

POWER PURCHASE AGREEMENT

BETWEEN

[[INSERT]]

AND

AVISTA CORPORATION

This standard form of power purchase agreement is provided pursuant to WAC 480-106-030(4). This standard form of power purchase agreement is applicable to new or existing qualifying facilities with capacities of five megawatts (5 MWs) or less. This standard form does not contain all matters upon which agreement must be reached in order for a transaction to be completed. Certain information must be provided and completed prior to execution of any final definitive power purchase agreement. The matters set forth herein are not intended to and do not constitute a binding agreement or establish any obligation by any party, and this communication may not be relied upon as the basis for a contract by estoppel or otherwise. A binding agreement will arise only upon the execution and delivery of mutually satisfactory definitive agreement and the satisfaction of the conditions set forth therein, including completion of due diligence and, to the extent required, the approval of such agreements by the respective governing bodies and management of each party, which approval shall be in the sole subjective discretion of the respective governing bodies and management. Any actions taken by a party in reliance on terms expressed herein or on statements made during negotiations of the transactions contemplated hereby shall be at that party's own risk. Avista may revise this standard form of power purchase agreement, and submit such revised standard form of power purchase agreement to the Washington Utilities and Transportation Commission for approval, at any time.

POWER PURCHASE AGREEMENT

This Agreement is made by and between Avista Corporation, a Washington corporation (“Avista”), and _____ (“Seller”). Avista and Seller are sometimes referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, Seller will own, operate and maintain an electric power generating facility with a Nameplate Capacity Rating of five (5) MW Alternating Current (AC) or less, as more fully described in Exhibit A (“Facility”);

WHEREAS, Seller will operate the Facility as a Qualifying Facility, as defined by the Public Utility Regulatory Policies Act of 1978 (“PURPA”); and

WHEREAS, Seller will deliver and sell, and Avista will purchase, output generated from the Facility subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, the Parties agree as follows.

1. DEFINITIONS

Except as otherwise defined in this Agreement, whenever used in this Agreement and exhibits hereto, the following terms shall have the following meanings:

1.1 “Agreement” means this Power Purchase Agreement, including all exhibits, and any written amendments.

1.2 “Alternate Point of Delivery” shall have the meaning provided in Section 12.2 of this Agreement.

1.3 “Ancillary Services” means those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the electrical systems in accordance with Prudent Utility Practices and any existing or future WECC requirements.

1.4 “Avoided Cost Rates” shall have the meaning provided in Section 7.2 or Section 7.3, as applicable, of this Agreement.

1.5 “aMW” means average megawatt(s). An average megawatt is calculated by dividing the total generation in MWh over a given period of time (e.g., a calendar month) by the number of hours in that period of time.

1.6 **“Balancing Authority Area”** The collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.

1.7 **“Base Energy Amount”** means monthly Net Output less than or equal to 110 percent of the Monthly Net Output Estimate.

1.8 **“Business Day”** means every day other than a Saturday or Sunday or a national holiday. National holidays shall be those holidays observed NERC.

1.9 **Reserved.**

1.10 **“Commercial Operation Date”** means the date upon which all milestones set forth in Exhibit J required to be satisfied prior to achieving commercial operation, including Start-Up Testing, are satisfied. Upon achieving the Commercial Operation Date, Seller shall, within five Business Days, provide Avista written notice of the Commercial Operation Date. Such written notice shall certify that all such milestones were satisfied as of the Commercial Operation Date set forth in such notice. For Facilities that achieved the Commercial Operation Date under a prior agreement with Avista, the Commercial Operation Date shall be the date that the Facility first achieved the Commercial Operation Date under such prior agreement.

1.11 **“Commission”** means the Washington Utilities and Transportation Commission, or its successor.

1.12 **Declared Suspension of Energy Deliveries.** Shall have the meaning provided in Section 11.3.1 of this Agreement.

1.13 **“Effective Date”** shall have the meaning provided in Section 4 of this Agreement.

1.14 **“Environmental Attributes”** means any and all certificates, credits, benefits, emissions reductions, environmental air quality credits and emissions reduction credits, offsets and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance attributable to the generation of energy by the Facility, and the delivery of such energy to the electricity grid, and include without limitation, any of the same arising out of any current or future legislation or regulation concerned with oxides of nitrogen, sulfur, or carbon, with particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change (“UNFCCC”) or the Kyoto Protocol to the UNFCCC or crediting “early action” with a view thereto, or laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or successor administrator (collectively with any state or federal entity given jurisdiction over a program involving transferability of Environmental Attributes, the “CAMD”), but specifically excluding investment tax credits, production tax credits, and cash grants associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with ownership of the Facility that are applicable to a state or federal income tax obligation, if any. Environmental Attributes also include the reporting rights or Renewable Energy Certificates (“RECs”) associated with these Environmental Attributes. Environmental Attributes include

without limitation all “Environmental Attributes” and all “Green Attributes” as those terms are defined in Appendix A-1 and Appendix A-2 of California Public Utilities Commission D. 08-08-028 in R. 06-02-012. RECS are accumulated on a MWh basis and one REC represents the Environmental Attributes associated with one MWh of energy. Environmental Attributes do not include any energy, capacity, reliability or other power attributes from the Facility.

1.15 “**Excess Energy**” shall have the meaning provided in Section 7.3.4 of this Agreement.

1.16 “**Facility**” means the electric energy generating facilities, including all equipment and structures necessary to generate and supply electric energy, more particularly described at Exhibit A.

1.17 “**Facility Service Power**” means the electric energy generated and used by the Facility during its operation to operate equipment that is auxiliary to primary generation equipment including, but not limited to, pumping, generator excitation, cooling or other operations related to the production of electric energy by the Facility.

1.18 “**Force Majeure**” shall have the meaning provided in Section 13 of this Agreement.

1.19 “**FERC**” means the Federal Energy Regulatory Commission, or its successor.

1.20 “**Independent Engineering Certification**” means certifications detailed in Section 3.3 provided by a professional engineer registered in the state in which the Facility is located, who has no direct or indirect, legal, or equitable ownership interest in the Facility.

1.21 “**Initial Capacity Determination**” shall have the meaning provided in Section 3.4 of this Agreement.

1.22 “**Initial Delivery Date**” shall mean the date upon which Seller first schedules Net Output to Avista pursuant to this Agreement.

1.23 “**Initial Year Monthly Net Output Estimates**” shall have the meaning provided in Section 5.2 of this Agreement.

1.24 “**Interconnection Agreement**” means, as applicable, the agreement between Seller and Avista or Seller and a Transmitting Entity that is providing interconnection service which governs how the Net Output is delivered to Avista’s or the Transmitting Entity’s electrical system at the Point of Interconnection during the Term of this Agreement.

1.25 “**Interconnection Facilities**” means all facilities required to connect the Facility to the Point of Interconnection, including connection, transformation, switching, relaying and safety equipment. Interconnection Facilities shall also include all telemetry, metering, cellular telephone, and/or communication equipment required under this Agreement regardless of location.

1.26 “**Losses**” means the loss of electrical energy occurring as a result of the transformation and transmission of energy between the Point of Interconnection and the Point of Delivery. For purposes of this Agreement, Losses shall equal ___ percent of the total generation of the Facility as metered at the Facility.

1.27 “**MW**” means megawatt. One thousand kilowatts equals one megawatt.

1.28 “**MWh**” means megawatt-hour. One thousand kilowatt-hours equals one megawatt-hour.

1.29 “**Market Energy Price**” means the PowerDex hourly Mid-Columbia (“Mid-C”) index price, or other mutually agreed to index.

1.30 “**Monthly Net Output Estimate**” means, as applicable, the Initial Year Monthly Net Output Estimates provided pursuant to Section 5.2 or the Subsequent Monthly Net Output Estimates provided pursuant to Section 5.3.

1.31 “**Nameplate Capacity Rating**” means the maximum generating capacity of the Facility, as determined by the manufacturer, and expressed in megawatts (MW) or kilowatts (kW).

1.32 “**NERC**” means the North American Electric Reliability Corporation or its successor.

1.33 “**Net Output**” means the capability and electric energy generated by the Facility, less Facility Service Power and Losses expressed in megawatt-hours (MWh) or kilowatt-hours (kWh).

1.34 “~~**Nominal Interconnected Facility Reserved.**” shall have the meaning provided in Section 5.1 of this Agreement.~~

1.35 **Reserved**

1.36 “**Operating Year**” means each 12-month period from January 1 through December 31.

1.37 “**Point of Delivery**” means the location, as specified in Exhibit A of this Agreement, where Seller’s Facility interconnects with Avista’s electrical system or, if the Facility is not interconnected with Avista’s electrical system, the point where the electric energy produced by the Facility is delivered to Avista’s electrical system.

1.38 “**Point of Interconnection**” means the high voltage side of Seller’s step-up transformer at the point of interconnection between Seller’s Facility and the Transmitting Entity’s electric system, which is commonly referred to as the “busbar.”

1.39 “**Prudent Utility Practices**” means the practices, methods, and acts commonly and ordinarily used in electrical engineering and operations by a significant portion of the electric

power generation and transmission industry, in the exercise of reasonable judgment in the light of the facts known or that should have been known at the time a decision was made, that would have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy, and expedition.

1.40 “Qualifying Facility” or “QF” means a generating facility which meets the requirements for “QF” status under PURPA and part 292 of FERC’s Regulations, 18 C.F.R. Part 292, and which has obtained certification of its QF status.

1.41 “Scheduled Commercial Operation Date” means a date not later than three (3) years after the Effective Date upon which the Facility is scheduled to achieve the Commercial Operation Date.

1.42 “Scheduled Outage” means any outage which is scheduled by the Seller to remove electrical or mechanical equipment from service for repair, replacement, maintenance, safety or any other reason, and which thereby limits the generating capability of the Facility to less than the Initial Capacity Determination.

1.43 ~~“Shortfall Energy Reserved.” shall have the meaning provided in section 7.3.3 of this Agreement.~~

1.44 ~~“Shortfall Energy Price Reserved” shall mean the price Avista will pay Seller for Shortfall Energy~~

1.45 “Start-Up Testing” means the start-up tests required by the manufacturer and/or Avista that prove that the Facility is reliably producing electric energy.

1.46 ~~Reserved. “Surplus Energy” means (i) Net Output during any month which exceeds 110 percent of the Monthly Net Output Estimate for the corresponding month; and (ii) any electric energy that is scheduled by Seller and delivered to the Point of Delivery in any month in excess of the Net Output generated by the Facility in such month.~~

1.47 ~~“Surplus Energy Price Reserved.” shall have the meaning provided in section 7.3.2 of this Agreement.~~

1.48 “Term” shall have the meaning provided in Section 4.1 of this Agreement.

1.49 “Test Energy” shall mean Net Output during Start-Up Testing and before the Commercial Operation Date.

1.50 “Transmitting Entity” means any entity or entities that provide transmission and/or interconnection service to deliver electric energy from the Facility to Avista’s electrical system at the Point of Delivery.

1.51 “Transmission Agreement” means any agreement(s) entered into between Seller and a Transmitting Entity under which the Transmitting Entity shall provide firm transmission

from the Facility to Point of Delivery for the Term of this Agreement. The Transmission Agreement is attached hereto as Exhibit F.

1.52 ~~“Variable Energy Resource Reserved.” shall mean a solar or wind QF.~~

1.53 “WECC” means the Western Electricity Coordinating Council or its successor.

1.54 “WREGIS” means the Western Renewable Energy Generation Information System, or a successor.

1.55 “WREGIS Operating Rules” means the then current operating rules and requirements adopted by WREGIS, as such rules and requirements may be amended, supplemented or replaced (in whole or in part) from time to time.

2. WARRANTIES

2.1 No Warranty by Avista. Avista makes no warranties, expressed or implied, regarding any aspect of Seller’s design, specifications, equipment or facilities, including, but not limited to, safety, durability, reliability, strength, capacity, adequacy or economic feasibility, and any review, acceptance or failure to review Seller's design, specifications, equipment or Facility shall not be an endorsement or a confirmation by Avista. Avista assumes no responsibility or obligation with regard to any NERC and/or WECC reliability standard associated with the Facility or the delivery of electric energy from the Facility to the Point of Delivery.

2.2 Seller’s Warranty. Seller warrants and represents that: (a) Seller has investigated and determined that it is capable of performing and will perform the obligations hereunder and has not relied upon the advice, experience or expertise of Avista in connection with the transactions contemplated by this Agreement; (b) all professionals and experts including, but not limited to, engineers, attorneys or accountants, that Seller may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Seller; (c) Seller will comply with all applicable laws and regulations and shall obtain and comply with applicable licenses, permits and approvals in the design, construction, operation and maintenance of the Facility; and (d) the Facility is, and during the Term of this Agreement will remain, a Qualifying Facility as that term is used in 18 C.F.R Part 292. Seller’s failure to maintain Qualifying Facility status will be a material breach of this Agreement. Avista reserves the right to review the Seller’s Qualifying Facility status and associated support and compliance documents at any time during the Term of this Agreement.

3. CONDITIONS PRIOR TO DELIVERY OF NET OUTPUT

3.1. Time is of the Essence. Time is of the essence in the performance of this Agreement and Seller understands and agrees that Avista is relying on Seller to meet the requirements of Section 4.2 on or before the Scheduled Commercial Operation Date. Seller understands and agrees that Avista’s acceptance of deliveries of energy from Seller is contingent upon Seller fully satisfying each of the requirements in Section 3 of this Agreement prior to the commencement of the first delivery of Net Output to Avista.

3.2 Seller Representation. Seller represents that, prior to the commencement of the first delivery of Net Output to Avista Seller's licenses, permits and approvals (including, but not limited to, evidence of compliance with Subpart B, 18 C.F.R. § 292.207, tribal, state and local business licenses, environmental permits, easements, leases and all other required approvals) are legally and validly issued, are held in the name of the Seller, and Seller is in substantial compliance with said permits.

3.3 Independent Engineering Certifications. Upon Avista's request, prior to the commencement of the first delivery of Net Output to Avista, Seller shall submit to Avista applicable Independent Engineering Certifications for Construction Adequacy for a Qualifying Facility. The Independent Engineering Certification shall be signed by a licensed professional engineer in good standing submitted in a form acceptable to Avista and will acknowledge that the licensed professional engineer rendering the opinion understands that Avista is relying on said opinion. Avista's acceptance of such forms shall not be unreasonably withheld. This section 3.3 shall not apply to a Seller who has previously provided the certification required by this section to Avista for the same Facility.

3.4 Initial Capacity Determination. Seller shall operate the Facility in a manner such that under normal design conditions the Net Output does not exceed 5 MW. Prior to the commencement of the first delivery of Net Output to Avista, Seller shall submit to Avista the maximum hourly generation capability of the Facility ("Initial Capacity Determination"). Such Initial Capacity Determination shall be determined either by use of the Nameplate Capacity Rating or such other means acceptable to Avista and shall be documented and submitted to Avista by Seller. Such documentation shall include the information listed in Exhibit E. Upon receipt of Seller's Initial Capacity Determination, Avista will review such determination within a reasonable time and, if acceptable to Avista, Avista shall issue to Seller its written approval of the Initial Capacity Determination. If the Initial Capacity Determination submitted by Seller is not acceptable to Avista, Avista will promptly notify Seller that Avista will not accept its Initial Capacity Determination. In such event, Avista shall engage, at Seller's sole expense, an independent qualified consultant to determine the Initial Capacity Determination. ~~During the Term of this Agreement, Seller shall not cause the capacity of the Facility to be greater than the Initial Capacity Determination by any means, including by addition, upgrade, or replacement.~~ Seller shall not be required to provide the Initial Capacity Determination required by this section 3.4 if Seller has previously provided an Initial Capacity Determination by this section to Avista for the same Facility. Seller shall promptly update the Initial Capacity Determination if, at any time during the term of this Agreement, Seller modifies the Facility and such modification increases or reduces the maximum hourly generating capability of the Facility.

3.5 Interconnection Agreement. Prior to the Initial Delivery Date, Seller shall provide Avista a copy of its Interconnection Agreement, which shall be attached hereto as Exhibit G.

3.6 Ancillary Services. In the event that the Facility is located outside of Avista's Balancing Authority Area, Seller shall be responsible at its sole expense for obtaining any and all necessary Ancillary Services.

3.7 Insurance. Prior to the Initial Delivery Date, Seller shall, to the extent applicable, submit to Avista evidence of compliance with Section 9.1.

3.8 Network Resource Designation. Prior to the Initial Delivery Date, Seller shall provide to Avista all data required by Avista to enable the Facility to be designated by Avista as a network resource.

3.9 Written Acceptance. Prior to the Initial Delivery Date, Seller shall request and obtain from Avista written confirmation that all conditions to acceptance of electric energy have been fulfilled. Avista shall use reasonable commercial efforts to promptly provide Seller written confirmation that all conditions to acceptance of electric energy have been fulfilled or provide notice that such conditions have not been fulfilled.

4. TERM OF AGREEMENT

4.1 This Agreement shall be effective on the date last signed below or such other date set by Commission order (the "Effective Date") and shall continue for [15 years for new projects or 10 years for existing projects] after the Effective Date (the "Term"), unless otherwise terminated as provided herein.

4.2 ~~Except as otherwise provided in this Section 4.2 or in Section 13, in the event that the Seller fails to achieve the milestones set forth in Exhibit J, and such failure is not cured within thirty (30) days of such failure including achieving the Commercial Operation Date of the Facility within three (3) years of the Effective date, Avista may terminate this Agreement by providing Seller written notice of termination; provided, however, that Avista may not terminate this Agreement if the failure to achieve such milestone(s) was caused by Avista and the Facility can achieve a Commercial Operation Date that is not later than three (3) years from the Effective Date. Notwithstanding the foregoing, failure by Seller to achieve the Commercial Operation Date of the Facility within three (3) years (or 1,095 days) of the Effective Date for any reason is not curable and, therefore, this Agreement shall automatically terminate 1,096 days after the Effective Date if the Facility fails, for any reason, achieve the Commercial Operation Date within three (3) years (1,095) days of the Effective Date.~~

5. NET OUTPUT AMOUNTS FORECASTS

~~**5.1** This Section 5.1 shall not apply to any Facility directly intereconnected to Avista's electrical system and whose Initial Capacity Determination is less than or equal to 3 MW ("Nominal Intereconnected Facilities") or to any Variable Energy Resource.~~

~~**5.1.2 Initial Year Monthly Net Output Estimates.** Seller shall provide to Avista Net Output estimates for each of the twelve consecutive months that begin with the month containing the Initial Delivery Date, counting the month during which the Initial Delivery Date occurs as month one ("Initial Year Monthly Net Output Estimates"). Seller shall provide to Avista such Initial Year Monthly Net Output Estimates by written notice in accordance with Section 30 no later than thirty (30) calendar days prior to the commencement of the first delivery of Net Output to Avista.~~

~~**5.1.3 Subsequent Monthly Net Output Estimates.** At the end of month three following the Initial Delivery Date, and at the end of every month thereafter, Seller shall provide to Avista Net Output estimates pertaining to each additional consecutive month for which Seller has not yet delivered to Avista Net Output estimates. Seller shall provide such Net Output estimates to Avista by written notice in accordance with Section 30, no later than 5:00 p.m. of the last Business Day of the month during which they are required to be provided.~~

~~**5.1.4 Content of Net Output Estimates.** All Net Output estimates shall be expressed in megawatt hours by month.~~

~~**5.1.5 Failure to Provide Net Output Estimates.** In the event that Seller fails to provide Monthly Output Estimates when required herein Avista may determine the Monthly Net Output Estimates pertaining to such month or months, and the Monthly Net Output Estimates determined by Avista shall be binding for purposes of the Agreement as though they were prepared by Seller and provided to Avista as required by the Agreement. Failure of Seller to provide Monthly Output Estimates for three (3) consecutive months shall be a material breach of this Agreement and Avista may, in its sole discretion, terminate this Agreement.~~

~~**5.1.6 Seller's Revisions of Net Delivered Output Estimates.** After the Commercial Operation Date, Seller may revise any future Monthly Net Output Estimates by providing written notice no later than 5 PM Mountain Standard time on the 25th day of the month that is prior to the month to be revised. If the 25th day of the month falls on a weekend or holiday, then written notice must be received on the last business day prior to the 25th day of the month. For example, if the Seller would like to revise the Monthly Net Output Estimates for October, Seller would need to submit a revised schedule no later than September 25th or the last business day prior to September 25th. Failure to provide timely written notice of changes to the Monthly Net Output Estimates will be deemed to be an election of no change from the most recently provided Monthly Net Output Estimates.~~

~~**5.1.7 Avista Adjustment of Monthly Net Output Estimate.** If, pursuant to Section 10 or 11.2, Avista is excused from accepting the Seller's Net Output, or there is a Declared Suspension of Energy Deliveries pursuant to Section 11.3.1, the Monthly Net Output Estimate for the specific month in which the reduction or suspension occurs will be reduced by an amount commensurate to such curtailment (the Monthly Net Output Estimated as adjusted is referred to as the "Adjusted Net Output"). This Adjusted Net Output estimate will be used in applicable Surplus Energy and Shortfall Energy calculations for only the specific month in which Avista is excused from accepting the Net Output or in which the Seller's Declared Suspension of Energy Deliveries occurred.~~

~~**5.1.8** Unless excused by an event of Force Majeure or due to Avista curtailments pursuant to Section 10 or 11.2, Seller's failure to deliver Net Output in any Operating Year in an amount equal to at least ten percent of the sum of the Initial Year Monthly Net Output Estimates as specified pursuant to Section 5.1.2 shall constitute a material breach of this Agreement.~~

~~**5.2 Nominal Interconnected Facilities Forecast.** This Section 5.2 shall apply only to Nominal Interconnected Facilities and shall not apply to any Facility that is either not directly~~

~~interconnected to Avista's electrical system or whose Initial Capacity Determination is greater than 3 MW. Nominal Interconnected Facilities Seller~~ shall provide an annual forecast (8760) for its Facility for each year (or, for the last year of the Term, partial year) during the Term with the first such annual forecast to be provided to Avista on or before the later of the Effective Date or the Commercial Operation Date and on such date in each subsequent year.

6. SCHEDULING

6.1 This Section 6 shall only apply to a Facility that is not directly interconnected to Avista's electrical system. To the extent that the Facility is directly interconnected to Avista's electrical system, the provisions of this Section 6 are not applicable.

6.2 Seller is responsible for supplying day(s)-ahead energy pre-schedules for each hour. Such schedules will, to the extent practical, be based on the anticipated actual generation of the Facility for each such hour. Seller shall submit energy pre-schedules to accommodate generally acceptable scheduling practices as mutually agreed by the Parties. In the absence of such mutual agreement, this requirement may be satisfied by Seller submitting energy pre-schedules for the next Business Day by email, or by other mutually agreed upon means, to Avista no later than 5:30 am on the Business Day immediately preceding the day on which energy deliveries are to be made; *provided, however*, that for estimates of deliveries on weekends and holidays (as defined by NERC), Seller and Avista shall follow scheduling procedures in accordance with then-current standard scheduling practices.

6.3 Seller shall create an electronic tag (e-Tag) that reflects the day-ahead hourly estimate no later than 2:00 pm on the Business Day immediately preceding the day on which energy deliveries are to be made; *provided, however*, that for estimates of deliveries on weekends and holidays (as defined by NERC), Seller and Avista shall follow scheduling procedures in accordance with then current standard scheduling practices.

6.4 The day-ahead estimate shall be provided for preschedule purposes and shall not restrict Seller's right to submit revised hour-ahead schedules as provided herein. At least ninety (90) minutes prior to the start of each delivery hour during the delivery Business Day, Seller shall provide Avista with an updated electric tag (e-Tag) that reflects the firm schedule for that delivery hour. Seller shall pay any energy imbalance charges or penalties imposed by the Transmission Entity on the delivery of the Net Output to the Point of Delivery.

6.6 Email contact information with regard to pre-scheduling and telephone contact information with regard to generation level changes, interruptions or outages are specified in Exhibit C, Communication and Reporting.

6.7 Should circumstances change in the WECC or WECC sub-region, within which Avista operates its electric system, dictate that scheduling protocols or timing of schedule notifications need to conform, then the Parties agree to negotiate in good faith to a mutually agreed modification of this Section 6 as necessary.

7. PURCHASE PRICES AND PAYMENT

7.1 Seller Election. By checking the applicable space below, Seller elects to provide energy or capacity generated by the Facility to Avista:

7.1.1 ____ Pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term, in which case the rates for such purchases shall, at the option of the Seller exercised prior to the beginning of the specified term, be based on either:

(i) ____ The avoided costs calculated at the time of delivery; or

(ii) ____ The avoided costs calculated at the time the obligation is incurred.

7.1.2 ____ As Seller determines energy generated by the Facility is available for sale to Avista.

7.2 Avoided Costs Calculated at the Time of Delivery. To the extent that Seller elects to provide energy or capacity, as applicable, generated by the Facility to Avista pursuant to Section 7.1.1(i) or Section 7.1.2, the rate to be paid to Seller shall be the avoided costs calculated at the time of delivery (“Avoided Cost Rates”), which shall, for each hour in which Seller delivers ~~energy~~ Net Output to Avista at the Point of Delivery, the Market Energy Price for such hour expressed in \$ per kWh multiplied by the total kWh delivered to Avista at the Point of Delivery for such hour.

7.3 Avoided Costs Calculated at the Time the Obligation is Incurred. To the extent that Seller elects to provide energy or capacity, as applicable, generated by the Facility to Avista pursuant to Section 7.1.1, Seller shall, except when either Party’s performance is excused as provided herein, for the Term of this Agreement, deliver Net Output from the Facility to Avista at the Point of Delivery. For all Net Output delivered to Avista at the Point of Delivery, Avista shall pay the applicable rate specified in Sections ~~7.2, 7.3.1, 7.3.2, 7.3.3, 7.3.4~~ and 7.3.5 of this Agreement.

7.3.1 Base Energy. For all Base Energy delivered to Avista at the Point of Delivery, Avista shall pay Seller the applicable rate based upon its published Avoided Cost Rates as specified in Exhibit B (“the Avoided Cost Rates”). This Section 7.3.1 shall only apply to the to a Seller that elects to provide energy or capacity generated by its Facility pursuant to Section 7.1.1(ii) and will not apply to a Seller that elects to sell energy generated by the Facility pursuant to Sections 7.1.1(i) or 7.1.2.

7.3.2 ~~Surplus Energy Reserved. For all Surplus Energy delivered to Avista at the Point of Delivery, Avista shall pay Seller the lower of the Market Energy Price or the Avoided Cost Rate specified in Exhibit B (“Surplus Energy Price”). This Section 7.3.2 shall only apply to the to a Seller that elects to provide energy or capacity generated by its Facility pursuant to Section~~

~~7.1.1(ii) and will not apply to a Seller that elects to sell energy generated by the Facility pursuant to Sections 7.1.1(i) or 7.1.2. This section 7.3.2 shall not apply to Nominal Interconnected Facilities or Variable Energy Resources.~~

7.3.3 ~~Shortfall Energy Reserved. Except to the extent due to Force Majeure event or Avista curtailment pursuant to Section 10 or 11.2, if the month's Net Output is less than 90 percent of the Monthly Net Output Estimate for the corresponding month, Shortfall Energy will be the difference between 90 percent of the Monthly Net Output Estimate and the same month's actual Net Output delivered to Avista at the Point of Delivery. For all Shortfall Energy Seller shall pay to Avista the greater of zero or the Market Energy Price ("Shortfall Energy Price"). This Section 7.3.3 shall only apply to the to a Seller that elects to provide energy or capacity generated by its Facility pursuant to Section 7.1.1(ii) and will not apply to a Seller that elects to sell energy generated by the Facility pursuant to Sections 7.1.1(i) or 7.1.2. This section 7.3.2 shall not apply to Nominal Interconnected Facilities or Variable Energy Resources.~~

7.3.42 Excess Energy. Excess Energy is Net Output, expressed in MWh, which Seller delivers to Avista at the Point of Delivery that exceeds a delivery rate in excess of 5 MW. Avista, at its sole discretion, may accept Excess Energy, but Avista will not pay for any Excess Energy. Where Avista does not elect to accept Excess Energy, and Seller delivers such energy after notification by Avista in accordance with Exhibit C, Seller shall pay Avista liquidated damages equal to the absolute value of the lesser of the Market Energy Price or \$0 per MWh of Excess Energy delivered to Avista. The Parties agree that the damages that Avista would incur due to Seller's delivery of Excess Energy when Avista does not elect to accept Excess Energy would be difficult or impossible to predict with certainty and the liquidated damages contemplated by this provision are a fair and reasonable calculation of such damages and are not a penalty.

7.3.53 Test Energy. For all Test Energy delivered to Avista at the Point of Delivery, Avista shall pay the lower of 85 percent of the Market Energy Price or the Avoided Cost Rate specified in Exhibit B.

7.4 Payments to Seller. Avista shall prepare and submit to Seller monthly statements during the Term of the Agreement based upon Net Output delivered to Avista during the previous month. Payments owed by Avista shall be paid no later than the 20th day of the month following the end of the monthly billing period or five days after the receipt of a monthly statement, whichever is later. If the due date falls on a non-Business Day, then the payment shall be due on the next Business Day.

7.5 Payments to Avista and Right of Set Off. If Seller is obligated to make any payment or refund to Avista, Seller agrees that Avista may set off such payment or refund amount against any current or future payments due Seller under this Agreement. If Avista does not elect to set off, or if no current or future payment is owed by Avista, Avista shall submit an invoice to Seller for such payments. Seller shall pay Avista no later than the 20th day of the month following the end of the monthly billing period or five days after the receipt of a monthly statement, whichever is later. If the due date falls on a non-Business Day, then the payment shall be due on the next Business Day.

7.6 Interest. In addition to the remedies set forth in Section 17 of this Agreement, any amounts owing after the due date specified in Sections 7.5 and 7.6 will be subject to interest in the amount of one and one half percent (1.5%) per month, not to exceed the maximum rate allowed by the law, multiplied by the unpaid balance.

7.7 Wire Transfer. All payments shall be made by ACH or wire transfer in accordance with further agreement of the Parties.

7.8 Title and Risk of Loss. As between the Parties, Seller shall be deemed to be in control of the output from the Facility, including any Environmental Attributes, up to and until delivery to and receipt by Avista at the Point of Delivery and Avista shall be deemed to be in control of the Net Output and, if Section 8.1 is checked, Environmental Attributes delivered to Avista.

8. ENVIRONMENTAL ATTRIBUTES

8.1 Ownership of Environmental Attributes. To the full extent allowed by applicable laws or regulations, Avista shall own or be entitled to claim all Environmental Attributes associated with the lesser of the Environmental Attribute Percentage of (i) the actual Net Output of the Facility or (ii) the Net Output delivered to Avista. The Environmental Attribute Percentage shall be calculated by determining the percentage of the applicable Avoided Cost Rates over the Term (or, if applicable, for the period from the Commercial Operation Date through the end of the Term) that is based on the avoided capacity costs of an eligible renewable resource as defined in RCW 19.285.030. The Environmental Attribute Percentage shall be stated in Exhibit B.

To the extent necessary, Seller shall assign to Avista all rights, title and authority necessary for Avista to register, own, hold and manage such Environmental Attributes in Avista's own name and to Avista's account, including any rights associated with WREGIS (or any other renewable energy information or tracking system that may be established) with regard to monitoring, tracking, certifying, or trading such Environmental Attributes. The Environmental Attributes to be transferred to Avista hereunder will be sourced from the Facility. Seller shall take all reasonable steps, at Seller's expense, required to obtain and maintain tradable renewable certification, including Green-e, California Energy Commission, or other similar certification for the Facility and/or the Gross Facility Output.

8.2 Transfers. To the extent that Avista is to own any Environmental Attributes in accordance with Section 8.1 of this Agreement, Seller shall transfer all such Environmental Attributes to Avista on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Seller shall comply with all laws, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such Environmental Attributes to Avista and Avista shall be given sole title to all such Environmental Attributes. Seller warrants that upon delivery to Avista, the Environmental Attributes will be free and clear of all liens, security interests, claims and encumbrances. Upon request of Avista, Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that such Environmental Attributes are issued and tracked for purposes of satisfying state renewable portfolio standard requirements, including Washington State's Energy Independence Act requirements, and are transferred in a timely manner to Avista.

8.3 Changes to WREGIS. If the WREGIS Operating Rules are changed or replaced after the Effective Date, WREGIS applies the WREGIS Operating Rules in a manner inconsistent with Section 8.2 after the Effective Date, or WREGIS is eliminated or replaced, the Parties promptly shall modify Section 8.2 as reasonably required to cause and enable Seller to transfer Environmental Attributes to Avista (to the extent required by Sections 8.1 and 8.2), including but not limited to those modifications reasonably required to cause and enable Seller to transfer to Avista's WREGIS Account the Environmental Attributes that are required to be transferred to Avista for each given calendar month under this Agreement.

9. INSURANCE; CONTINUING OBLIGATIONS

9.1 Insurance. Prior to the commencement of the first delivery of Net Output to Avista, Seller, at its own cost, shall obtain and maintain the following insurance in force over the term of this Agreement and shall provide certificates of all insurance policies. All insurance policies required to fulfill the requirements of this Section 9 shall include language requiring that any notice of cancellation or notice of change in policy terms be sent to Avista by the insurance carrier(s) at least sixty days prior to any change or termination of the policies.

9.1.1 General Liability. Seller shall carry commercial general liability insurance for bodily injury and property damage with a minimum limit equal to \$1,000,000 for each occurrence. The deductible shall not exceed the Seller's financial ability to cover claims and shall not be greater than prevailing practices for similar operations in the State of Washington.

9.1.2 Property. Seller shall carry all-risk property insurance for repair or replacement of the Facility. The limit of property insurance shall be sufficient to restore operations in the event of reasonably foreseeable losses from natural, operational, mechanical and human-caused perils. The deductible shall not exceed the Seller's financial ability to fund the cost of losses and shall not be greater than prevailing practices for similar operations in the State of Washington.

9.1.3 Qualifying Insurance. The insurance coverage required by this Section 9 shall be obtained from an insurance company reasonably acceptable to Avista and shall

include an endorsement naming Avista as an additional insured and loss payee as applicable.

9.1.4 Notice of Loss or Lapse of Insurance by Seller. If the insurance coverage required by this Section 9 is lost or lapses for any reason, Seller will immediately notify Avista in writing of such loss or lapse. Such notice shall advise Avista of (i) the reason for such loss or lapse and (ii) the steps Seller is taking to replace or reinstate coverage. Seller's failure to provide the notice required by this Section and/or to promptly replace or reinstate coverage will constitute a material breach of this Agreement

9.2 Reserved.

9.3 Continuing Obligations. For the Term of this Agreement, Seller will provide Avista with the following:

9.3.1 Insurance. Upon Avista's request, Seller shall provide Avista evidence of compliance with the provisions of Section 9.1. If Seller fails to comply, such failure will be a material breach and may only be cured by Seller promptly supplying evidence that the required insurance coverage has been replaced or reinstated.

9.3.2 Engineer's Certification. If requested by Avista, Seller will supply Avista with a Certification of Ongoing Operations and Maintenance from a Registered Professional Engineer licensed in the state in which the Facility is located, which certification shall be in the form specified in Exhibit D. Seller's failure to supply the certificate required by this Section 9.3.2 will be a material breach that may only be cured by Seller promptly providing the required certificate. Avista may request the Certification of Ongoing Operations and Maintenance required by this Section once in any three-year period during the Term.

9.3.3 Licenses and Permits. During the Term of this Agreement, Seller shall comply with all applicable federal, state, and local laws and regulations. Seller shall maintain compliance with all permits and licenses described in Section 3.2 of this Agreement. In addition, Seller will obtain, and supply Avista with copies of, any new or additional permits or licenses that may be required for Seller's operations. At least every fifth year after the Effective Date, Seller will update the documentation described in Section 3.2. If at any time Seller fails to maintain compliance with the permits and licenses described in Section 3.2 or this Section, or to provide documentation required by this Section, such failure will be a material breach of this Agreement that may only be cured by Seller submitting to Avista evidence of compliance.

10. CURTAILMENT, INTERRUPTION OR REDUCTION OF DELIVERY

Avista may require Seller to curtail, interrupt or reduce delivery of Net Output if, in accordance with Section 11.2, Avista determines that curtailment, interruption or reduction is necessary because of a Force Majeure event or to protect persons or property from injury or damage, or because of emergencies, necessary system maintenance, system modification or special operating circumstances. Avista will use commercially reasonable efforts to keep any period of curtailment, interruption, or reduction to a minimum. In order not to interfere unreasonably with Seller operations, Avista will, to the extent practical, give Seller reasonable prior notice of any curtailment, interruption, or reduction, the reason for its occurrence and its probable duration. Seller understands and agrees that Avista may not be able to provide notice to Seller prior to interruption, curtailment, or reduction of electrical energy deliveries to Avista in emergency circumstances, real-time operations of the electric system, and/or unplanned events.

11. OPERATION

11.1 Communications and Reporting. Avista and the Seller shall maintain appropriate operating communications through the Communicating and Reporting Guidelines specified in Exhibit C.

11.2 Excuse From Acceptance of Delivery of Energy.

11.2.1 Avista may curtail, interrupt, reduce or suspend delivery, receipt or acceptance of Net Output if Avista, in its sole discretion, reasonably determines that such curtailment, interruption, reduction or suspension is necessary, consistent with Prudent Utility Practice, and that the failure to do so may:

- (a) endanger any person or property, or Avista's electric system, or any electric system with which Avista's system is interconnected;
- (b) cause, or contribute to, an imminent significant disruption of electric service to Avista's or another utility's customers;
- (c) interfere with any construction, installation, inspection, testing, repair, replacement, improvement, alteration, modification, operation, use or maintenance of, or addition to, Avista's electric system or other property of Avista; or
- (d) prevent or interfere with Avista's compliance with any applicable law or regulatory requirement.

11.2.2 Avista shall promptly notify Seller of the reasons for any such curtailment, interruption, reduction or suspension provided for in Section 11.2. Avista shall use reasonable efforts to limit the duration of any such curtailment, interruption, reduction or suspension.

11.3 Seller Declared Suspension of Energy Deliveries.

11.3.1 If the Seller's Facility experiences a forced outage due to equipment failure which is not caused by an event of Force Majeure or by neglect, disrepair or lack of adequate preventative maintenance of the Seller's Facility, Seller may, after giving notice as provided in Section 11.3.2 below, temporarily suspend all deliveries of Net Output to Avista from the Facility or for from individual generation unit(s) within the Facility impacted by the forced outage for a period of not less than 48 hours to correct the forced outage condition ("Declared Suspension of Energy Deliveries"). Seller's Declared Suspension of Energy Deliveries will begin at the start of the next full hour following the Seller's telephone notification as specified in Section 11.3.2 and will continue for the time as specified (not less than 48 hours) in the written notification provided by the Seller. In the month(s) in which the Declared Suspension of Energy occurred, the Net Output Amount will be adjusted as specified in Section 5.1.7.

11.3.2 If the Seller desires to initiate a Declared Suspension of Energy Deliveries as provided in Section 11.3.1, the Seller shall notify the Avista by telephone. The beginning hour of the Declared Suspension of Energy Deliveries will be at the earliest the next full hour after making telephone contact with Avista. Seller shall, within 24 hours after the telephone contact, provide Avista a written notice in accordance with Section 30 that will contain the beginning hour and duration of the Declared Suspension of Energy Deliveries and a description of the conditions that caused Seller to initiate a Declared Suspension of Energy Deliveries. Avista shall review the documentation provided by Seller to determine Avista's acceptance of the described forced outage as qualifying for a Declared Suspension of Energy Deliveries as specified in Section 11.3.1. Avista's acceptance of the Seller's forced outage as an acceptable forced outage will be based upon the clear documentation provided by Seller that the forced outage is not due to an event of Force Majeure or by neglect, disrepair or lack of adequate preventative maintenance of Seller's Facility.

11.4 Scheduled Outage. On or before December 15 prior to each calendar year, Seller shall submit a written proposal of Scheduled Outages for the upcoming calendar year. Such written proposal of Scheduled Outages shall contain the percentage of hours in each calendar month where the Facility is expected to be on Scheduled Outage. Seller may update the annual Scheduled Outages proposal periodically. The Seller in no instance may change Scheduled Outages for the current or following 2 calendar months. Avista and Seller shall mutually agree as to the acceptability of the proposal and any updates or changes to the proposal. The Parties' determination as to the acceptability of Seller's timetable for Scheduled Outages shall take into consideration Prudent Utility Practices, Avista's system requirements and Seller's preferred schedule. Neither Party shall unreasonably withhold acceptance of the proposed Scheduled Outages. The Parties shall cooperate in determining mutually acceptable times for Scheduled Outages.

11.5 Seller's Risk. Seller shall design, construct, own, operate and maintain the Facility at its own risk and expense in compliance with all applicable laws, ordinances, rules, regulations, orders and other requirements, now or hereafter in effect, of any governmental authority.

11.6 Avista's Right to Inspect. Seller shall permit Avista to inspect and audit the Facility, any related production, delivery and scheduling documentation or the operation, use or maintenance of the Facility at any reasonable time and upon reasonable notice. Seller shall provide Avista reasonable advance notice of any Facility test or inspection performed by or at the direction of Seller.

11.7 Seller Obligations in Accordance with Prudent Utility Practices. Seller shall own, operate and maintain the Facility and any Seller-owned Interconnection Facilities so as to allow reliable generation and delivery of Net Output to Avista for the full Term of the Agreement, in accordance with Prudent Utility Practices.

11.8 Modifications. Seller shall notify Avista in writing of any material modifications to the Facility. Material modifications to the Facility include, but are not limited to, any modification that increases or decreases the Facility ~~n~~Nameplate ~~c~~Capacity ~~r~~Rating, changes the primary energy source, and changes to the generator fuel. Any material modifications to the Facility, including but not limited to the generator or turbine, that (1) increases ~~or decreases~~ the Facility ~~n~~Nameplate ~~c~~Capacity ~~r~~ating such that the total installed capacity rating is greater than five (5) MWs, or (2) changes the primary energy source, or (3) changes to the generator fuel, will require a review of the Agreement terms, conditions and pricing and Avista, at its sole determination, may adjust the pricing or terminate the Agreement. If the Agreement is terminated because of said modifications, the Seller will be responsible for any termination damages.

12. INTERCONNECTION, METERING AND TRANSMISSION

Seller shall make all necessary arrangements to interconnect its Facility with the electrical system of Avista or another Transmitting Entity. Any required metering for the Facility shall be pursuant to the Interconnection Agreement. To the extent that the Facility is interconnected to the electrical System of a Transmitting Entity other than Avista, Seller shall comply with the requirements of Sections 12.1 through 12.4 of this Agreement.

12.1 Prior to the commencement of the first delivery of Net Output, Seller shall provide Avista with copies of all executed Transmission Agreements in a form reasonably satisfactory to Avista, providing for the firm transmission of Net Output from the Facility to the Point of Delivery for the Term of this Agreement or with renewal rights to extend its term for the entire Term of this Agreement. Seller shall not consent to any modification of any firm Transmission Agreement without Avista's advance written approval, which approval shall not be unreasonably withheld.

12.2 In the event that Seller is required to curtail, interrupt or reduce delivery of Net Output to the Point of Delivery, Seller may arrange at its own expense to deliver Net Output to a secondary point of delivery ("Alternate Point of Delivery"), and Avista shall use reasonable commercial efforts to accept Net Output at such Alternate Point of Delivery.

12.3 The termination, cancellation or expiration of any Transmission Agreement required to deliver electric energy to Avista under this Agreement shall constitute a material breach of this Agreement, and Avista may terminate the Agreement by giving Seller written notice of

such termination which shall be effective upon written notice of such termination, cancellation or expiration of the applicable Transmission Agreement.

12.4 Seller shall be responsible for any and all costs and expenses related to transmission of Net Output to the Point of Delivery under this Agreement, including but not limited to Ancillary Services any costs or expenses incurred by Avista resulting from the Transmission Agreements including, but not limited to, any charges, reimbursable expenses or other amounts payable by Avista to any Transmitting Entity. Seller shall defend, indemnify and hold harmless, Avista from all claims, losses, harm, liabilities, damages, costs, and expenses including, but not limited to, reasonable attorneys' fees, arising out of any act or omission of Seller in connection with the Transmission Agreements, including, but not limited to, any breach of or default under any of the Transmission Agreements by Seller.

13. FORCE MAJEURE

13.1 Except as expressly provided in Section 13.6, neither Party shall be liable to the other Party, or be considered to be in breach of or default under this Agreement, for delay in performance due to a cause or condition beyond such Party's reasonable control which despite the exercise of reasonable due diligence, such Party is unable to prevent or overcome ("Force Majeure"), including but not limited to:

(a) fire, flood, earthquake, volcanic activity; court order and act of civil, military or governmental authority; strike, lockout and other labor dispute; riot, insurrection, sabotage or war; pandemic or epidemic; unanticipated electrical disturbance originating in or transmitted through such Party's electric system or any electric system with which such Party's system is interconnected; or

(b) an action taken by such Party which is, in the sole judgment of such Party, necessary or prudent to protect the operation, performance, integrity, reliability or stability of such Party's electric system or any electric system with which such Party's electric system is interconnected, whether such actions occur automatically or manually.

13.2 In the event of a Force Majeure event, the time for performance shall be extended by a period of time reasonably necessary to overcome such delay. Avista shall not be required to pay for Net Output which, as a result of any Force Majeure event, is not delivered.

13.3 Nothing contained in this Section shall require any Party to settle any strike, lockout or other labor dispute.

13.4 In the event of a Force Majeure event, the delayed Party shall provide the other Party notice by telephone or email as soon as reasonably practicable and written notice within fourteen days after the occurrence of the Force Majeure event. Such notice shall include the particulars of the occurrence. The suspension of performance shall be of no greater scope and no longer duration than is required by the Force Majeure and the delayed Party shall use its best efforts to remedy its inability to perform.

13.5 Force Majeure shall include any unforeseen electrical disturbance that prevents any electric energy deliveries from occurring at the Point of Delivery.

13.6 Notwithstanding anything to the contrary herein, Force Majeure shall not apply to, or excuse any default under, Sections 17.1(a), 17.1(b), 17.1(c), or 17.1(d). For the avoidance of doubt, Avista may declare Seller in Default if an event described in any of Sections 17.1(a), 17.1(b), 17.1(c), or 17.1(d), occurs and Avista may pursue any remedy available to it under this agreement. In addition, Force Majeure shall not apply to a failure to achieve the Commercial Operation Date of the Facility within three (3) years of the Effective date as required in Section 4.2 of this Agreement.

14. INDEMNITY

14.1 Each Party shall defend, indemnify and hold harmless, the other Party, its directors, officers, employees, and agents (as the "Indemnitee") from and against all claims, demands, causes of action, judgments, liabilities and associated costs and expenses (including reasonable attorney's fees) to the extent arising from or attributable to the performance or non-performance of that Party's (as the "Indemnitor") obligations under this Agreement, including but not limited to, damage to tangible property and bodily injury or death suffered by any person (including employees of Seller or Avista or the public), provided that:

- (a) No Indemnitee shall be indemnified for any loss, liability, injury, or damage resulting from its sole negligence, gross negligence, fraud or willful misconduct; and
- (b) The Indemnitor shall be entitled, at its option, to assume and control the defense and any settlement of such suit.

Each indemnity set forth in this Section is a continuing obligation, separate and independent of the other obligations of each Party and shall survive the expiration or termination of this Agreement.

14.2 SELLER AND AVISTA SPECIFICALLY WARRANT THAT THE TERMS AND CONDITIONS OF THE FOREGOING INDEMNITY PROVISIONS ARE THE SUBJECT OF MUTUAL NEGOTIATION BY THE PARTIES, AND ARE SPECIFICALLY AND EXPRESSLY AGREED TO IN CONSIDERATION OF THE MUTUAL BENEFITS DERIVED UNDER THE TERMS OF THE AGREEMENT.

14.3 EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE UNDER ANY PROVISION OF THIS AGREEMENT FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT, SAVINGS OR REVENUE, LOSS OF THE USE OF EQUIPMENT, COST OF CAPITAL, OR COST OF TEMPORARY EQUIPMENT OR SERVICES, WHETHER BASED IN WHOLE OR IN PART IN CONTRACT, IN TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY; PROVIDED, HOWEVER, THAT ANY AMOUNTS DUE TO SELLER AS PAYMENT FOR NET OUTPUT DELIVERED TO AVISTA PURSUANT TO THE TERMS OF THIS AGREEMENT SHALL BE DEEMED TO BE DIRECT DAMAGES.

15. ASSIGNMENT

15.1 Seller shall not assign its rights or delegate its duties under this Agreement without the prior written consent of Avista, which consent shall not be unreasonably withheld. Subject to the foregoing restrictions on assignments, this Agreement shall be fully binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors, heirs and assigns.

15.2 Seller shall have the right without Avista's consent, but with a thirty days prior written notice to Avista, to make collateral assignments of its rights under this Agreement to satisfy the requirements of any development, construction, or other reasonable long-term financing. A collateral assignment shall not constitute a delegation of Seller's obligations under this Agreement, and this Agreement shall not bind the collateral assignee. Any collateral assignee succeeding to any portion of the ownership interest of Seller shall be considered Seller's successor in interest and shall thereafter be bound by this Agreement.

16. NO UNSPECIFIED THIRD-PARTY BENEFICIARIES

There are no third-party beneficiaries of this Agreement. Nothing contained in this Agreement is intended to confer any right or interest on anyone other than the Parties, and their respective successors, heirs and assigns permitted under Section 15.

17. DEFAULT AND TERMINATION

17.1 In addition to any other breach or failure to perform under this Agreement, each of the following events shall constitute a Default:

- (a) The Facility ceases to be a Qualifying Facility;
- (b) A Party becomes insolvent (e.g., is unable to meet its obligations as they become due or its liabilities exceed its assets);
- (c) Seller makes a general assignment of substantially all of its assets for the benefit of its creditors, files a petition for bankruptcy or reorganization or seeks other relief under any applicable insolvency laws;
- (d) Seller has filed against it a petition for bankruptcy, reorganization or other relief under any applicable insolvency laws and such petition is not dismissed or stayed within sixty days after it is filed;
- (e) Seller is in default under any Agreement related to this Agreement; or
- (f) Termination, cancellation or expiration of any agreement required for Seller to deliver electric energy to Avista under this Agreement, including but not limited to the Transmission Agreement or the Interconnection Agreement.

17.2 Notice and Opportunity to Cure. In the event of a Default, the non-Defaulting Party shall give written notice to the Defaulting Party of a Default in accordance with Section 30. Except as provided in Section 17.1(d), if the Defaulting Party has not cured the breach within thirty days after receipt of such written notice, the non-Defaulting Party may, at its option, terminate this Agreement and/or pursue any remedy available to it in law or equity; *provided* that, if a Default occurs under Sections 17.1(a) or 17.1(f), Seller shall not deliver any Net Output to Avista, and Avista shall have no obligation to accept any Net Output from the Facility, until such Default is cured; *provided, further*, that if a Default occurs under 17.1(g), Avista may immediately terminate this Agreement without opportunity to cure, and such termination shall become effective upon written notice of Default.

17.3 Additional Rights and Remedies. Any right or remedy afforded to either Party under this Agreement on account of a Default by the other Party is in addition to, and not in lieu of, all other rights or remedies available to such Party under any other provisions of this Agreement, by law or otherwise on account of the Default.

17.4 Damages. If this Agreement is terminated as a result of Seller's Default after the Effective Date, Seller shall pay Avista, in addition to other damages, the positive difference, if any, between the applicable Avoided Cost Rate and the cost to replace the Net Output for twelve months beginning on the date of the original Default, plus all associated transmission costs to Avista to acquire such replacement Net Output.

18. DISPUTE RESOLUTION

Each Party shall strive to resolve any and all differences during the term of the Agreement through meetings and discussions. If a dispute cannot be resolved within a reasonable time, not to exceed thirty days, each Party shall escalate the unresolved dispute to a senior officer designated by each Party. If the senior officers are not able to resolve the dispute within ten Business Days of escalation then the Parties may agree to mediate or arbitrate the dispute. In the event that the Parties do not agree to mediation or arbitration, either Party may, as applicable, request a hearing before the Commission or seek relief in a court of competent jurisdiction.

19. RELEASE BY SELLER

Seller releases Avista from any and all claims, losses, harm, liabilities, damages, costs and expenses to the extent resulting from any:

19.1 Electric disturbance or fluctuation that migrates, directly or indirectly, from Avista's electric system to the Facility;

19.2 Interruption, suspension or curtailment of electric service to the Facility or any other premises owned, possessed, controlled or served by Seller, which interruption, suspension or curtailment is caused or contributed to by the Facility or the interconnection of the Facility;

19.3 Disconnection, interruption, suspension or curtailment by Avista pursuant to terms of this Agreement or the Interconnection Agreement; or

20. **RESERVED**

21. **SEVERAL OBLIGATIONS**

The duties, obligations and liabilities of the Parties under this Agreement are intended to be several not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties. Each Party shall be individually and severally liable for its own obligations under this Agreement. Further, neither Party shall have any rights, power or authority to enter into any agreement or undertaking for or on behalf of, to act as to be an agent or representative of, or to otherwise bind the other Party.

22. **IMPLEMENTATION**

Each Party shall promptly take such action (including, but not limited to, the execution, acknowledgement and delivery of documents) as may be reasonably requested by the other Party for the implementation or continuing performance of this Agreement.

23. **NON-WAIVER**

The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment of such Party's right to assert or rely upon any such provision or right in that or any subsequent instance; rather, the same shall be and remain in full force and effect.

24. **AMENDMENT**

No change, amendment or modification of any provision of this Agreement shall be valid unless set forth in a written amendment to this Agreement signed by both Parties.

25. **CHOICE OF LAWS**

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington without reference to its choice of law provisions.

26. **HEADINGS**

The Section headings in this Agreement are for convenience only and shall not be considered part of or used in the interpretation of this Agreement.

27. **SEVERABILITY**

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and this Agreement shall be construed in all respects as if the invalid or unenforceable provision were omitted.

- Exhibit C Communications and Reporting
- Exhibit D Independent Engineering Certifications for Construction Adequacy for a
Qualifying Facility
- Exhibit E Initial Capacity Determination Documentation
- Exhibit F Transmission Agreement
- Exhibit G Interconnection Agreement
- Exhibit H Metering
- Exhibit I Reserved
- Exhibit J Milestones

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date set forth below.

SELLER

AVISTA CORPORATION

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A

Project Description and Point of Delivery

Description of the Facility:

Seller's Facility is described as _____ [project name] and consists of:

Location:

Seller's Facility is located:

Point of Delivery:

DRAFT

|

Exhibit B

Avoided Cost Rates

DRAFT

Exhibit C

Communication and Reporting

(1) Email communications between Seller and Avista shall be submitted to:

Avista: _____@avistacorp.com; or
_____@avistacorp.com

Seller: _____

Alternate: _____

(2) All oral communications relating to electric energy scheduling, generation level changes, interruptions or outages between Seller and Avista will be communicated on a recorded line as follows:

(a) Pre-Schedule (5:30 am to 12:00 noon on Business Days):

Avista Pre-Scheduler: (509) 495-4911

Alternate Phone: (509) 495-4073

Seller: _____

Alternate Phone: _____

(b) Real-Time Schedule (available 24 hours a day)

Avista Real-Time Scheduler: (509) 495-8534

Seller: _____

Alternate Phone: _____

(3) Either Party may change its contact information upon written notice to the other Party.

Exhibit D

**Independent Engineering Certification for
Construction Adequacy for a Qualifying Facility**

1. I, _____ am a licensed professional engineer registered to practice and in good standing in the State of _____. I have substantial experience in the design, construction and operation of electric power plants of the same type as _____ (Title of QF) sited at _____ in _____ County, State of _____ (the "Facility").

2. I have reviewed and/or supervised the review of the construction in progress and of the completed Facility and it is my professional opinion that said Facility has been designed and built according to appropriate plans and specifications bearing the words "CERTIFIED FOR ACCEPTANCE" and with the stamp of the certifying licensed professional engineer of the design, and that the Facility was built to commercially acceptable standards for this type of facility.

3. I have no economic relationship to the designer or owner of said Facility and have made my analysis of the plans and specifications independently.

4. I hereby CERTIFY that the above statements are complete, true, and accurate to the best of my knowledge and I therefore set my hand and seal below.

Signed and Sealed

DATE: _____

SIGNATURE: _____

PRINTED NAME: _____

|

Exhibit E

Initial Capacity Determination Documentation

DRAFT

|

Exhibit F

Transmission Agreement

DRAFT

|

Exhibit G

Interconnection Agreement

DRAFT

|

Exhibit H

Metering

DRAFT

|

Exhibit I

Reserved

DRAFT

|

Exhibit J

Milestones

DRAFT