

**U.S. DEPARTMENT OF ENERGY**

**USE PERMIT**

**NO. DE-NE700065**

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**U.S. DEPARTMENT OF ENERGY  
USE PERMIT  
NO. DE-NE700065**

This use permit (“Permit”) is authorized by the UNITED STATES OF AMERICA (“the Government”) acting by and through the U.S. Department of Energy (“DOE”) to Utah Associated Municipal Power Systems (hereafter called “Holder”) for the uses, and subject to the terms, described herein.

**I. RECITALS**

- A. The Idaho National Laboratory site (“INL site”) is a federal facility that is approximately 890 square miles in size and located in Bingham, Bonneville, Butte, Clark, and Jefferson counties near Idaho Falls, Idaho. At the INL site, DOE and its contractors conduct multi-program activities, including, but not limited to, nuclear research and development, waste management, environmental remediation, technology development and transfer, and national security missions.
- B. The Department of Energy-Idaho Operations Office (“DOE-ID”) is a field office of the DOE. One of the missions of DOE is to advance nuclear power as a resource capable of meeting the Nation’s energy, environmental, and national security needs by resolving technical, cost, safety, proliferation resistance, and security barriers through research, development, and demonstration as appropriate.
- C. Holder intends to develop, license, construct, own and operate a nominal 600 MW combined capacity first-of-a-kind modular nuclear reactors facility using the reactor design being developed by NuScale Power of Corvallis, Oregon to produce electric energy, meeting its need for additional low carbon power (the “Carbon Free Power Project” or “CFPP”). DOE believes that the successful deployment of the NuScale reactor design may advance the development of other small modular reactors across the United States, thereby advancing the nuclear energy industry and providing the nation with additional low carbon energy resources, while promoting new U.S.-based reactor designs for use worldwide.
- D. Following a competitive financial assistance process, DOE awarded a cooperative agreement to NuScale Power (DE-NE0000633: NuScale SMR Design Development and Certification Project) on June 1, 2014. The cooperative agreement award supports project activities specific to design development and certification by the US Nuclear Regulatory Commission (“NRC”) of the NuScale Power Module™ SMR. Holder has proposed deploying the NuScale Power Module in support of the CFPP and has approached the DOE to use the INL site as a siting location. DOE has made a further financial assistance award to NuScale to support the

potential siting and permitting of the first NuScale small modular reactor facility by Holder (DE-NE0008369: Site Permitting and Licensing of the NuScale Small Modular Reactor), on August 11, 2015.

- E. DOE, under the authority of Section 161g and to further the purposes of Section 3.d. of the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 et seq.), 42 U.S.C. § 7278, and other applicable law, finds that the proposed permitted use of the property shall be advantageous to the Government and in the public interest. DOE also finds that the potential siting and operation of the CFPP on the INL site shall further the goals of, and should not conflict with, DOE missions at the INL site.
- F. To facilitate Holder's licensing, construction, ownership and operation of the small commercial modular nuclear reactors facility, DOE hereby grants Holder permission during Phase I to undertake site characterization activities at the INL site with the goal of identifying a portion of the INL site that is suitable for the siting of the CFPP (the "CFPP Site"), subject to the processes, procedures, terms and conditions of this Permit.
- G. DOE and Holder recognize that DOE grants the use described herein as a secondary use that shall not materially interfere with DOE's ongoing missions. Holder recognizes the limitations of this grant and Holder assumes the responsibility to ensure its activities do not interfere with DOE's ongoing missions.
- H. DOE recognizes and accepts that Holder's use of the CFPP Site for the CFPP to construct and operate an NRC-licensed facility, and that, if Holder proceeds to develop the CFPP at the INL site, it must do so in compliance with NRC requirements. The Parties commit to work cooperatively to align NRC license requirements for the CFPP with DOE's retained ownership of the CFPP Site. Nothing in this Permit requires DOE to submit to NRC regulation.
- I. The Parties intend that Holder's activities are not DOE activities and shall be considered an independent commercial undertaking and that Holder is undertaking such activities on its own behalf and not under contract or for the direct benefit of DOE. This Permit does not create a partnership or a contractual relationship between the DOE and Holder, or their respective contractors or employees, nor does the execution of this Permit cause DOE to share the risk of any loss related to Holder's independent commercial venture. The provisions of this Permit must be construed to give effect to this intent.
- J. The following additional agreements at a minimum shall be needed to implement and establish procedures for compliance with certain provisions of this Permit: (1) Memorandum of Understanding (MOA) to address environmental permitting and compliance activities; (2) MOA to address access procedures for the selected site; and (3) Site Services Agreement describing the services that DOE agrees to provide to the Holder. Holder and DOE agree to negotiate in good faith regarding these agreements.
- K. There shall be two Phases under this Permit (referred to herein as "Phase I" and "Phase II" respectively). Under Phase I, Holder is given permission to access the INL Site to analyze

environmental, safety, and siting conditions. Phase I commences with the Effective Date of this Permit and continues until DOE issues a final decision in accordance with the process described in Section III.D.

Subject to the completion of the final EIS under Section VII. F. and attendant decisions or approvals by DOE and the NRC as provided in this Permit, under Phase II, Holder is authorized to complete design, license, construct, inspect, install, operate, service, maintain, decommission, or remove the Holder's CFPP equipment/facilities. Phase II commences with the completion of Phase I and continues until the termination of this Permit under the terms set forth in Section III.C.

## II. DEFINITIONS

AEA: Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2011, et seq.

Authorized Personnel: Any of Holder's or its affiliates' personnel, contractors, Holder's regulators, suppliers, third-party inspectors, and others who have been authorized access to the INL site by DOE, and whose presence on the INL site is deemed by Holder to be reasonably required to enable Holder to complete its responsibilities and carry out its activities, pursuant to this Permit.

CERCLA: The Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, et seq.

CFPP: Carbon Free Power Project, as defined in Section I.C.

CFPP Site: The site of the CFPP, as defined in Section I.F.

Day: The term refers to calendar days and includes Saturdays, Sundays, and Federal Holidays. If a due date for any item or activity required under the terms of this Permit falls on a Saturday, Sunday, or Federal Holiday, it will be due the following business day (Monday-Friday).

DEQ: Idaho Department of Environmental Quality.

DOE: The United States Department of Energy, including its contractors and their subcontractors, agents, officers, employees, assigns or successors in interest. Any separate discussion of the DOE's contractors is for clarity in describing the DOE's obligations and is not intended to restrict the inclusive nature of this term.

DOE-ID: Department of Energy-Idaho Operations Office, as defined in Section I.B.

Effective Date: The Effective Date is the date this Permit is executed by both DOE and Holder.

EPA: The United States Environmental Protection Agency.

Federal Facility Agreement and Consent Order or FFA/CO: The enforceable agreement among DOE, EPA, and the State of Idaho, effective December 9, 1991, for remediation of the INL site.

Holder: Utah Associated Municipal Power Systems (as defined in this Section), and its contractors, subcontractors, affiliates, agents, employees, assigns, and successors in interest.

Idaho site or INL site: The Idaho National Laboratory site that is approximately 890 square miles in size and located in Bingham, Bonneville, Butte, Clark and Jefferson counties near Idaho Falls, and administered by the Department of Energy as further described in Section 1.A.

Management and Operating (or M&O) contractor: The Management and Operating contractor, as defined in Federal Acquisition Regulation Subpart 17.6, contracted by DOE to operate the INL site under the administration of DOE's Idaho Operations Office.

NEPA: The National Environmental Policy Act, 42 U.S.C. § 4321, et seq.

NRC: The United States Nuclear Regulatory Commission.

NuScale: NuScale Power LLC is a limited liability company headquartered in Corvallis, Oregon, formed to design and commercialize a small modular nuclear reactor ("SMR"), and its successors and assigns. NuScale's SMR plant design consists of up to 12 nuclear power modules with a nominal electrical output of 50 MWe/module. NuScale is the nuclear reactor original equipment manufacturer for the CFPP.

OSHA: The Occupational Safety and Health Administration, Department of Labor.

OSH Act: Occupational Safety and Health Act, as amended, 29 U.S.C. § 651, et seq.

Parties: The United States Government, acting by and through the U.S. Department of Energy Idaho Operations Office, and Utah Associated Municipal Power Systems.

Occupation Date: The date on which Phase II commences in accordance with Section III.D.7.

Utah Associated Municipal Power Systems ("UAMPS"): A political subdivision of the State of Utah that provides comprehensive wholesale electric energy, on a nonprofit basis, to community-owned power systems throughout the Intermountain West. The UAMPS membership represents 45 members from Utah, Arizona, California, Idaho, Nevada, New Mexico, Oregon and Wyoming.

### **III. AUTHORITY AND USE AUTHORIZED**

#### **A. Authority:**

DOE is issuing this Permit under the authority of section 161g the AEA, as amended, 42 U.S.C. § 2201g.

B. Rules, Laws, and Ordinances:

Holder, in exercising the privileges granted by this Permit, shall comply with all federal, state, county, and municipal laws, ordinances, and regulations which are or may become applicable to Holder and to the area and operations covered by this Permit. In the case of conflict among applicable laws and regulations, federal law and regulation shall govern consistent with general principles of preemption. The DOE assumes no responsibility for enforcing laws, regulations, ordinances and other provisions of law that are under the jurisdiction of other government bodies.

C. Term:

This Permit shall be in effect until the earlier of the following provisions, or unless terminated under the provisions set forth in Section IX, "Termination."

1. This Use Permit shall be in effect for period of ninety-nine (99) years from the commercial operation date for the first nuclear power module at the CFPP, provided however, that such date shall occur no later than ten (10) years following the Effective Date of this Permit or such additional period as necessary, with diligent pursuit, to obtain an NRC license ("Initial Term").
2. The termination of a license or licenses for the CFPP issued by the NRC under either 10 CFR Part 52 for constructing, operating, maintaining, safe storage, or decommissioning the reactors or the CFPP Site or 10 CFR Part 72 for any spent nuclear fuel storage at the CFPP site until termination of all NRC licenses and surrender of the property to DOE under Section IX.F.
3. The term is conditional on the Holder's pursuit of an NRC license or permit. Holder's failure to actively pursue development for five consecutive years (*i.e.*, site characterization and selection, design, financing, licensing/permitting, construction), operations, maintenance, or decommissioning (including safe storage and remediation) of the CFPP on the CFPP Site, or to maintain the NRC license, may result in termination. Holder shall notify DOE in writing semi-annually of its continued intention to develop the CFPP at the INL site.
4. The term may be shortened or the Permit terminated if an Act of Congress indicates that the operation of a small modular reactor at the location is no longer consistent with the authorized use of the property, subject to all rights of Holder under the Fifth Amendment to the Constitution of the United States of America to just compensation.
5. The Initial Term may be extended by ten (10) years by exercise of the option. The option is a mutual option requiring the written agreement of the Parties, and must be exercised, if at all, thirty (30) days before the expiration of the Initial Term. The Parties acknowledge and agree that if the option is exercised, there would need to be present, one or more sound reasons for extending this Permit. Such reasons include, but may not be limited to, the following: (a) UAMP's ongoing CFPP, and support that the CFPP Site

may be able to provide to such project; or (b) UAMPS' obligations to decommission, remediate and otherwise restore the CFPP Site. The Parties will engage in consultations well before the end of the Initial Term in order to ascertain if they share a mutual interest in an extension. If so, the Parties will timely execute a mutual option to extend this Permit.

D. Selection of CFPP Site:

DOE grants Holder the right, upon issuance of the final decision under this section, to occupy, use, and enjoy a portion of the INL site as the CFPP Site pursuant to the terms and conditions described in this Permit. During the term of this Use Permit, DOE shall retain title to the property. The location of the CFPP Site shall be established pursuant to the following process:

1. In consultation with DOE and with the benefit of site characterization information that DOE has available for the INL site, which information DOE shall make available to Holder in accordance with Section VI, Holder shall undertake site investigation and characterization activities to identify up to five sites at the INL site that may be suitable for the CFPP ("Candidate Sites"). Holder's site investigation activities fall within Exclusion B3.1 of DOE's NEPA regulations, 10 CFR Part 1021, Appendix B, B3.1.
2. DOE shall have 45 days from the date on which Holder notifies DOE in writing of identified Candidate Sites to review the Candidate Sites and to provide comments to Holder identifying any potential impacts that locating the CFPP at any of the Candidate Sites might have on the ability of DOE and its contractors to continue to fulfill their missions. DOE shall also identify which, if any, of the Candidate Sites are incompatible with the missions of DOE and its contractors at the INL site.
3. Holder shall address DOE's comments within 45 days and shall determine, based on DOE comments, whether to eliminate any Candidate Sites from further consideration and which of the Candidate Sites Holder will propose to the NRC as its preferred site or alternative sites for the CFPP.
4. Once Holder identifies a preferred site and alternative sites from the Candidate Sites, it shall notify DOE in writing, and DOE shall have 30 days after receiving such written notice of Holder's identification of the preferred site for the CFPP Site and alternative sites to raise any objections to those designations. If DOE fails to raise any objections, then the Holder's preferred site shall become the Holder's proposed site in its NRC applications and NRC NEPA analysis, and the alternative sites may be included as alternative sites in Holder's NRC application and NRC NEPA analysis.
5. Any site that DOE identifies as incompatible with the DOE mission at the INL site shall be eliminated from further consideration for the CFPP.
6. DOE shall request that NRC treat DOE as a cooperating agency in NRC's NEPA review of the CFPP. If DOE is a cooperating agency, DOE shall issue a final decision regarding

whether Holder may use the CFPP Site within 45 days of the date of publication of the NRC's Final Environmental Impact Statement as described in Section VII.F. The final decision shall be in the form of a Record of Decision (ROD) under NEPA. If DOE is not a cooperating agency, DOE will recirculate the final NRC EIS for public review for a period of sixty days, unless otherwise extended, and make a final decision in the form of a ROD 45 days after the end date of the public review period.

7. If DOE issues a final decision authorizing Holder's use of the CFPP Site, Holder shall be entitled to occupy the CFPP Site pursuant to this Permit and the ROD. Holder shall notify DOE in writing of the date on which it intends to take control of and occupy the CFPP Site, and the Parties agree to work in good faith to facilitate Holder's ability to occupy, control, and use the CFPP Site. Such use may include any site work that does not meet the definition of construction under 10 CFR 50.10(a) and which the NRC permits prior to the issuance of a license under 10 CFR Part 52. Construction, as defined in 10 CFR 50.10(a), may commence upon receipt of a Limited Work Authorization or license from NRC and Holder's written notification to DOE.
8. Nothing in this site selection process or in this Permit constitutes an express or implied warranty by DOE, nor does DOE assume any responsibility to ensure that any Candidate Site or Holder's preferred site is suitable for the CFPP.

E. Nonexclusive Use:

This Permit is not exclusive. This Permit is subject to all easements and rights-of-way over, under, across, in and upon the CFPP Site, or any portion thereof existing as of the Effective Date, recognizing that such rights may need to be modified to comply with NRC regulatory or license requirements. The Permit also is subject to the right of DOE to grant such additional easements and rights-of-way as it may determine to be in the public interest, provided that such grants do not violate or interfere with Holder's ability to comply with any NRC regulatory or CFPP license requirements, or unreasonably interfere with Holder's use of the CFPP Site.

F. Acquisition of Future Easements and Rights-of-Way:

Holder and its associated service providers may seek, and DOE shall reasonably grant, easements or rights-of-way over, under, across, in and upon the INL site in order to provide utilities, including transmission lines, and other related services to the CFPP Site and to carry out the purposes of the CFPP Project.

G. Financial and Other Assurances by Holder:

1. Holder shall ensure that any agreement with each of its members to pursue activities related to this Permit shall contain provisions substantially similar to the financial assurance provisions set forth in Schedule A hereto that obligate such members to provide the financial assurance, and other assurances, as necessary, to ensure Holder can financially comply with the obligations in this Permit should Holder be unable to comply

with such obligation of its own accord. Holder shall provide copies of said agreements (including any material amendments, waivers or other modifications thereto) upon written request of DOE and shall provide written notice to DOE that such material amendments, waivers or other modifications have occurred. To the extent Holder believes the agreements provided to DOE contain business sensitive, or other proprietary information, Holder shall mark them as such. Accordingly DOE shall treat any such marked agreements as official use only and protect them from release to the extent allowed by law or regulation

2. Prior to DOE acceptance of the CFPP Site as documented in a final decision by DOE, it is understood that Holder must submit, as part of its license application to the NRC, a demonstration of sufficient financial assurance of its ability to develop, construct, own, operate, decontaminate and decommission the CFPP pursuant to the NRC's regulations on financial qualifications and decommissioning funding assurance. In the event that Holder cancels or otherwise abandons the CFPP prior to commencement of operations and fails to restore the CFPP Site back to its substantially original condition, DOE reserves the right to complete such restoration of the CFPP Site in accordance with Section IX.G.

#### H. Transfers and Assignments:

Holder may not assign, dispose, or otherwise transfer all or any part of its interest in this Permit without the prior written consent of DOE, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Holder may assign its interest to its parent company, an affiliate or subsidiary, or, in the event Holder decides not to proceed with CFPP, to NuScale, subject to the assignee assuming all of Holder's obligations herein.

### IV. ACCESS

#### A. Access:

DOE and its contractors shall provide Holder and its Authorized Personnel reasonable access to the INL site, in order to enable Holder to perform site characterization activities for the CFPP during Phase I, and to design, license, construct, inspect, install, operate, service, maintain, decommission, remove the Holder's CFPP equipment/facilities, and restore the CFPP Site during Phase II.

1. During Phase I, Holder shall coordinate with DOE regarding site access and site characterization activities of Holder and its Authorized Personnel. Holder and its Authorized Personnel shall adhere to DOE and INL Site procedures for site access; and all work will be conducted in accordance with the DOE and INL Site training, qualification, and work control requirements applicable to the specific tasks being performed.

2. Upon commencement of Phase II, the parties will establish a binding Memorandum of Agreement (“MOA”) pursuant to Section XI.A(b) of this Permit governing ongoing access through the remainder of the term of this Permit.

B. Costs:

Holder may arrange with DOE through its prime contractor at the INL for use of site facilities and support services on an advance cost reimbursement basis, in accordance with the provisions of Section XI.A(c), Site Services Agreement. Any costs reasonably incurred by DOE or directly relating to Holder’s accessing the INL site, which may directly result from Holder’s interconnection to the INL site system, or reasonable costs anticipated to be incurred by DOE directly incidental to Holder’s installation and maintenance of Holder’s equipment or facilities shall be chargeable to Holder at DOE’s sole discretion. Examples may include, but may not be limited to, costs for activities such as: dispatching INL fire department and emergency personnel, escorted access on site for the purpose of non-emergency access by Holder after normal business hours, and NEPA reviews. DOE and Holder shall agree to procedures for the charging of such costs that shall include prior written notification to and discussion with Holder of any cost that is to be charged to Holder in advance of the work to be performed. For discrete one-time services, 30 days prior to the beginning of the work, Holder shall be required to advance sufficient moneys to fully fund the work. For ongoing services, 30 days prior to the beginning of the work, Holder shall be required to advance sufficient moneys to fully fund the work for 60 days and continue to advance sufficient moneys to ensure DOE has at a minimum 45 days of funds available. Any advanced funds remaining after completion of the project or service will be returned to Holder.

DOE does not represent or warrant, and no representation or warranty may be implied, that these services will be maintained for use by the Holder or that affected facilities are suitable for the use intended.

C. Holder Access Limitations:

Consistent with Holder’s NRC license and NRC nuclear safety, security and operational regulations/requirements, DOE may limit or restrict the right of access granted herein in any manner deemed necessary by DOE, in its sole discretion, for national emergencies, site emergencies, or other emergency situations. In the event of such an emergency that results in limitations on Holder’s access to the CFPP site, DOE shall notify Holder immediately and shall restore Holder’s full access to the CFPP Site as soon as possible consistent with the emergency. In exercising its discretion pursuant to this subsection, DOE shall impose only those restrictions on Holder’s access as are reasonably necessary given the nature of the emergency situation and shall provide Holder notice of such restrictions as soon as possible. Additionally, DOE may for safety reasons reasonably exclude Holder from access to certain unimproved portions of the INL site or CFPP Site due to scientific experiments. DOE shall limit the impacts of such exclusions from access.

D. DOE Access to the CFPP Site:

Consistent with Holder's NRC license and NRC nuclear safety, security and operational regulations and requirements, DOE shall have the right to reasonably access the CFPP Site, including, but not limited to:

1. To provide agreed upon services;
2. To maintain and repair any DOE infrastructure and equipment on the CFPP Site;
3. To respond to a health or safety emergency;
4. To discharge responsibilities under compliance agreements (including the FFA/CO), or environmental, safety, and health requirements imposed upon DOE by law, regulation or order, including:
  - a. To conduct investigations and surveys including, where necessary, drilling, soil and water sampling, test-putting, and testing soil borings; or
  - b. To construct, operate, maintain or undertake any response, remedial, corrective action, or institutional controls as required or necessary under the FFA/CO or other enforceable requirement under environmental, health and safety, or other laws; and
5. To ensure compliance with this Permit as well as Holder's compliance with applicable permits, licenses, or other authorizations to which DOE is obligated to comply under the law.

E. Notification:

In all instances except for emergency response and inspections by regulatory authorities, DOE shall provide Holder at least 24 hours advance notice of its intent to access the CFPP Site. In the case of emergency response and inspections by regulatory authorities, DOE shall provide Holder as much notice as is reasonable under the circumstances. In the event of emergency response and to the extent consistent with Holder's NRC license, Holder shall have the right to accompany the DOE Authorized Representative or her designated representatives in their exercise of the right to access the CFPP Site.

F. Independent Access/Regulation:

Nothing in this agreement shall be construed as abrogating the ability of independent regulatory agencies, including, but not limited to, the NRC, OSHA, EPA and DEQ, to access, inspect or regulate the CFPP Site and operations thereon.

## V. HOLDER'S USE OF THE CFPP SITE

### A. Use Purposes:

Holder shall carry out site characterization activities and, once a site is selected by Holder and approved by DOE in accordance with Section III.D, use the CFPP Site only for the purposes described herein or as permitted by DOE and Holder's NRC license. Holder shall maintain the CFPP Site in good condition at all times and shall not commit waste of any kind, nor commit or permit any unlawful act, activities, or nuisance upon the INL site or, once selected, upon the CFPP Site. Holder shall also exercise due diligence and employ reasonable methods to protect the INL site and, once selected, the CFPP Site, including vegetation, structures, equipment, and improvements against damage, destruction, and fire. Holder shall not place on the INL site or the CFPP Site commercial signage including, but not limited to, advertisements or logos, without the prior express written authorization of DOE. Permitted signage shall include signs designed to enhance safety and security, or to identify and provide directions to the CFPP Site. Throughout Phase II:

1. Holder shall confine all operations (including storage of materials) to areas on the CFPP Site unless DOE provides prior written authorization. This restriction does not preclude reasonable ingress and egress to the CFPP Site across the INL site.

Except for the area within the boundaries of the CFPP Site (after issuance of a final decision by DOE authorizing Holder's use of the CFPP Site under section III.D.7), Holder's access, use, and activities on the INL site shall be subject to the general supervision and approval of DOE and to such requirements regarding ingress, egress, safety, sanitation, and security as may be prescribed (and provided in writing to Holder) by DOE from time to time. Application of such DOE supervision, approval, and requirements shall be coordinated so as not to conflict with the requirements of any NRC-issued licenses and/or nuclear regulatory requirements governing the CFPP Site.

2. Holder may not allow use of the CFPP Site for services other than the siting, development, licensing, construction, operation, maintenance, remediation and decontamination/decommissioning associated with the CFPP and related services unless this Permit is modified by a written agreement of the Parties. Similarly, Holder shall not grant any rights to contractors or other third parties for use of the areas beyond the CFPP Site boundaries, except for purposes of reasonable ingress and egress to the CFPP Site across the INL site.

### B. Excavation, Drilling, and Digging:

Holder shall not conduct any subsurface excavation, digging, drilling or other surface disturbance without first notifying DOE in writing and obtaining DOE approval. The Parties shall establish a protocol for timely notification by Holder and prompt approval by DOE of such activity so as to allow Holder's work to proceed without unreasonable interruption or delay. DOE shall review the notification to ensure that: the activity is consistent with existing applicable environmental and historic preservation legal requirements, known easements for

utilities; cultural resource surveys are or have been conducted; any contamination or remediation issues that are the responsibility of DOE are addressed; and the proposed water production or monitoring wells are located in an area consistent with DOE's existing or planned wells. Holder shall reasonably minimize removal or destruction of natural vegetation in conducting its activities and remediation will be conducted consistent with the excavation, drilling or digging plan approved by DOE prior to the commencement of the soil disturbance activity.

C. DOE's Ongoing Mission:

Holder recognizes that DOE's ongoing mission at the INL site includes handling hazardous materials, including source, special nuclear, and byproduct materials regulated under the Atomic Energy Act, and that DOE's hazardous materials and activities may be in close proximity to the CFPP Site. Thus, during both Phase I and Phase II, DOE shall promptly disclose and Holder shall take account of such activities so as to avoid interference with DOE's activities in fulfilling its mission and avoid creating unsafe conditions for either Party.

D. Agreement Not to Interfere with DOE's Work:

Holder's access, operations and activities during both Phase I and Phase II shall be conducted in a manner that will not materially interfere with DOE or its contractors' operations at the INL site. Minor foreseeable impacts, such as increases in traffic on the INL site are exempted from this provision. DOE and Holder shall cooperate to reasonably modify Holder activities to avoid or minimize impacts on DOE's operations. Consistent with Holder's NRC license and NRC nuclear safety, security and operational regulations/requirements, Holder also agrees, upon DOE's request, to cooperate with DOE to make reasonable modifications to Holder's activities to accommodate new, or changes to existing, DOE facilities, programs, projects or activities. Nothing in this section affects the authorities of the Government consistent with the Fifth Amendment to the United States Constitution and other applicable law.

E. Hazardous Materials and Activities:

Holder expects to use hazardous materials and engage in hazardous activities on the CFPP Site. As such, Holder agrees to address emergency planning and responses and community right to know requirements for its hazardous activities on the CFPP Site. These responsibilities include, but are not limited to, the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11001 *et seq.*. Holder and DOE shall work together to integrate all emergency planning and response activities with those of the INL site.

## VI. CONDITION OF THE CFPP SITE

### A. Condition of the CFPP Site:

To facilitate Holder's site characterization activities and selection of the CFPP Site, DOE shall provide Holder with all publicly available information on current, known and reasonably suspected environmental conditions on the INL site, and shall provide Holder an adequate opportunity to inspect candidate locations for the CFPP Site. Toward fulfilling this obligation, the following link provides Holder with access to the DOE's Administrative Record and Information Repository record collections regarding the Idaho Cleanup Project at the INL site: [https://ar.icp.doe.gov/about\\_5.htm](https://ar.icp.doe.gov/about_5.htm). The documents maintained in this Administrative Record and Information Repository provide information regarding releases of hazardous substances, cleanup evaluations, decisions, and progress as required under CERCLA and the FFA/CO.

### B. Potential for Unexploded Ordnance:

The INL site is considered a CERCLA site, and is listed on the National Priorities List. The INL site has the potential to contain unexploded ordnance. As a result, access to and activities on the candidate locations for the CFPP Site may be restricted. Ordnance removal at the location selected for the CFPP Site is the responsibility of Holder, and Holder agrees to conduct such removal in accordance with the INL Site-wide Institutional Controls, and Operations and Maintenance Plan for CERCLA Response Actions, DOE/ID-11042 or successor documents. Notwithstanding any other provision in this Permit: (1) Holder and DOE may agree to DOE, through its contractor, performing surveys or removal of ordnance on a full cost reimbursement basis, and (2) nothing in this Permit obligates DOE to conduct surveys or removal of ordnance to accommodate Holder's activities without Holder's advance reimbursement of such costs.

### C. Holder's Obligations:

Holder has the sole obligation to inspect the location selected for the CFPP Site to ensure that it is safe and free from hazards that may cause injury or death to persons or damage to property. Prior to Phase II, this Permit will be amended in accordance with Section XI.B(2) to include a real property and environmental condition report for the CFPP Site, which includes all pre-existing known or reasonably suspected conditions for which Holder will not be held responsible. Prior to Holder's use of the CFPP Site, a representative of Holder and a representative of DOE shall conduct a joint inspection of the land and any buildings or facilities to determine suitability for use by Holder.

## **VII. REGULATORY LICENSES, PERMITS, AND REQUIREMENTS**

### **A. Compliance:**

Throughout the term of this Permit, Holder shall comply and require its contractors, subcontractors, affiliates, agents, employees, and assigns to comply with all applicable federal, state, and local laws, codes, and regulations. Holder shall obtain any necessary licenses or permits for its activities at its own expense and require similar compliance from all of its contractors and subcontractors.

### **B. Sole Applicant:**

Except as provided in Section XI.A, DOE shall not be an applicant for any licenses or permits for the CFPP. In pursuing licenses and permits for the CFPP, Holder may affiliate with others subject to DOE's prior written approval, which approval shall not be unreasonably withheld.

### **C. Cooperation:**

The Parties shall cooperate fully with each other to obtain any licenses, permits, or other governmental approvals or authorizations required in connection with the activities contemplated by this Permit. Because Holder must comply with security, environmental, health and safety, and other requirements and regulations promulgated by NRC, OSHA, EPA, DEQ and other agencies, Holder shall not be subject to DOE Orders or similar requirements covering these same matters. DOE, as landowner, shall cooperate with Holder in its NRC pre-licensing and licensing activities, including, but not limited to, providing necessary information to Holder to prepare and prosecute its construction and operating license application, and to respond to NRC requests for additional information regarding DOE or the CFPP Site. It is understood that the Parties have worked to construct this Permit in a manner that complies with all applicable NRC regulations, standards, processes and procedures; however, in the event the NRC were to find any provision of this Permit inconsistent with applicable NRC regulations, standards, processes or procedures, the Parties agree to negotiate in good faith a modification of this Permit to resolve such issue.

### **D. Coordination:**

Upon commencement of Phase II, the Parties will enter into Memoranda of Agreement pursuant to Sections XI.A(a) and (b) of this Permit to address coordination on environmental permitting and compliance activities as well as emergency preparedness and security.

### **E. Preservation of Antiquities, Wildlife, and Land Areas:**

During both Phase I and Phase II, Holder shall exercise reasonable care in the preservation of native vegetation and in the protection of wildlife on the INL site. If vegetation must be removed, the disturbed soils shall be re-vegetated or stabilized as appropriate. Holder shall maintain an effective invasive plant species management program.

Holder and its Authorized Personnel shall protect all antiquities on the INL site in accordance with the National Historic Preservation Act, 16 U.S.C. § 470 *et seq.* Antiquities include, but are not limited to, Indian graves, campsites, relics, and artifacts. DOE may conduct or require Holder to conduct a cultural resources survey for such items prior to ground disturbance activities. Whenever such items are discovered, Holder shall notify DOE as soon as possible and protect the affected area and material from further disturbance until receiving both DOE approval and direction to proceed, which DOE shall provide as expeditiously as feasible. Any required mitigation will be at the expense of Holder.

F. NEPA Compliance:

Holder shall support the federal government in meeting its obligations to comply with NEPA. Holder's initial site characterization activities fall within Categorical Exclusion B3.1 of DOE's NEPA regulations, 10 CFR Part 1021, Appendix B, B3.1.

If Holder submits an application to the NRC for a license to construct and operate the CFPP (Phase II activities), it is anticipated that the NRC will prepare an environmental impact statement ("EIS") under NEPA for the CFPP as part of its licensing process. DOE may be a cooperating agency in the NRC's NEPA analysis, and DOE may adopt the EIS prepared by the NRC. When the environmental review process is complete, DOE will decide whether to approve use of the CFPP Site for Phase II activities, which is conditional on the information gathered as part of the NEPA review. DOE reserves the right not to approve the use of the CFPP Site for Phase II activities based on analysis in the EIS, provided that DOE would only make such a decision on the basis of material information concerning the project's potential environmental impacts that have been evaluated in the EIS.

Holder shall not initiate any actions beyond Phase I site characterization and identification activities, or take any actions that represent an irreversible or irretrievable commitment of resources or that would limit the choice of reasonable alternatives, until DOE has issued a final decision regarding whether to authorize Holder's use of the CFPP Site for Phase II activities.

G. Introduction, Management, and Disposition of Nuclear Materials, Non-Nuclear Fuels, Hazardous or Toxic Materials, and Wastes:

Holder shall manage nuclear materials, non-nuclear fuels and hazardous or toxic materials brought on to or produced on the INL site by Holder. Any spills, leaks, or accidental discharges of hazardous, toxic or petroleum-based materials shall be reported immediately to DOE. Holder shall be responsible for the clean-up, disposal, and appropriate remediation actions associated with any spills, leaks, or accidental discharges, resulting from Holder's acts or omissions. Holder shall minimize all wastes produced and shall remove these wastes from the site at its own expense, in compliance with federal, state, and local regulatory definitions and requirements. With the exception of transportation, Holder shall confine all operations – including management of nuclear materials, non-nuclear fuels, hazardous or

toxic materials, and waste management – to areas on the CFPP Site unless otherwise authorized in writing by DOE.

## VIII. LIABILITIES

### A. Price Anderson Act:

Nothing in the Permit is intended to alter, amend, extend or waive any otherwise applicable provisions of the Price Anderson Act, 42 U.S.C. § 2210, as amended, as it applies to the separate and distinct activities of the Parties. The CFPP at INL site shall be an NRC-licensed facility operated as an independent commercial undertaking; Holder's activities at the CFPP Site are conducted on its own behalf, not under contract with or for the direct benefit of DOE, and Holder is not covered by the DOE system of Price Anderson Act indemnification of contractors. This does not preclude DOE and Holder from entering into other agreements for research, power supply, and other services or activities determined to be beneficial to furthering the purpose of the CFPP or the INL Site mission.

### B. Indemnification:

Holder shall indemnify and require its contractors to similarly indemnify DOE and hold DOE harmless for any claim, cause of action, cost, damages, fines, enforcement actions by regulatory agencies, expense (including outside attorney and expert witness fees), and any other liability relating to the loss of or damage to life, limb, or property arising from or attributable to the conduct of Holder, its contractors, agents, employees, and officers. The indemnification shall extend to, but is not limited to, any such claim maintained in tort against DOE concerning death or injury of an employee of Holder or its contractors, which is or could be the basis for a statutory worker's compensation claim. Notwithstanding Section X.G, Holder agrees that its employees and the employees of its contractors are not employed by DOE or its contractors and thus, any claim of the employees of Holder or its contractors for worker's compensation cannot be asserted against DOE or its contractors pursuant to Idaho Worker's Compensation law, codified at Idaho Code 72-209. The indemnification shall also include, but not be limited to, any claim that may result from Holder's failure to comply with environmental laws or that otherwise results from a release (as defined in § 101(22) of CERCLA) of a hazardous substance (as defined in § 101(14) of CERCLA), including but not limited to any petroleum product, crude oil, or fraction thereof, to or from the CFPP Site while either stationary or in transit. Holder shall have no responsibility or liability for the negligent acts or omissions of DOE and its contractors.

### C. Damage to United States Property:

Holder shall exercise diligence in protecting United States property at INL from damage. Holder shall pay to the United States the full cost to cover damage to United States property at the INL site caused by Holder's negligence, or Holder's activities under this Permit.

D. Risks:

Holder assumes all risk of loss of Holder's improvements resulting from natural or catastrophic events, including, but not limited to, wildfires, high winds, snowstorms, and other hazardous events.

E. Insurance:

Holder shall procure and maintain, and require its contractors to procure and maintain, insurance for the benefit of, and sufficient to protect, DOE against all liability with respect to Holder's and its contractors' activities at the INL site, including liability arising from a release (as defined by Section 101(22) of CERCLA) of a hazardous substance (as defined in Section 101(14) of CERCLA) or a contaminant or pollutant (including, but not limited to, any petroleum product, crude oil, or fraction thereof), and shall ensure DOE is named as a direct payee and additional insured under the policies procured. Such insurance of general liability shall be with companies of recognized responsibility, and copies of such insurance policies shall be filed annually with DOE. Each policy of insurance shall contain a provision requiring 30 days written notice to DOE prior to making any material change or cancellation of the policy. Holder shall promptly deliver a certificate of insurance or a certified copy of each insurance policy required by this Permit to DOE. The required minimum insurance amounts set forth below shall be subject to review and increase by DOE every five years from the effective date of this Permit by notice to Holder; provided, however, that the increase for each five year period shall not be greater than the percentage of change in the Consumer Price Index for All Urban Consumers (CPI-U) for the United States over the applicable five year period. Holder shall also deliver a certificate of insurance or a certified copy of each renewal policy no later than 30 days prior to the expiration of any policy.

1. Each policy of insurance against loss of or damage to the CFPP Site or otherwise covering damage to DOE property shall contain a loss payable clause that reads:

“The insurer waives any right of subrogation against the United States of America which may arise by reason of any payment under this policy.”

2. During Phase I, Holder shall obtain and carry, at no expense to DOE or its contractors, and to DOE's satisfaction, the following minimum amounts of insurance:
  - a. Comprehensive general liability for personal injury or death and property damage (including damage caused by releases of hazardous substances, contaminants, and pollutants to the environment): \$10 million.
  - b. Automobile liability: \$5 million.
3. During Phase II, Holder shall obtain and carry, at no expense to DOE or its contractors, and to DOE's satisfaction, the following minimum amounts of insurance:
  - a. The amounts and types of insurance required by the CFPP NRC license.

- b. Comprehensive general liability for personal injury or death and property damage (including damage caused by releases of hazardous substances, contaminants, and pollutants to the environment): \$20 million or such amount later agreed to by the Parties based on liability limits carried by other nuclear facilities.
- c. Automobile liability: \$5 million or such amount later agreed to by the Parties based on liability limits carried by other nuclear facilities.

F. DOE Responsibility:

DOE shall be responsible for any claims, damages, causes of action, proceedings, judgments, or suits, and all liabilities, losses, costs, or expenses to the extent they do not arise from the negligent acts or omissions of Holder, and do arise from or are incident to (a) conduct of the DOE or its contractors in providing services to Holder; (b) any “release” by the DOE as defined in Section 101(22) of CERCLA of any “hazardous substance” as defined in Section 101(14) of CERCLA (including radiological materials), contaminant, pollutant, or petroleum (including crude oil or any fraction thereof) onto or from the CFPP Site at any time prior to the Effective Date of this Permit; (c) the failure of DOE or its contractors to comply with applicable environmental laws; or (d) the transportation, treatment, deposit, storage, or disposal by DOE of hazardous substances, contaminants, pollutants, or petroleum. DOE shall not, however, be responsible for ameliorating any commercial or financial risks associated with this private venture, which may arise by virtue of the foregoing DOE/contractor acts or omissions. Nothing in this Section F affects or modifies Section VIII.A.

G. Notice:

If the provisions of this Section regarding indemnification or contribution apply to any claim, the Party seeking indemnification or contribution shall:

1. Give prompt written notice to the other Party’s Authorized Representative of any known action, suit, or claim filed or made that is subject to this provision, and
2. Except as otherwise directed by the other Party, furnish promptly to the other Party’s Authorized Representative copies of all pertinent papers received or filed with respect to such actions, suits, or claims.

If notice of indemnification or contribution is given, the Party receiving notice shall:

1. Cooperate with the other Party in the settlement or defense of such action, suit, or claim;
2. Require the written prior approval of the other Party to contribute or pay any settlement;
3. Reserve the right to appear through its own counsel, participate in any action or suit, and settle or defend any such action.

H. Limitations of Liability:

Neither Party shall be liable to the other for any consequential, incidental, punitive or indirect damages for any cause of action, whether in contract or tort. Consequential, incidental, or indirect damages include, but are not limited to, lost profits, lost revenues, and lost business opportunity, whether or not the other Party was aware or should have been aware of the possibility of these damages.

**IX. TERMINATION**

A. DOE Termination:

This Permit may be terminated by DOE, in whole or in part, for any of the following reasons:

1. Holder's failure to cure within a reasonable period after receiving notice under Section IX.C of any material noncompliance with the terms or conditions of this Permit;
2. Holder's material breach of Holder's duty under this Permit to conform to the requirements of law, including, but not limited to, environmental, health and safety, and other laws and regulations; or
3. At any time by mutual consent of the Parties expressed in writing.

B. Duty to Return Property:

Holder shall return to DOE any portion of the CFPP Site not used by Holder during the term of its NRC license and is not reasonably necessary for its activities under this Permit. This obligation to return property does not include any area of reasonable buffer zone that may be specified in Holder's NRC license.

C. Notice:

If DOE reasonably determines that this Permit is subject to termination or partial termination, DOE shall give Holder written notice of the grounds for termination and provide Holder a reasonable opportunity to cure. In the event that Holder does not commence and continue to pursue in good faith necessary steps to cure the grounds for termination within 120 days of receipt of DOE's notice, DOE may terminate or partially terminate this Permit. Any such termination shall be conducted in compliance with all regulatory requirements then applicable to the CFPP.

D. Holder Termination:

Holder may terminate this Permit by providing DOE with 120 days' written notice of its intent to terminate.

E. Automatic Termination:

This Permit will automatically terminate upon expiration of the term established in this Permit in Section III.C., unless extended by agreement by the Parties.

F. Holder Restoration of CFPP Site:

Upon termination and surrender under this Permit and except as otherwise agreed to by the Parties as a modification to this Permit, Holder shall remove its property and restore the CFPP Site to substantially the same condition it was in when the Permit took effect, subject however, to ordinary wear and tear and loss or damage for which Holder is not liable hereunder to DOE prior to its surrender. Holder's obligation to remove its property includes removal of any wastes or materials not owned by DOE, and which were not present on the CFPP Site as of the Effective Date. Holder shall revegetate areas of ground made bare by removing facilities, structures or improvements (including, but not limited to, roads, sidewalks, or disturbed areas) with native flora. The Parties may amend this Permit to identify specific improvements that Holder is not required to remove upon surrender, including, but not limited to, roads, sidewalks, highway on and off-ramps, and foundational structures. Any such remaining improvements shall be surrendered in a safe condition, meeting all applicable laws, codes, and regulations. Upon surrender, title to such remaining improvements shall pass to DOE. For the purposes of Holder's obligation to restore pursuant to this provision, the real property and environmental condition report created pursuant to VI.C of this Permit will be used to determine the baseline conditions that Holder will be required to restore the CFPP Site.

G. DOE Restoration of CFPP Site:

Upon termination and surrender under this Permit, DOE may restore the CFPP Site to the condition provided for in Section IX.F if Holder fails to do so within the timeframe provided in Section IX.H. Any costs that DOE reasonably incurs in performing such restoration shall be the responsibility of Holder and will be charged to the Holder. Any property of Holder that remains after termination and is not removed by Holder as required by this Permit will be presumed to be abandoned. DOE may store or dispose of any abandoned property at Holder's expense without any set-off credit or remuneration to Holder for the value of the property. DOE shall not be responsible for the value, preservation, or safekeeping of such abandoned property. For the purposes of Holder's obligation to restore pursuant to this provision, the real property and environmental condition report created pursuant to VI.C of this Permit will be used to determine the baseline conditions that Holder will be required to restore the CFPP Site.

H. Time to Restore:

Holder shall complete all decontamination and decommissioning efforts within the time limits prescribed by 10 CFR §50.82 after permanent cessation of operations.

**X. OPERATIONAL MATTERS:****A. DOE Agreements:**

DOE has entered into an FFA/CO with the State of Idaho and EPA that describes the activities that DOE intends to undertake for remediation of releases at the INL site. Financial responsibility for compliance with the FFA/CO shall remain with DOE. DOE assumes no liability to Holder should implementation of the FFA/CO interfere with Holder's use of the CFPP Site. DOE shall, however, exercise reasonable care to avoid any such interference. DOE's issuance of this use Permit does not constitute a transfer of property to Holder pursuant to CERCLA Section 120(h). DOE remains responsible for implementing the FFA/CO on the Permitted property. To the extent that cleanup or surveys are necessary for Holder's construction or other activities at the INL site, Holder shall reimburse DOE for the costs of such services.

**B. Services:**

Holder may arrange with DOE through its contractors at the INL site for use of site facilities and support services on an advance cost reimbursement or in-kind service basis. These services may include the use of general infrastructure facilities such as electric power, roads to and from the CFPP Site, utility systems, water wells, communications, and services such as road maintenance, fire protection and response, emergency and medical response, and security. This Permit will be amended with Exhibit A to set forth the site facilities, site support services, and the applicable charges for those services that Holder has arranged to have provided by DOE through its contractors. For discrete one-time services, 30 days prior to the beginning of the work, Holder shall be required to advance sufficient moneys to fully fund the work. For ongoing services, 30 days prior to the beginning of the work, Holder shall be required to advance sufficient moneys to fully fund the work for 60 days and continue to advance sufficient moneys to ensure DOE has at a minimum 45 days of funds available. Any advanced funds remaining after completion of the project or service will be returned to Holder.

**C. Security:**

DOE provides general physical security for the INL site and the INL Site boundary; however, DOE shall not be responsible for security on the CFPP Site where NRC shall be the cognizant security authority. Under DOE's security policy, unauthorized persons are not permitted to access the INL site. Thus, all potential Authorized Personnel shall first have to receive DOE access authorization in order to become Authorized Personnel. INL site access badging of Authorized Personnel shall be conducted by Holder in coordination with DOE's M&O contractor. Further, Holder shall ensure that its ingress and egress activities to and from the INL site are exercised consistent with DOE's security procedures. Badging of Holder's employees will be conducted by Holder in coordination with DOE. Holder may, at its expense, and at any time, install its own security system for the CFPP Site, once selected, provided that the system shall not interfere with the INL site security system. The Parties acknowledge that there may be a need for DOE and Holder to agree to a coordinated security

plan that will become part of CFPP's NRC license application, and ultimately incorporated as part of CFPP's NRC license. Holder agrees that such security plan proposal should include proposed provisions that would allow certain authorized DOE and DOE contractor personnel to access all parts of the CFPP Site in the event of an emergency. Nothing in this provision, however, shall subject DOE to NRC regulation.

D. Modifying Facilities:

To avoid unreasonably interfering with the operations of either Party, Holder shall coordinate its activities with ongoing DOE operations. In light of such coordination, DOE may agree to modify facilities or activities at the INL site, including accelerating cleanup activities, to accommodate Holder. Any agreement to so modify facilities shall be carried out on a full cost-reimbursement basis.

E. Duty to Provide Safe Work Environment:

If DOE notifies Holder of any condition on the CFPP site that poses a serious or imminent danger to the environment or the health or safety of the public or to personnel on the INL site, Holder must take immediate corrective action. If an agency or court of competent jurisdiction determines, after exhaustion of any appeals, that the Holder, as defined herein, is out of compliance with a regulatory requirement, permit, or license and Holder thereafter fails to take measures to correct the noncompliance, then DOE – subject to Holder's NRC license, nuclear safety and security requirements and regulations, and in consultation with the NRC – may issue an order to Holder to stop work regarding relevant operations until the noncompliance is corrected. Holder shall not be entitled to and DOE shall not be liable for any damages, losses, or claims of any nature arising from or associated with any notice or stop work order that is reasonably issued and administered as described above.

F. Status of Employees:

DOE and Holder agree (subject to any determinations of any regulatory authority having jurisdiction) that DOE and Holder's employees, including contractor employees who work on the INL site are considered site-workers subject to occupational exposure levels, as opposed to off-site members of the general public for purposes of exposure and emission restrictions on DOE and Holder activities at the INL site. DOE and Holder shall notify its employees of this status.

G. Occupational Safety and Health Program:

Holder shall implement an occupational safety and health program that complies with the applicable standards of the Occupational Safety and Health Act, 29 U.S.C. § 651, et seq. Holder shall provide and maintain work environments and procedures that (a) safeguard the public, DOE, and its contractors' personnel, property, materials, supplies, and equipment exposed to Holder's operations and activities; and (b) avoid interrupting or delaying DOE operations at the INL site. Although Holder is regulated by OSHA, Holder agrees to notify both DOE and OSHA of incidents and accidents. Nothing in this Permit provides DOE with

the authority to regulate Holder under the OSH Act, but DOE retains the right to require compliance with OSHA requirements as a condition of this Permit.

H. Emergency Preparedness Training:

Holder shall, as appropriate, provide emergency preparedness training to its employees addressing radiological and other hazards arising from its and DOE activities at the INL site.

**XI. GENERAL PROVISIONS:**

A. Basic Agreement:

The Parties recognize that this Permit contains general terms and conditions governing Holder's identification, characterization and permitted use of a potential CFPP Site. Additional agreements will be needed to implement and establish procedures for compliance with many of the provisions of this Permit. Holder and DOE agree to negotiate in good faith regarding these agreements. It is anticipated that, no later than the commencement of Phase II, the following agreements will be required:

1. A Memorandum of Agreement (MOA) to address coordination on environmental permitting and compliance activities as required by Section VII.D that includes but is not limited to:
  - a. Recognize DOE's role as owner of the INL Site and Holder's role as owner and operator of the CFPP;
  - b. Establish roles and responsibilities for preparing and approving regulatory submittals, reporting, and interfacing with EPA and/or the State of Idaho DEQ;
  - c. Establish procedures for review of draft permit applications, modifications, and permits, and signing and certification of documents; and
  - d. Establish procedures for review, approval, and submittal of reports, data, and notifications required to be submitted to EPA and/or the State of Idaho DEQ.
2. An MOA to address access and control procedures to the CFPP Site as required by Section IV.A.2 and VII.D. This agreement will define items such as badging and access controls, emergency response procedures, security, and any activities that may require coordination with DOE.
3. A Site Services Agreement which will describe which, if any, services the Holder expects or desires the DOE or its contractors to provide or supply to the CFPP, as provided under Section X.B. This agreement will describe the service and the cost structure for such services. Examples of these services include, but may not be limited to, security, emergency response, transportation, power, sanitation, and roads maintenance.

4. One or more MOA's to address issues arising from DOE's exercise of its authority over a DOE activity and another regulatory agency's (such as NRC) exercise of its authority over a Holder activity; in addition, Holder acknowledges that DOE may need to enter into a MOU, MOA, or similar agreement with another regulatory agency and agrees to cooperate in the negotiation and implementation of any such MOU, MOA, or similar agreement.

These additional agreements will be subject to periodic review and modification as needed to maintain currency, and shall be binding and enforceable under the terms of this Permit. In the event of a conflict between the provisions of the MOAs and this Permit, the terms of this Permit shall control.

B. Amendment and Modification:

This Permit may not be amended, superseded, or otherwise modified except by mutual agreement in writing executed by Holder and DOE. All amendments or modifications must be signed by the DOE Authorized Representative. It is anticipated that this Permit will be modified to include, among others, the following exhibits:

1. CFPP Site description. This description will include a description of the land and any improvements, including a map of the INL site depicting common areas to include means of ingress and egress and restricted areas; a description of the CFPP Site; an inventory of any personal property; limits of operations within the CFPP Site and common areas; description and charges for utility, maintenance, and other services to be provided by DOE pursuant to this Permit.
2. A real property and environmental condition report for the CFPP site.

C. Water Rights:

1. DOE has been decreed a federal reserved water right A34-10901, which contains conditions concerning its use and transferability. DOE does not guarantee or represent that any of its federally reserved water right can be made available for the use of Holder. DOE, however, agrees to cooperate with Holder's efforts to confirm whether a portion of DOE's federal reserved water right may be used by Holder for the construction and operation of the CFPP pursuant to this agreement, related MOAs or agreements. Any such federal reserved water rights beneficially used by Holder on the Idaho Site shall continue to be held in the name of the United States and such beneficial use by Holder shall be in furtherance of the goals of this Agreement and DOE's mission on the Idaho Site.
2. To the extent the DOE federal reserved water right is unavailable to Holder, Holder shall be responsible for obtaining and developing any supply of water and/or water rights to meet its needs pursuant to state law. Any such independently acquired water rights beneficially used by Holder on the Idaho Site shall be the property of the Holder.

3. DOE agrees to cooperate with Holder in Holder's efforts to acquire water supply and/or water rights, including cooperation in the siting of water supply or delivery facilities such as wells, pumps, canals, pipelines, lift stations or reservoirs necessary for the development and use of Holder's water supply and/or water rights, and in their transfer to the Idaho Site for beneficial use by Holder.

D. Liens:

Holder shall promptly discharge or cause to be discharged any valid lien, right in rem, or claim, caused by Holder or any of its contractors that at any time may arise or exist with respect to the CFPP Site or materials or equipment furnished by DOE or used to provide services by DOE on behalf of Holder.

E. Payments and Interests:

Holder shall make all payments to DOE required under this Permit by check or money order made payable to the U.S. Department of Energy, or by electronic funds transfer to an account designated by DOE, and delivered to DOE unless otherwise directed by DOE. In the case of advance payments, amounts shall be due 30 days prior to the beginning of the underlying work. Otherwise, amounts shall be due no later than 60 days from the earlier of: (1) the date fixed pursuant to this Permit; (2) the date of the first written demand for payment, including demand consequent upon termination; (3) the date DOE transmits to Holder a proposed supplemental agreement to confirm completed negotiations fixing the amount. All amounts that become payable by Holder to DOE under this Permit shall bear interest from the date due until paid at the interest rate established by the Secretary of the Treasury pursuant to Public Law 92-41 for the Renegotiation Board, as of the date the amount becomes due as provided herein.

F. State and Local Taxes:

In the event that any taxes, assessments or similar charges are imposed by state or local authorities upon the activities of Holder, Holder shall pay those charges when due.

G. Access to Records:

Solely for the purposes of administering this Permit, and subject to a written request and robust confidentiality protections, and upon reasonable advance notice to Holder, Holder shall make all of the accounting books and supporting records of the business activities available for analysis by the DOE or other Federal agencies authorized to review DOE activities.

H. Export Controls:

The Parties acknowledge that to the extent the activities covered by this Agreement are subject to U.S. export control laws, transactions with certain persons and the exportation of certain types and levels of technologies and services are prohibited or restricted. These laws

include, without limitation, the Atomic Energy Act of 1954, as amended; the Arms Export Control Act (22 U.S.C. 2751 et seq.); the Export Administration Act of 1979 (560 U.S.C. Append 2401 et seq.); Assistance for Foreign Atomic Energy Activities (10 CFR part 810); Export and Import of Nuclear Equipment and Material (10 CFR part 110); International Traffic in Arms Regulations (22 CFR parts 120 et seq.); Export Administration Regulations (15 CFR part 730 et seq.); Foreign Assets Control Regulations (31 CFR parts 500 et seq.); and the Espionage Act (37 U.S.C. 791 et seq.) which among other things prohibit the making of false statements and the concealment of any material information regarding the activities covered by this Agreement that are subject to U.S. export control laws.

Each Party is responsible for its own compliance with laws and regulations governing export controls.

I. Failure to Insist upon Compliance:

DOE's failure to insist upon Holder's performance of any of the terms, covenants, or conditions of this Permit shall not be construed as a waiver or relinquishment of DOE's right to Holder's future performance of any such terms, covenants, or conditions.

J. Nondiscrimination:

Holder shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin or disability in the construction, operation, maintenance, and remediation activities on the CFPP Site; and Holder shall comply with all applicable statutes, regulations, and ordinances.

K. Covenants against Contingent Fees:

Holder warrants that no person or agency has been employed or retained to solicit or obtain this Permit upon an agreement or understanding for a contingent fee, except a bona fide employee or bona fide agency. For breach or violation of this warranty, DOE has the right to annul this Permit without liability or in its sole discretion to add to the consideration, or otherwise recover, the full amount of such contingent fee.

"Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government agreements nor holds itself out as being able to obtain any Government agreement or agreements through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by Holder and subject to Holder's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government agreements nor holds itself out as being able to obtain any Government agreement or agreements through improper influence.

“Contingent fee,” as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person has in securing a Government agreement.

“Improper influence,” as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government agreement on any basis other than the merits of the matter.

L. Compliance with Anti-Corruption Laws:

Holder agrees that when dealing with any government official, political party, party official or candidate for any political office, that they and their officers, directors, employees, agents, members, or representatives on their behalf shall fully comply with the provisions of all applicable anti-corruption laws including the U.S. Foreign Corrupt Practices Act and all relevant local anti-corruption laws.

M. Gratuities:

Bribery Prohibited. Holder agrees that in connection with obtaining this Permit or conducting any work related to this Permit, they shall not directly or indirectly give, offer, or promise anything of value to any government official, official political party, party official or candidate for any political office for the corrupt purpose of influencing or inducing any act or decision by any government official or agency, or for the purpose of securing any improper advantage on behalf of either of them.

N. Disputes:

In the event of a dispute arising under this Permit, the Parties agree that, before filing any action in court, they shall put forth a reasonable good faith effort and attempt to resolve any issues arising out of or relating to this Permit informally. If resolution cannot be achieved, then DOE shall issue a written decision on the dispute. DOE shall issue such a decision within 30 days of receipt of a written request from Holder for a decision.

1. The decision of the DOE Authorized Representative will be final and conclusive unless, within 30 days from the date Holder receives such decision, Holder submits a written appeal to the Manager, Department of Energy Idaho Operations Office. Any such appeal shall include the information Holder is relying on to support its position. The Manager shall issue a final determination within 30 days of receipt of the appeal. The written determination of the Manager will be final and conclusive unless Holder brings an action in a court of competent jurisdiction within 90 days after receipt of the Manager’s decision.
2. Any litigation brought to resolve disputes under this Permit shall be brought in the United States District Court for the District of Idaho with venue in Pocatello, Idaho.

3. The time periods in this Section may be extended by written agreement of the Parties. If DOE fails to issue a decision within the time periods required by this Section, Holder may initiate litigation to resolve the dispute.

O. Severability:

If any term or provision of this Permit is held invalid or unenforceable to any extent, the remainder of this Permit shall not be affected and shall remain in place.

P. Availability of Funds:

Implementation and performance under this Permit by DOE is subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. §1341, *et seq.* DOE's performance of any of the terms or conditions in this Permit shall be subject to the availability of funds appropriated by Congress.

## **XII. REPRESENTATIONS**

A. DOE Authorized Representatives:

As of the Effective Date, for the purposes of this Permit, DOE's Authorized Representative is Suzette Olson, Contracting Officer, and notices required under this Permit shall be forwarded to her at U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

B. Holder Authorized Representatives:

As of the Effective Date, for the purposes of this Permit, Holder's Authorized Representative is Ted Rampton, General Manager for the CFPP, and notices required under this Permit shall be forward to him at Utah Associated Municipal Power Systems, 155 North 400 West, Suite 480, Salt Lake City, UT 84103.

C. Changes in Authorized Representatives:

All successor Authorized Representatives and/or changes in address shall be provided in writing to the other party within 30 days of the effective date of the change.

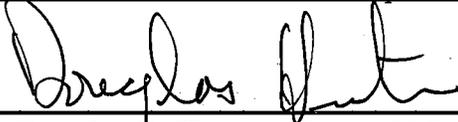
D. Effect of Notices:

No notice, order, direction, determination, requirement, consent or approval under this Permit shall be of any effect unless provided in accordance with this Use Permit. All notices required under this Permit to be in writing shall be addressed to Holder, or to DOE, as may be appropriate, at the addresses specified in this Permit or as may be changed by written notice.

**XIII. EFFECTIVE DATE**

This Permit is effective upon signature by all Parties.

HOLDER: Utah Associated Municipal Power Systems

By:   
\_\_\_\_\_  
**Douglas O. Hunter, General Manager**

Date: February 17<sup>th</sup>, 2016

UNITED STATES DEPARTMENT OF ENERGY

By:   
\_\_\_\_\_  
**Richard B. Provencher, Manager**  
**Idaho Operations Office**

Date: 2/17/16