agreement as an independent contractor and in accordance with Good Utility Practice and applicable Governmental Requirements and Governmental Authorizations and without adverse distinction among the Funders.
- 4.5 Assistance. Each Funder shall cooperate with the Permitting Project Manager promptly, as and when reasonably requested by the Permitting Project Manager, to assist the Permitting Project Manager in the performance of its duties, responsibilities and

obligations under this Agreement, including executing and delivering from time to time such additional documents, certificates or instruments, and taking such additional actions, as may be reasonably requested by the Permitting Project Manager. Each Funder shall bear its own costs for providing such cooperation and assistance as requested by the Permitting Project Manager unless all of the Funders agree otherwise in writing. Each Funder shall provide internal personnel, services, know how, intellectual property or other internal resources as may be reasonably necessary or appropriate to carry out the intent of and to perform the Funders' and Permitting Project Manager's obligations under this Agreement or as all of the Funders may otherwise agree to in writing; provided however, to the extent the Permitting Project Manager desires to use for the purposes of this Agreement services of a Funder that are the subject of a separate agreement, such Funder shall consent, in its sole and absolute discretion, to such use and be reimbursed by the other Funders and the Permitting Project Manager as mutually agreed to by all the Funders. No Funder (other than Idaho Power in its role as Permitting Project Manager) shall have the right to invoice the other Funders for the costs or expenses associated with the utilization of internal personnel, services, know how intellectual property or other internal resources necessary or appropriate to carry out the intent of and to perform its obligations under this Agreement, unless otherwise agreed upon in writing by the Funders. Nothing in this Agreement shall preclude a Funder from exercising any rights expressly granted it under this Agreement or taking any action (or having its Affiliates take any action) with respect to any other transmission project, including any such project that may compete with the Permitting Project. The Permitting Project Manager shall request assistance under this Section 4.5 without adverse distinction of the Funders.

#### 4.6 Remedies.

- (a) Notwithstanding any provision to the contrary contained in this Agreement, the Permitting Project Manager shall not have any liability to the Non-Permitting Project Manager Funders in connection with the performance of its covenants and obligations under this Agreement, provided, however, the Permitting Project Manager shall be liable for any direct actual damages resulting from its own negligence or breach of this Agreement. The Funders agree that each Funder has a duty to mitigate any damages and shall use Commercially Reasonable Efforts to minimize any damages it may incur as a result of the Permitting Project Manager's failure to perform or breach of any of its covenants or obligations under this Agreement.
- (b) The Funders and the Permitting Project Manager acknowledge that the obligations and covenants performed by the Permitting Project Manager hereunder are unique and that the Non-Permitting Project Manager Funders will be irreparably injured should such obligations and covenants not be performed in accordance with the

terms and conditions of this Agreement. Consequently, the Non-Permitting Project Manager Funders will not have an adequate remedy at law if the Permitting Project Manager shall fail to perform its obligations and covenants hereunder. The Non-Permitting Project Manager Funders shall have the right, in addition to any other remedy available under this Agreement, to specific performance of the Permitting Project Manager's obligations and covenants hereunder, and the Funders and the Permitting Project Manager agree not to take a position in any proceeding arising out of this Agreement to the effect that the Non-Permitting Project Manager Funder has an adequate remedy at law.

- 4.7 Injury to Third Parties. Idaho Power and PAC shall be responsible for obtaining and maintaining during the Term insurance covering their respective legal liabilities to third persons or the property of third persons related to their respective obligations under this Agreement in amounts consistent with Good Utility Practice and any applicable Governmental Requirements. Insurance coverage required by this Section 4.7 for Idaho Power and PAC may be through a carrier or self-insured, or any combination of carrier insured and self-insured. BPA shall be responsible for injury or damage to third persons or the property of third parties related to its obligations under this Agreement and caused by BPA in accordance with the provisions of the Federal Tort Claims Act.

## **ARTICLE V TRANSFER OF RIGHTS AND INTERESTS; ASSIGNMENT**

- 5.1 Prohibited Transfers and Assignments. Except as provided in Section 3.3(c) and Section 5.2, no Funder may, without the express written consent of the other Funders (such consent not to be unreasonably withheld, conditioned or delayed) sell, assign, transfer, convey or otherwise dispose of, directly, in whole or in part, any of its rights, titles or interest in and to (a) this Agreement including its rights, duties and obligations hereunder, or (b) the Permitting Project. Any sale, assignment, transfer, conveyance or other disposition in violation of this Article V shall be null and void.
- 5.2 Permitted Assignments and Transfers. Notwithstanding anything to the contrary contained in this Agreement, Section 5.1 shall not restrict:
- (a) the right of any Funder to transfer voluntarily (and without the consent of the other Funders) all of its Permitting Interest in the Permitting Project and all of its rights, titles and interests in and to this Agreement (including all of its rights and obligations in this Agreement as Permitting Project Manager, if any) in connection with any sale, merger or other transfer of substantially all of such Funder's electric transmission facilities as an operating entity; provided, however, that the effectiveness of such assignment shall be conditioned upon the assignee

agreeing in writing to assume all of the rights and obligations of the assigning Funder under this Agreement (including all of its rights and obligations in this Agreement as Permitting Project Manager, if any) as of the effective date of assignment;

- (b) the right of any Funder to transfer voluntarily (and without the consent of the other Funders) all of its Permitting Interest in the Permitting Project and all of its rights, titles and interests in and to this Agreement (including all of its rights and obligations in this Agreement as Permitting Project Manager, if any) to an Affiliate of the Funder; provided, however, that the effectiveness of such assignment shall be conditioned upon the assignee agreeing in writing to assume all of the rights and obligations of the assigning Funder under this Agreement (including all of its rights and obligations in this Agreement as Permitting Project Manager, if any) as of the effective date of assignment;
- (c) the right of any Funder to transfer voluntarily all of its Permitting Interest in the Permitting Project and all of its rights, titles and interest in and to this Agreement (including all of its rights and obligations in this Agreement as Permitting Project Manager, if any) to a third party that is financially and technically capable of performing the transferring Funder's (and, Permitting Project Manager's, if any) obligations under this Agreement; provided that: (i) the other Funders approve, in their sole discretion, such transfer, and (ii) the other Funders are offered the right of first refusal to purchase such Permitting Interest and all of the transferring Party' rights, titles and interests in and to this Agreement (including all of its rights and obligations in this Agreement as Permitting Project Manager, if any) at the amounts set forth in the Permitting Funding Schedule; provided, however, that the effectiveness of such assignment shall be conditioned upon the third-party purchaser agreeing in writing to assume all of the rights and obligations of the assigning Funder under this Agreement (including all of its rights and obligations in this Agreement as Permitting Project Manager, if any) as of the effective date of assignment.

5.3 Release. Upon any assignment or transfer pursuant to this Section 5.2, no Funder transferring or assigning its right, title and interest in this Agreement and the Permitting Project shall have any further obligations or responsibilities under this Agreement.

## ARTICLE VI TERM

6.1 Term. The term of this Agreement ("Term") shall commence on the Effective Date and shall continue in full force and effect until the successful completion of the duties and obligations under this Agreement in accordance with the terms of this Agreement, unless

terminated earlier as set forth in this Article VI. Notwithstanding the foregoing, this Agreement shall terminate not later than January 1, 2022.

6.2 Early Termination.

- (a) The Term of this Agreement shall terminate effective upon the occurrence of any of the following:
  - (i) Withdrawal of two (2) Funders, if there are three (3) Funders at the time, or one (1) Funder, if there are only two (2) Funders at the time, in each case, pursuant to Article VII;
  - (ii) the mutual written consent of the Funders; or
  - (iii) The effective date of a separate written agreement among all of the then current Funders which by its terms supersedes this Agreement.
- (b) If this Agreement is terminated pursuant to this Section 6.2, then, except as for those provisions that are expressly intended to survive termination pursuant to this Agreement, this Agreement shall terminate and become void and of no further force and effect, without further action by any Funder, provided that no Funder shall be relieved from any of its obligations or liabilities hereunder accruing prior thereto.
- (c) If this Agreement is terminated pursuant to Section 6.2(a)(i), then the Non-Withdrawing Funder may, in its sole and absolute discretion, proceed with the Permitting Project.

**ARTICLE VII  
WITHDRAWAL**

- 7.1 Withdrawal. PAC or BPA may withdraw from this Agreement at any time and for any reason, or for no reason, subject to the limitations of this Article VII (a “Withdrawing Funder”). Idaho Power shall have no right to withdraw from this Agreement under any circumstance or at any time, including if it is a Defaulting Funder pursuant to Article VIII. A Withdrawing Funder shall provide reasonable prior written notice to the other Funders of its intent to withdraw from this Agreement (“Notice of Withdrawal”), and the Notice of Withdrawal shall specify the effective date of withdrawal, which in no event shall be less than five (5) Business Days after the date of delivery of the Notice of Withdrawal.
- 7.2 Effect of Withdrawal. The Withdrawing Funder’s withdrawal from this Agreement shall be subject to the following:



- (a) Withdrawal will become effective as of the last day of the month the Withdrawing Funder provides its Notice of Withdrawal (“Withdrawal Date”). As of the Withdrawal Date, the Withdrawing Funder shall be obligated to pay the Permitting Project Manager any outstanding Mandatory Payments identified in Exhibit B, including a true up that shall include all cost adjustments to Mandatory Payments 1, 2 and 4 approved by the Funding Committee and not previously paid by the Withdrawing Funder as of the Withdrawal Date and any credit for any accrued interest pursuant to Section 3.1(a)(i) (the “Withdrawal Payment”). The Permitting Project Manager shall invoice, in a manner consistent with Section 3.1(b), the Withdrawing Funder for the Withdrawal Payment within one hundred twenty (120) days following the Withdrawal Date.
- (b) Except as otherwise provided in Article III of this Agreement, effective as of the Withdrawal Date, a Withdrawing Funder shall forfeit and transfer to the remaining Funders all of its right, title and interest in: (i) the Permitting Project, including all Governmental Authorizations, and amounts paid to the Permitting Project Manager through the Withdrawal Date; (ii) all Rights-of-Way issued by the BLM and other federal agencies (including any other permits, licenses, options, permissions); and (iii) any and all reports and studies. The Withdrawing Funder’s Permitting Interest (including all project investments associated therewith) shall be allocated to the remaining Funders at no cost to the remaining Funders, such that the remaining Funders shall have 100% of the Permitting Interest in the Permitting Project.
- (c) The Withdrawing Funder shall execute such documents and instruments as may be reasonably requested by the remaining Funders in connection with the withdrawal, including as may be necessary to evidence the Withdrawing Funder’s relinquishment of its rights, titles and interest in the Permitting Project; provided, however, that the remaining Funders shall not be obligated to pay or reimburse the Withdrawing Funders for any Project Costs or the Withdrawal Payment paid to the Permitting Project Manager through the Withdrawal Date or to otherwise compensate the Withdrawing Funder for its rights, titles and interest in the Project.

## **ARTICLE VIII EVENT OF DEFAULT**

- 8.1 Event of Default. Each of the following events shall constitute an event of default (“Event of Default”) by the defaulting Funder, including the Permitting Manager Funder, (a “Defaulting Funder”):

- (a) Subject to Section 3.1(b)(ii), the failure to make, when due, any payment required pursuant to this Agreement, if such failure is not remedied within ninety (90) days after written notice thereof from a Non-Defaulting Funder;
- (b) any material representation or warranty made by a Defaulting Funder herein that is false or misleading in any material respect when made, unless (i) the fact, circumstance or condition that is the subject of such representation or warranty is made true within thirty (30) days after notice thereof from a Non-Defaulting Funder, provided that if the fact, circumstance or condition that is the subject of such representation or warranty reasonably cannot be corrected within such thirty (30) day period, then the Defaulting Funder shall have an additional period of time (not to exceed sixty (60) days) in which to correct the fact, circumstance or condition that is the subject of such representation or warranty so long as the Defaulting Funder commences good faith activities to correct the fact, circumstance or condition that is the subject of such representation or warranty during the initial 30-day cure period and continues thereafter to utilize Commercially Reasonable Efforts to effect a cure, and (ii) (A) such cure removes any adverse effect on the Non-Defaulting Funders of such fact, circumstance or condition being otherwise than as first represented, or (B) such fact, circumstance or condition being otherwise than as first represented does not materially adversely affect the Non-Defaulting Funders;
- (c) a transfer, assignment or other disposition of its interest in this Agreement or its Permitting Interest in the Permitting Project, in each case, in violation of Article V;
- (d) the failure to perform or breach of any material covenant or obligation set forth in this Agreement (other than provided for in this Section 8.1), if such failure is not remedied within thirty (30) days after written notice thereof from a Non-Defaulting Funder, provided that if such failure or breach cannot reasonably be cured within thirty (30) days, then the Defaulting Funder shall have an additional period of time (not to exceed ninety (90) days) in which to cure such failure or breach so long as the Defaulting Funder commences good faith activities to cure the failure or breach during the initial 30-day cure period and thereafter continues to utilize Commercially Reasonable Efforts to effect a cure; or
- (e) the Defaulting Funder or the Permitting Project Manager becomes Bankrupt.

8.2 Cure by Non-Defaulting Funders. If a Defaulting Funder fails to cure an Event of Default, then the Non-Defaulting Funders may, individually or together, in their respective sole discretion, attempt to cure the Event of Default, provided that the

Defaulting Funder shall reimburse the Non-Defaulting Funders for all costs and expenses incurred by or on behalf of the Non-Defaulting Funders pursuant to this Section 8.2.

### 8.3 Remedies.

- (a) If an Event of Default occurs and is continuing, then each of the Non-Defaulting Funders shall be entitled to exercise any of its remedies provided for in this Agreement and any of its remedies at law or in equity, including recovery from the Defaulting Funder of any damages suffered as a result of the Event of Default, subject to Section 11.6. The Non-Defaulting Funders shall use Commercially Reasonable Efforts to mitigate any damages suffered as a result of the Event of Default.
- (b) If an Event of Default by BPA or PAC occurs and is not cured as provided in this Article VIII, then BPA or PAC, as the Defaulting Funder, shall be deemed to be a Withdrawing Funder under and subject to the terms of Article VII.
- (c) The Funders acknowledge that the obligations and covenants performed by Idaho Power (as a Funder and Permitting Project Manager) hereunder are unique. If an Event of Default by Idaho Power occurs and is not cured as provided in this Article VIII, BPA and PAC shall have the right, in addition to any other remedy available under this Agreement, at law, or in equity, to seek specific performance of Idaho Power's obligations and covenants hereunder, and the Non-Defaulting Funders agree not to take a position in any proceeding arising out of this Agreement to the effect that the Non-Defaulting Funders have an adequate remedy at law.

## **ARTICLE IX FORCE MAJEURE**

- 9.1 Force Majeure Defined. For purposes of this Agreement, “Force Majeure” means an event or circumstance beyond the reasonable control of, and without the fault or negligence of, a Funder or Permitting Project Manager claiming Force Majeure (“Affected Party”), which, despite the exercise of reasonable diligence, cannot be or be caused to be prevented, avoided or removed by such Affected Party including, to the extent satisfying the above requirements, acts of God; earthquake; abnormal weather condition; hurricane; flood; lightning; high winds; drought; peril of the sea; explosion; fire; war (declared or undeclared); military action; sabotage; riot; insurrection; civil unrest or disturbance; acts of terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out that are of an industry or sector-wide nature and that are not directed solely or specifically at the Affected Party; the binding order of any Governmental Authority, provided that the Affected Party has in good faith reasonably

contested such order; the failure to act on the part of any Governmental Authority, provided that such action has been timely requested and diligently pursued; unavailability of equipment, supplies or products, but only to the extent caused by Force Majeure; failure of equipment, provided that the equipment has been operated and maintained in accordance with Good Utility Practice; and transportation delays or accidents, but only to the extent otherwise caused by Force Majeure; provided, however, that neither insufficiency of funds, financial inability to perform nor changes in market conditions shall constitute Force Majeure.

## 9.2 Effect of Force Majeure.

- (a) If an Affected Party is rendered wholly or partly unable to perform its obligations under this Agreement or its performance is delayed because of Force Majeure, such Affected Party shall be excused from, and shall not be liable for, whatever performance it is unable to perform or delayed in performing due to the Force Majeure to the extent so affected, provided that:
  - (i) The Affected Party, as soon as reasonably practical after the commencement of the Force Majeure, gives the other Funders (s) and/or the Project Manager prompt written notice thereof, including a description of the particulars of the Force Majeure;
  - (ii) The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure; and
  - (iii) The Affected Party uses Commercially Reasonable Efforts to overcome and remedy its inability to perform as soon as reasonably practical after the commencement of the Force Majeure.
- (b) Notwithstanding anything in this Article IX to the contrary, no payment obligation arising under this Agreement prior to the date of an event of Force Majeure shall be excused by such event of Force Majeure.
- (c) Whenever an Affected Party is required to commence or complete any action within a specified period and is prevented or delayed by Force Majeure from commencing or completing such action within the specified period, such period shall be extended by an amount equal to the duration of such event of Force Majeure occurring or continuing during such period.

**ARTICLE X  
REPRESENTATIONS AND WARRANTIES**

10.1 Representations and Warranties of Idaho Power. Idaho Power represents and warrants to PAC and BPA as of the Effective Date as follows:

- (a) It is duly formed, validly existing and in good standing under the laws of the jurisdiction of its formation.
- (b) It has all requisite corporate power necessary to own its assets and carry on its business as now being conducted or as proposed to be conducted under this Agreement.
- (c) It has all necessary corporate power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, and the execution and delivery of this Agreement and the performance by it of this Agreement have been duly authorized by all necessary corporate action on its part.
- (d) The execution and delivery of this Agreement and the performance by it of this Agreement do not: (i) violate its organizational documents; (ii) violate any Governmental Requirements applicable to it; or (iii) result in a breach of or constitute a default of any material agreement to which it is a party.
- (e) This Agreement has been duly and validly executed and delivered by it and constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms, except as the same may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and by principles of equity regardless of whether such principles are considered in a proceeding at law or in equity.
- (f) All material Governmental Authorizations required by Governmental Requirements to have been obtained by it prior to the date hereof in connection with the due execution and delivery of, and performance by it of its obligations under, this Agreement, have been duly obtained or made and are in full force and effect.

10.2 Representations and Warranties of PAC. PAC represents and warrants to BPA and Idaho Power as of the Effective Date as follows:

- (a) It is duly formed, validly existing and in good standing under the laws of the jurisdiction of its formation.

- (b) It has all requisite corporate power necessary to own its assets and carry on its business as now being conducted or as proposed to be conducted under this Agreement.
- (c) It has all necessary corporate power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, and the execution and delivery of this Agreement and the performance by it of this Agreement have been duly authorized by all necessary corporate action on its part.
- (d) The execution and delivery of this Agreement and the performance by it of this Agreement do not: (i) violate its organizational documents; (ii) violate any Governmental Requirements applicable to it; or (iii) result in a breach of or constitute a default of any material agreement to which it is a party.
- (e) This Agreement has been duly and validly executed and delivered by it and constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms, except as the same may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and by principles of equity regardless of whether such principles are considered in a proceeding at law or in equity.
- (f) All material Governmental Authorizations required by Governmental Requirements to have been obtained by it prior to the date hereof in connection with the due execution and delivery of, and performance by it of its obligations under, this Agreement, have been duly obtained or made and are in full force and effect.

10.3 Representations and Warranties of BPA. BPA represents and warrants to PAC and Idaho Power as of the Effective Date as follows:

- (a) It is duly formed, validly existing and in good standing under the laws of the jurisdiction of its formation.
- (b) It has all requisite statutory and administrative power necessary to own its assets and carry on its business as now being conducted or as proposed to be conducted under this Agreement.
- (c) It has all necessary statutory and administrative power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, and the execution and delivery of this Agreement and the performance by it of this Agreement have been duly authorized by all necessary statutory or administrative action on its part.

- (d) The execution and delivery of this Agreement and the performance by it of this Agreement do not: (i) violate its organizational documents; (ii) violate any Governmental Requirements applicable to it; or (iii) result in a breach of or constitute a default of any material agreement to which it is a party.
- (e) This Agreement has been duly and validly executed and delivered by it and constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms, except as the same may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and by principles of equity regardless of whether such principles are considered in a proceeding at law or in equity.
- (f) All material Governmental Authorizations required by Governmental Requirements to have been obtained by it prior to the date hereof in connection with the due execution and delivery of, and performance by it of its obligations under, this Agreement, have been duly obtained or made and are in full force and effect.

**ARTICLE XI  
COMMON DEFENSE & LIMITATION OF LIABILITY**

11.1 Common Defense. The Funders shall, at such time as specified in this Section 11, enter into a Joint Defense Agreement that is consistent with applicable Governmental Requirements and that provides for the common defense, as well as payment for the common defense, including actual damages, for any and all suits, actions, liabilities, legal proceedings, claims, demands, losses, costs and expenses of whatsoever kind or character ( including reasonable attorneys' fees and expenses of third parties) of third parties, for injury or death of persons or physical loss of or damage to property of persons (other than of the Funders or the Permitting Project Manager) arising from the performance by the Permitting Project Manager of its obligations under this Agreement ("Claims"); provided, however, that the Funders shall not be obligated to enter into a Joint Defense Agreement or otherwise be responsible for any Claims arising from the Permitting Project Manager's own negligence or willful misconduct in connection with the performance of its obligations under this Agreement. The Joint Defense Agreement shall set forth the terms under which the Funders shall provide a common defense for the Claims described in this Section 11.1, including, but not limited to, the retention of appropriate legal counsel, advisors, and experts and the resolution of any such Claims. Each Funder shall contribute under the Joint Defense Agreement, in proportion to its Permitting Interest set forth in Exhibit D, or as otherwise mutually agreed to by the Funders in writing, to such common defense.

- 11.2 Notice and Participation. The Permitting Project Manager shall give the other Funders prompt written notice of any Claim upon the receipt of actual knowledge or information by the Permitting Project Manager of a Claim (the “Joint Defense Agreement Notice”). Upon the issuance of the Joint Defense Agreement Notice, the Funders and Permitting Project Manager shall use all Commercially Reasonable Efforts to agree to the terms of and enter into a Joint Defense Agreement consistent with the provisions of this Section 11 as soon as practicable. Except as otherwise provided in Section 11.1, during such period as the Funders shall not be a party to a Joint Defense Agreement but a Joint Defense Agreement Notice or Joint Defense Agreement Notices shall have been delivered, each of the Funders shall contribute funds and otherwise support the common defense of the Claims that are the subject of such Joint Defense Agreement Notice, in proportion to its Permitting Interest set forth in Exhibit D or as otherwise mutually agreed to by the Funders in writing, and during such period all costs incurred by or on behalf of the Permitting Project Manager for the defense or resolution of any such Claims (including, but not limited to, actual damages to be paid to resolve such Claims and reasonable attorneys’ fees and costs) shall be considered Project Costs and payable to the Permitting Project Manager in proportion to the Funders’ Permitting Interest set forth in Exhibit D and pursuant to the terms of this Agreement.
- 11.3 Control of Defense Prior to Joint Defense Agreement. After delivery of a Joint Defense Agreement Notice but before the Funders have entered into a Joint Defense Agreement, the Permitting Project Manager shall have the right to assume the defense of the Claim, with counsel designated by the Permitting Project Manager and reasonably satisfactory to the Funders, and contest or, with or without the prior consent of the Funders, settle such Claim, provided that the Permitting Project Manager shall not settle any Claim with respect to which it has sought or is entitled to seek recovery pursuant to Section 11.1 unless it has obtained the prior written consent of the Funders.
- 11.4 Failure to Provide Timely Joint Defense Agreement Notice. The Funders shall have no obligation to enter into a Joint Defense Agreement for any Claim for which a Joint Defense Agreement Notice is not timely provided, but only to the extent that such failure to give such notice materially and prejudicially impairs the ability of the Funders to jointly defend the applicable Claim. To the extent that failure to provide a timely Joint Defense Agreement Notice materially and prejudicially impairs a Funder’s ability to jointly defend the applicable Claim, the Permitting Project Manager shall not be entitled to recover any costs incurred by or on behalf of the Permitting Project Manager in respect of such Claim as such Claim shall not be considered a Project Cost.
- 11.5 Survival of Obligation. The duty to provide for the common defense and enter into a Joint Defense Agreement shall continue in full force and effect for a period of one year after the expiration or termination of this Agreement, unless a Funder withdraws pursuant to Article VII in which case the duties and obligations under Sections 11.1 and 11.2 shall



not apply to the Withdrawing Funder for any Claim where it receives the Joint Defense Agreement Notice after the Notice of Withdrawal.

11.6 Limitation on Liability.

- (a) In the case of breach or default by a Funder or Permitting Project Manager hereunder for which an express remedy or measure of damages is provided, such express remedy or measure of damages shall be the sole and exclusive remedy, and the Funder's or Permitting Project Manager's liability shall be limited as set forth in such provision and all other remedies or damages at law or in equity are hereby irrevocably waived, unless the provision in question provides that the express remedies are in addition to other remedies that may be available. Unless otherwise provided in this Agreement, if no remedy or measure of damages is expressly provided herein (and a remedy or damages is otherwise permitted), then the Funder's or Permitting Project Manager's liability shall be limited to direct actual damages only, and such direct actual damages shall be the sole and exclusive remedy and all other remedies or damages at law or in equity are hereby irrevocably waived.
- (b) Notwithstanding any provision in this Agreement to the contrary, no Funder, whether in its capacity as Funder or Permitting Project Manager, shall be liable under this Agreement in any action at law or in equity, whether based on contract, tort or strict liability or otherwise, for any special, incidental, indirect, exemplary, punitive or consequential damages or losses, including any loss of revenue, income, profits or investment opportunities, loss of the use of equipment, or the cost of temporary equipment or services, provided that any Claims shall not be excluded under this Section 11.6(b) as special, incidental, indirect, exemplary, punitive or consequential damages or losses.

**ARTICLE XII  
PROPRIETARY INFORMATION**

- 12.1 Disclosure of Proprietary Information Prohibited. The Funders agree that all information exchanged in connection with this Agreement (but not this Agreement) shall be treated as "Confidential Information" subject to the terms and conditions of the Nondisclosure Agreement, dated March 15, 2010, between the Funders (the "Confidentiality Agreement"), the provisions of which are incorporated herein by reference.
- 12.2 Publicity. Each Funder shall provide reasonable advance notice to, and shall consult with, the other Funders of any planned press release, public statement or meeting with the public or Governmental Authorities by such Funder in which discussion of the Permitting Project is expected to be a material part, provided that nothing herein shall prevent, limit, or delay any Funder from making any disclosure required by Governmental

Requirements or Governmental Authorizations. Each Funder shall provide notice to the other Funders as promptly as possible of the nature and content of any significant unplanned communications about the Permitting Project with the public or with Governmental Authorities. Notwithstanding the foregoing, when the information provided at a meeting is part of a previously agreed to public affairs plan or otherwise previously approved for disclosure by the Funders, notice of each such meeting or communication is not required.

### **ARTICLE XIII DISPUTE RESOLUTION**

- 13.1 Exclusive Procedure. Any dispute, controversy or claim arising out of or relating to this Agreement or the breach, interpretation, termination, performance or validity of this Agreement (each, a “Dispute”) shall be resolved pursuant to the procedures of this Article XIII.
- 13.2 Dispute Notices. If a Dispute arises between the Funders or between the Permitting Project Manager and the Non-Permitting Project Manager Funders, then any Funder or Permitting Project Manager to such Dispute (each, a “Disputing Party”) may provide written notice thereof to the other Disputing Parties, including a detailed description of the subject matter of the Dispute (the “Dispute Notice”). Any Disputing Party may seek a preliminary injunction or other provisional judicial remedy to the extent allowed by law if such action is necessary to prevent irreparable harm or preserve the status quo, in which case the Disputing Party nonetheless will continue to pursue resolution of the Dispute pursuant to this Article XIII.
- 13.3 Informal Dispute Resolution.
- (a) The Disputing Parties shall make a good faith effort to resolve the Dispute by prompt negotiations between and/or among each Disputing Party’s representative so designated in writing to the other Disputing Party or Disputing Parties (each a “Manager”). If the Managers are not able to resolve the Dispute within thirty (30) days after the date of the Dispute Notice, they shall refer the matter to the designated senior officers of the Disputing Parties (the “Executives”), who shall have authority to settle the Dispute. If the Executives are not able to resolve the Dispute within sixty (60) days after the date of the Dispute Notice, then the Dispute shall be resolved pursuant to Section 13.4.
  - (b) All communications and writings exchanged between and/or among the Disputing Parties in connection with these negotiations shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process between the

Disputing Parties, either with respect to the current Dispute or any future Dispute between the Funders and/or the Permitting Project Manager.

- 13.4 Remedies. If any Dispute arising under this Agreement cannot be resolved as provided in Section 13.3, then any Disputing Party may, in its sole discretion, pursue any available remedy at law or equity.
- 13.5 Continued Performance. During the pendency of any Dispute, each Funder and the Permitting Project Manager shall continue to perform all of its respective obligations under this Agreement.

#### **ARTICLE XIV MISCELLANEOUS**

- 14.1 Counterparts. This Agreement may be executed in counterparts, each of which shall be considered an original, but all of which together shall constitute the same instrument. Electronic transmission of any signed original document, and retransmission of any signed electronic transmission, shall be the same as delivery of an original. At the request of any Funder or the Permitting Project Manager, the other Funders or Permitting Project Manager, as applicable, will confirm electronically transmitted signatures by signing an original document.
- 14.2 Headings. The Article and Section headings used in this Agreement (including headings used in any Exhibits attached hereto) are for convenience of reference only and shall not affect the construction of the Agreement or limit the scope of the particular provisions to which they refer.
- 14.3 Waiver. No waiver by any Funder of any breach or default by any other Funder or the Permitting Project Manager of its obligations herein shall be construed as a waiver of any other breach or default whether of a like kind or different nature. Any delay by a Funder, less than any applicable statutory period of limitations, in asserting or enforcing any rights or remedies under this Agreement shall not be deemed a waiver of such rights or remedies. Failure of any Funder or Permitting Project Manager to enforce any provision hereof shall not be construed to waive such provision, or to affect the validity of this Agreement or any part hereof, or the right of any Funder thereafter to enforce each and every provision hereof.
- 14.4 Relationship of Funders.
- (a) Several and not Joint. The covenants, obligations, and liabilities of the Funders are intended to be several and not joint or collective, and nothing herein contained shall be construed to create an association, joint venture, trust or partnership, or to impose a trust or partnership covenant, obligation or liability on or with regard to

any of the Funders. Each Funder shall be individually responsible for its own covenants, obligations and liabilities as herein provided. No Funders shall be under the control of, or shall be deemed to control, the other Funders. No Funder shall have a right or power to bind any other Funder without such other Funder's express written consent.

- (b) No Partnership. None of the provisions of this Agreement shall be deemed to constitute a partnership among or between the Funders and none of the Funders shall have any authority to bind the other Funders in any way, and the Funders agree that the arrangement contemplated by this Agreement shall be excluded from subchapter K of the U.S. Internal Revenue Code of 1986, as amended ("Subchapter K"). Idaho Power and PAC agree to report their respective Permitting Interest of any items of income, deductions and credits of the arrangement contemplated by this Agreement in a manner consistent with the exclusion of such arrangement from Subchapter K beginning with the taxable year which includes the Effective Date.
- (c) Additional Funders. This Agreement may be amended to include one or more additional parties as Funders upon mutual written agreement of the then current Funders.

14.5 Severability. In the event that any provision of this Agreement or the application thereof becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of Idaho Power, PAC, and BPA. The Funders and Permitting Project Manager further agree to replace such illegal, void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the maximum extent possible, the economic, business and other purposes of such illegal, void or unenforceable provision.

14.6 Binding Effect. Upon execution by all Funders, this Agreement shall be binding upon each of the Funders and the Permitting Project Manager and their respective successors and permitted assigns. This Agreement is null and void unless it is executed by all Funders.

14.7 Amendments. This Agreement shall not be modified, amended, supplemented or otherwise changed in any respect except by a written document signed by the Funders and the Permitting Project Manager.

14.8 No Third Party Beneficiary. This Agreement is for the exclusive benefit of the Funders and the Permitting Project Manager, and is not intended to nor shall be construed to

confer upon or give to any Person (other than the Funders and the Permitting Project Manager) any rights or remedies under or by reason of this Agreement or any transaction contemplated herein.

14.9 Entire Agreement. This Agreement, including the Exhibits and Schedule 2.2 attached hereto, constitutes the entire agreement of the Funders and the Permitting Project Manager with respect to the transactions contemplated by this Agreement and supersedes all prior agreements (other than the Confidentiality Agreement), oral or written, with respect thereto.

14.10 Notices.

- (a) Except as otherwise provided herein, any notice, demand, request or other communication required or permitted to be given pursuant to this Agreement shall be in writing and signed by the Funder or Permitting Project Manager giving such notice, demand, request or other communication and shall be hand delivered or sent by certified mail, return receipt requested, or overnight courier to the other Funders and/or Permitting Project Manager at the address set forth below:

If to Idaho Power

(as Funder or Permitting Project Manager)

Idaho Power Company  
1221 West Idaho Street  
Boise, ID 83702  
Attn: Manager, Delivery Projects  
Telephone: 208-388-2741

With a copy to:

Idaho Power Company  
1221 West Idaho Street  
Boise, ID 83702  
Attn: Legal Department  
Telephone: 208-388-2300

If to PAC

(as Funder)

PacifiCorp  
825 NE Multnomah Street, Ste. 1600  
Portland, OR 97232  
Attn: Vice President, Transmission  
Telephone: 503-813-6712

With a copy to:

PacifiCorp  
825 NE Multnomah Street, Ste. 1800  
Portland, OR 97232  
Attn: Legal Department  
Telephone: 503-813-5854

If to BPA

(as Funder)

Bonneville Power Administration  
5411 NE Highway 99  
Vancouver, WA 98663  
Attn: Senior Vice President,  
Transmission Services  
Telephone: 360-418-2122

With a copy to:

Bonneville Power Administration  
905 NE 11<sup>th</sup> Avenue  
Portland, OR 97232  
Attn: Office of General Counsel  
Telephone: 503-230-4201

- (b) Each Funder and the Permitting Project Manager shall have the right to change the place to which any notice, demand, request or other communication shall be sent or delivered by similar notice sent in like manner to the other Funder(s) and Permitting Project Manager. The effective date of any notice, demand, request or other communication issued pursuant to this Agreement shall be when: (i) delivered to the address of the Funders or Permitting Project Manager personally, by messenger, by a nationally or internationally recognized overnight delivery service or otherwise; or (ii) received or rejected by the Funders or Permitting Project Manager, if sent by certified mail, return receipt requested, in each case, addressed to the Funders or Permitting Project Manager at its address and marked to the attention of the person designated above (or to such other address or person as a Funders or Permitting Project Manager may designate by notice to the Funders and/or Permitting Project Manager effective as of the date of receipt by such Funders).


14.11 Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho, without giving effect to conflicts of laws principles. Notwithstanding the foregoing, for so long as BPA is a Funder, this Agreement shall be governed and construed in accordance with the laws of the United States.

- 14.12 Further Assurances. Each Funder and the Permitting Project Manager agrees to execute and deliver from time to time such additional documents, and to take such additional actions, as may be reasonably required by the other Funders or the Permitting Project Manager to give effect to the purposes and intent hereof.
- 14.13 Conflict of Interest. Nothing in this Agreement shall prohibit any Funder or the Permitting Project Manager from engaging in or possessing any interest in other projects or business ventures of any nature and description, independently or with others.

**[SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF, the Funders hereto have caused this Boardman to Hemingway Transmission Project Joint Permit Funding Agreement to be executed by their respective authorized representatives on the day and year first above written.

IDAHO POWER COMPANY,  
as Funder and Permitting Project Manager

By   
Date 1/12/12

PACIFICORP,  
as Funder

By \_\_\_\_\_  
Date \_\_\_\_\_

BONNEVILLE POWER ADMINISTRATION,  
as Funder

By \_\_\_\_\_  
Date \_\_\_\_\_



IN WITNESS WHEREOF, the Funders hereto have caused this Boardman to Hemingway Transmission Project Joint Permit Funding Agreement to be executed by their respective authorized representatives on the day and year first above written.

IDAHO POWER COMPANY,  
as Funder and Permitting Project Manager

By \_\_\_\_\_

Date \_\_\_\_\_

PACIFICORP,  
as Funder

By \_\_\_\_\_

Date \_\_\_\_\_

BONNEVILLE POWER ADMINISTRATION,  
as Funder

By Bruce Schuster

Date 1/12/12

IN WITNESS WHEREOF, the Funders hereto have caused this Boardman to Hemingway Transmission Project Joint Permit Funding Agreement to be executed by their respective authorized representatives on the day and year first above written.

IDAHO POWER COMPANY,  
as Funder and Permitting Project Manager

By \_\_\_\_\_

Date \_\_\_\_\_

PACIFICORP,  
as Funder

By  \_\_\_\_\_

Date 1/12/12 \_\_\_\_\_

BONNEVILLE POWER ADMINISTRATION,  
as Funder

By \_\_\_\_\_

Date \_\_\_\_\_

## Exhibit A

### Description of Boardman to Hemingway Transmission Project

The development, siting, and acquisition of permits and Rights-of-Way over public land, construction, operation, and maintenance of a single circuit 500kV overhead electric transmission line and facilities beginning near Boardman, Oregon, and terminating near Melba, Idaho

## Exhibit B

### Permit Funding Schedule

The cost allocation of the Payment Schedule is determined by each Funder's Permitting Interest as of the Effective Date, which shall be calculated using the methodology described in Exhibit D.

Table B.1. Permit Funding Payment Schedule

<b>Payment</b>	<b>Type</b>	<b>Idaho Power Amount</b>	<b>BPA Amount</b>	<b>PAC Amount</b>	<b>Date</b>
1	Mandatory Payment	\$1,608,839	\$ 1,838,673	\$4,137,015	Due Twenty (20) days following the Effective Date
2	Mandatory Payment	\$1,608,839	\$ 1,838,673	\$4,137,015	10/1/2012
3	Mandatory Payment*	\$2,255,155	\$ 2,577,320	\$5,798,969	3/1/2013
4	Mandatory Payment	\$804,420	\$ 919,337	\$2,068,508	10/1/2013
5	Completion Funding Payment*	\$3,945,498	\$ 4,509,141	\$10,145,567	Due One hundred twenty (120) days following publication of Final BLM Record of Decision in the <i>Federal Register</i>
6	Final Expense True-up	TBD	TBD	TBD	Two hundred ten (210) days following Notice of Payment

\* The payment amounts shown for Mandatory Payments 3 and Completion Funding Payment 5 include estimated AFUDC accruals. The actual invoice may differ from the amount shown based on the actual monthly AFUDC accrued during the period.

## Exhibit C

### Project Costs

Project Costs are included as part of the payments set forth in Exhibit B. Project Costs associated with Governmental Authorizations and other necessary work include as relating to the Permitting Project, but are not limited to:

- i. Governmental Authorization costs;
- ii. NEPA compliance activity;
- iii. public involvement activity;
- iv. reasonable attorney's fees;
- v. third party contractor work for EIS development and support of the Boardman to Hemingway Transmission Project, including, but not limited to, the NEPA process;
- vi. Preliminary design and engineering work in support of the Boardman to Hemingway Transmission Project, including, but not limited to, the NEPA process;
- vii. Any other costs approved by the Permit Funding Committee associated with services to be coordinated by the Permitting Project Manager (and not provided for above), as set forth in this Agreement; and
- viii. Overheads incurred by the Permitting Project Manager for the Permitting Project will be calculated at a 10% rate.

## Exhibit D

### Permitting Interest Work Paper

Each Funder is assigned a Permitting Interest based on the annual weighted capacity expressed in the Permitting Project. The Permitting Interest is determined by the sum of a Funder's eastbound capacity interest and westbound capacity interest, divided by the total of all Funders' eastbound and westbound capacity interests.

**Table 1: Boardman to Hemingway Weighted Interest**

	<b>Total Requested Capacity (MW)</b>	<b>Idaho Power Capacity Interest (MW)</b>	<b>BPA Capacity Interest (MW)</b>	<b>PacifiCorp Capacity Interest (MW)</b>
<b>West to East</b>	<b>1050</b>	350*	400*	300
<b>East to West</b>	<b>600</b>	0	0	600
<b>Permitting Interest</b>		21.21%	24.24%	54.55%

\* Seasonally shaped capacity.

The capacity interests are based on:

- Idaho Power's capacity interest is seasonally shaped with 500 MW of eastbound capacity during the months of April through September and 200 MW of eastbound capacity during the months of January through March and October through December.
- BPA's capacity interest is seasonally shaped with 250 MW of eastbound capacity during the months of April through September and 550 MW of eastbound capacity during the months of January through March and October through December.
- PacifiCorp's capacity interest is constant throughout the entire calendar year.
- The sum of all Permitting Interest will equal one hundred percent.
- The sum of capacity interest may or may not equal the total rated capacity of project.

Additional Considerations:

- If the capacity interests are less than the total rated capacity of the Boardman to Hemingway Transmission Project, the unallocated capacity will be divided among the Funders based on the Funders Permitting Interest.
- The total rated capacity of the Boardman to Hemingway Transmission Project is subject to the results of the WECC Rating Process.

**Assumed B2H Ratings and Unassigned Capacity**

	<b>Assumed Rating (MW)</b>	<b>Unallocated Capacity (MW)</b>
<b>West to East</b>	1050	0
<b>East to West</b>	1000	400

**Allocation of Unassigned Capacity**

	<b>Percentage</b>	<b>Allocation of W-E Unassigned Capacity (MW)</b>	<b>Allocation of E-W Unassigned Capacity (MW)</b>
<b>IPCO</b>	21.21%	0	85
<b>BPA</b>	24.24%	0	97
<b>PAC</b>	54.55%	0	218

## Schedule 2.2

### Project Permitting Objectives and Timetable

- National Environmental Policy Act (NEPA) – BLM Lead Agency
  - BLM Publishes Draft Environmental Impact Statement – Q1 of 2013
  - BLM Publishes Final Environmental Impact Statement – Q2 of 2014
  - BLM issues Record of Decision – Q4 of 2014
  - BLM issues Notice to Proceed – Q4 of 2014
- Oregon Energy Facility Siting Council (EFSC)
  - File preliminary Application for Site Certificate (ASC) – Q4 of 2012
  - File Complete ASC – Q2 of 2013
  - EFSC issues Proposed Order & Notice of Contested Case – Q3 of 2013
  - EFSC issues Final Order Issuing Site Certificate & Site Certificate Review – Q2 of 2014
  - EFSC issues Final Site Certificate – Q1 of 2015
  - EFSC issues Notice to Proceed – Q2 of 2015