

**EXH. RJR-4C
DOCKET UE-20____
2020 PSE PCORC
WITNESS: RONALD J. ROBERTS**

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY,

Respondent

Docket UE-20____

**THIRD EXHIBIT (CONFIDENTIAL) TO THE
PREFILED DIRECT TESTIMONY OF**

RONALD J. ROBERTS

ON BEHALF OF PUGET SOUND ENERGY

**REDACTED
VERSION**

DECEMBER 9, 2020


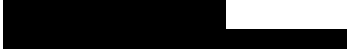
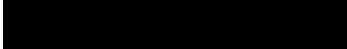
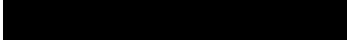

COAL SUPPLY AGREEMENT

Dated December 5, 2019

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COAL SUPPLY AGREEMENT

THIS COAL SUPPLY AGREEMENT (the “**Agreement**”), is made and effective as of this 5th day of December, 2019, by and among **Avista Corporation**, a Washington corporation (“**Avista**”), **NorthWestern Corporation**, d/b/a NorthWestern Energy, a Delaware corporation (“**NorthWestern**”), **PacifiCorp**, an Oregon corporation (“**PacifiCorp**”), **Portland General Electric Company**, an Oregon corporation (“**PGE**”), and **Puget Sound Energy, Inc.**, a Washington corporation (“**Puget**”), on the one hand, and **Westmoreland Rosebud Mining, LLC**, a Delaware limited liability company (“**Seller**”). Avista, NorthWestern, PacifiCorp, PGE, and Puget are sometimes referred to herein individually as “**Buyer**” and in the plural as the “**Buyers.**”

RECITALS

A. Buyers own and operate two coal fired steam-electric generating plants (“Units 3 and 4”) near Colstrip, Montana, adjoining the coal lands of Seller, based upon the assurance of a dependable supply of coal from Seller of specified quality and characteristics for the useful life of the plants.

B. Seller owns or controls, in Rosebud and Treasure Counties, Montana, adequate reserves of sub-bituminous Rosebud Seam coal from which it can supply Buyers’ coal requirements for Units 3 and 4 through the Term of this Agreement.

C. The Parties desire now to enter into this Agreement to provide the terms and conditions upon which coal will be supplied to Units 3 and 4 for the Term of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein stated, and the performance thereof, the Parties hereto agree as follows:

1. DEFINITIONS

Whenever used in this Agreement with initial letters capitalized (whether in the singular or the plural), the following words and terms shall have the following meanings:

1.1 “**Agreement**” means this Coal Supply Agreement.

1.2 “**Allocated Share**” for any value or amount specified in this Agreement shall mean the percentage of such value or amount equal to each Buyer’s Capacity Share at the time in question.

1.3 “**ASTM**” means ASTM International.

1.4 “**Btu**” means a British thermal unit and, in the appropriate context, the plural of that term, which means the amount of heat required to raise the temperature of one pound of distilled water from 59 degrees Fahrenheit to 60 degrees Fahrenheit at a constant pressure of 14.73 pounds per square inch absolute.

1.5 “**Capacity Share**” means each Buyer’s percentage ownership of eighty-five percent (85%) of the amount of electrical power for which Units 3 and 4 have been rated, expressed in net megawatts (MW), as the same may change during the Term of this Agreement. Each Buyer’s Capacity Share as of the Commencement Date is set forth on Exhibit 1 to this Agreement. Any subsequent changes in Buyers’ Capacity Shares shall be reflected in a revised Exhibit 1, but shall not require amendment of this Agreement.

1.6 “**Commencement Date**” means January 1, 2020.

1.7 “**Confidential Information**” has the meaning ascribed to it in Section 19.

1.8 “**Daily**” means a calendar day of 24 hours.

1.9 “**Delivery Day**” means the 24 hour period that begins at the starting time of the first coal delivery shift on each calendar day on which Seller delivers any coal under this Agreement.

1.10 “**Distribution Notice**” has the meaning ascribed to it in subsection 8.7.

1.11 “**Effective Date**” means the date first hereinabove written.

1.12

1.13 “**Force Majeure**” has the meaning ascribed to it in subsection 9(b).

1.14 “**GAAP**” means Generally Accepted Accounting Principles consistently applied.

1.15 “**GDP IPD**” means the Gross Domestic Product Implicit Price Deflator, as published by the U.S. Bureau of Economic Analysis.

1.16 “**MMBtu**” means one million (1,000,000) Btu.

1.17

1.18 “**Minimum Annual Volume**” has the meaning ascribed to it in subsection 2.1.

1.19 “**Operator**” means the entity designated to operate Units 3 and 4 pursuant to the Ownership and Operation Agreement.

1.20 “**Ownership and Operation Agreement**” means the Ownership and Operation Agreement among Buyers and Talen Montana, LLC (“Talen”), dated as of May 6, 1981, as previously or subsequently amended, related to the ownership and operation of Units 3 and 4, or any successor agreement.

1.21 “**Party**” means Seller or any one of Buyers, and “**Parties**” means all Buyers and Seller unless the context otherwise indicates.

1.22 “Point of Delivery” has the meaning ascribed to it in subsection 5.1.

1.23 [REDACTED]

1.24 “Quarter” or “Quarterly” means a calendar quarter. The First Quarter is January through March, the Second Quarter is April through June, the Third Quarter is July through September, and the Fourth Quarter is October through December.

1.25 “Rosebud Mine” means those mining areas under Seller’s ownership and control located near Colstrip, Montana, contained within coal mining permits issued by the State of Montana and, if required by law, the Office of Surface Mining Reclamation and Enforcement, within Rosebud and Treasure Counties, Montana in Townships 1 North and 2 North and Ranges 38 East through 41 East, plus all assets, plant and equipment related thereto. A map showing the general area of the Rosebud Mine is attached as Exhibit 2 hereto.

1.26 “Shortfall Tons” has the meaning ascribed to it in subsection 2.2(a).

1.27 “Term” has the meaning ascribed to it in subsection 3.1.

1.28 “Third Party Transferee” has the meaning ascribed to it in subsection 12.2.

1.29 “Tier Price” has the meaning ascribed to it in subsection 8.2.

1.30 “Ton” means 2,000 pounds.

1.31 “True-Up” has the meaning ascribed to it in subsection 2.2.

1.32 “Year” means a calendar year.

2. SALE AND PURCHASE OF COAL

2.1 Minimum Annual Volume.

During each Year of the Term of this Agreement starting on the Commencement Date and continuing through December 31, 2024, and except as provided in Section 16.2, Buyers agree to buy and receive, under the terms and conditions set forth in this Agreement, the greater of (a) 100% of Buyers’ coal requirements for Units 3 and 4 for the Year, or (b) the Minimum Annual Volume for each such Year, which will be an aggregate total of 4,250,000 Tons of coal. [REDACTED]

[REDACTED]

2.2

[REDACTED]

(a)

[REDACTED]

(b)

[REDACTED]

(c)

[REDACTED]

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[REDACTED]

2.3 [REDACTED]

[REDACTED]

Unless otherwise agreed by the Parties, all coal supplied by Seller under this Agreement shall be Rosebud Seam coal produced from the Rosebud Mine.

3. [REDACTED]

3.1 [REDACTED]

[REDACTED]

3.2 [REDACTED]

[REDACTED]

3.3 [REDACTED]

[REDACTED]

[REDACTED]

3.4 [REDACTED]

[REDACTED]

4. RESOLUTION OF DISPUTES

4.1 Negotiation.

Except as otherwise specifically provided in this Agreement, if a dispute arises between the Parties regarding any matter under this Agreement, which they are unable to resolve within a reasonable time after the dispute arises, any Party involved in the dispute may, by written notice to the other involved Parties, require that each of such Parties designate a representative with authority to resolve the dispute, and that the representatives of such Parties meet to resolve the dispute within thirty (30) days after the date of the written notice. If the representatives are unable to resolve the dispute within the thirty (30) day period, then any involved Party may submit the resolution of the dispute to arbitration under subsection 4.2.

4.2 Arbitration Process.

Each arbitration under this subsection 4.2 shall be before one neutral arbitrator selected unanimously by the Parties involved in the arbitration. If the Parties are unable to agree unanimously upon the selection within thirty (30) days of the date of the written notice invoking arbitration, then the arbitrator shall be selected in accordance with the Commercial Rules of the American Arbitration Association. The arbitrator shall (i) have had at least five (5) years' prior experience as a federal judge, or as a state judge at the highest judicial level of the subject state; and (ii) be neither an employee (or retired or previous employee) of any Party, nor a person with any substantial relationship with any Party, nor a person having any financial interest in the outcome of the arbitration. The arbitration shall be held in Denver, Colorado pursuant to the Commercial Rules and such procedures as may be agreed upon by the Parties and approved by the arbitrator. Seller and the Buyer(s) involved in the arbitration (with each Buyer bearing a proportionate part of the Buyers' collective share of such fees and expenses) each shall bear one-half of all fees and expenses of any arbitration under this subsection 4.2; provided, however, that each Party shall bear the expenses of its own participation in the arbitration, including its own

counsel, experts, witnesses, travel, and preparation. Judgment may be entered upon the arbitrator's award in any court having jurisdiction.

4.3 Jury Trial Waiver.

TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

5. DELIVERY, WEIGHING AND TRANSPORTATION

5.1

[REDACTED]

5.2 Weight and Scales.

All coal delivered hereunder shall be weighed by Seller at the Point of Delivery, and the weight so determined shall be used for billing purposes. Scales to be used for weighing shall be calibrated Quarterly using methods approved by the Western Weighing and Inspection Bureau. Any Buyer, at such Buyer's (or Buyers') expense, may have a representative present to observe any testing, calibration or certification of the scales. If upon calibration the scales are found to be in error or inaccurate by one percent (1%) or more, the scales shall be recalibrated for future shipments, and the recorded amount of coal delivered since the date of the most previous calibration shall be adjusted by 50% of the determined scale error (expressed as a percentage) prior to recalibration. Previously issued invoices pursuant to subsection 8.7 shall be adjusted accordingly, and appropriate debit or credit notices shall be provided by Seller to Buyers. Any Buyer may inspect Seller's weighing facilities and may make such verification of accuracy of weights as such Buyer(s) deems necessary.

5.3

(a)

[REDACTED]

(b)

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[REDACTED]

[REDACTED]

[REDACTED]

(c)

[REDACTED]

(d)

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6. QUALITY

Seller guarantees the coal as delivered to Units 3 and 4 shall have the following quality and characteristics:

(a) The coal delivered under this Agreement shall be from the Rosebud Seam of sub-bituminous rank, and shall further be unwashed, undried and untreated by oil or other chemical agents, unless such additional preparation is mutually agreed upon by the Parties. The coal shall be free of foreign matter and hazardous materials.

(b) Although coal to be sold and delivered under this Agreement has inherent qualities which cannot be changed, Seller will make all commercially reasonable efforts to produce coal in a manner that does not degrade such inherent qualities. Coal delivered under this Agreement shall be generally free of overburden, underclay, parting material and other non-intrinsic material which can be kept out or removed by Seller exercising reasonable care during mining, processing and loading of the coal so as to produce the highest heat content coal, and that meets the specifications set forth in this Section 6.

(c)

(d) The coal delivered from the Rosebud Mine shall meet the following specifications:

<u>Proximate Analysis</u>	<u>Typical As Received</u>	<u>Guarantee</u>		
Moisture				
Volatile Matter				
Fixed Carbon				
Ash (Daily Maximum)				
Ash (3 Day Average Maximum)				
Sodium Oxide (% of Ash) 5 Day Rolling Weighted Avg. Daily Maximum 3 Day Average Maximum 5 Day Average Maximum				
BTU/lb.			8,400	8,300 Min. and 8,800 Max.
Sulfur Daily Maximum 3 Day Average Max.				
HGI				
Mercury				
<u>Ultimate Analysis</u>				
Carbon				
Hydrogen				
Sulfur				
Oxygen				
Nitrogen				
Moisture				
Ash				
<u>Ash Fusion Temps</u>				
Oxidizing				
ID				
Softening (H=W)				
Fluid				
Reducing				
ID				
Softening (H+W)				
Fluid				

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(e)

[REDACTED]

(f)

[REDACTED]

(g)

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(h)

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[REDACTED]

(i)

[REDACTED]

[REDACTED]

(i)

[REDACTED]

7. SAMPLING AND ANALYSIS

7.1 General Procedures.

Coal sampling, sample reduction, sample preparation, laboratory analysis procedures, and bias testing of both Buyers and Seller shall conform with the most recent ASTM standards, methods and/or procedures, unless otherwise agreed to by Buyers and Seller.

7.2 Coal Sampling and Analysis.

At least one representative sample from each shift on a Delivery Day shall be taken by an independent third party testing laboratory using Seller's sampling equipment. Results of the on-line analysis shall be provided to Operator electronically at the time of the taking of the sample. At any Buyer's request and expense, bias tests of the sampling equipment shall be conducted at times reasonably agreed to by requesting Buyer(s) and Seller.

Any Buyer(s) and Seller shall have the right to have a representative present at any and all times to observe the sampling. An independent third-party testing laboratory selected by Buyer(s) and Seller shall assure the integrity of the samples taken as consistent with ASTM standards

through Quarterly inspections. Such independent testing laboratory shall ensure that all samples are divided into not fewer than four (4) parts and put in suitable airtight containers, the second, third and fourth containers to be held available by the testing laboratory for a period of ninety (90) days after the end of the calendar month in which such sample was taken. The independent third-party testing laboratory shall analyze the first part. Buyers or Seller may analyze at their own sole expense the second and third parts, respectively. The fourth part shall be for analysis if a dispute arises regarding the independent laboratory's initial analysis. Buyers and Seller shall each receive from the independent laboratory a copy of the report of each analysis. If any Party takes exception to the independent laboratory analysis, the dispute shall be referred to a commercial testing laboratory selected by the disputing Parties. The results of such commercial testing laboratory analysis shall be controlling and shall not be subject to further review.

8. PRICES AND PAYMENT

8.1 Base Price.

The Base Price for coal sold and delivered under this Agreement as of the Commencement Date shall be \$27.00 per Ton. [REDACTED]

8.2 [REDACTED]

[REDACTED]

8.3 [REDACTED]

[REDACTED]

8.4 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8.5 [REDACTED]

[REDACTED]

8.6 Entire Compensation.

The Prices, as adjusted pursuant to subsections 5.3(b), 6(h) and (i) and this Section 8, shall constitute the sole and complete compensation payable to Seller for all coal sold, transported and delivered hereunder, and shall be deemed inclusive of all costs associated with the mining, processing, treatment, transportation and delivery of coal sold hereunder, including but not limited to taxes and royalties, and Buyers shall have no further payment obligations to Seller.

8.7 Invoices.

By the third (3rd) business day of each month, Buyers shall submit to Seller a monthly “Distribution Notice” in a form to be mutually agreed upon by the Parties, setting forth the portion of actual deliveries of coal during the preceding month to be used to bill each Buyer. Based upon such Distribution Notices, Seller shall prepare and submit separate invoices to each Buyer on or before the sixth (6th) business day of the month to which the Distribution Notice applies.

8.8 Payment.

Each Buyer shall pay its invoiced amount to Seller on or before the twentieth (20th) day of the month in which such Buyer receives an invoice. Such payment will be made by electronic transfer of funds or other method to an address or account number as directed by Seller in writing from time-to-time. Subject to subsection 8.9 if a payment is made more than fifteen (15) days after the due date, the delinquent Buyer(s) will be obligated to pay a service fee equal to one percent (1%) per month on all past due invoices.

8.9 Disputed Charges.

Seller shall provide such information as Buyers may reasonably request to explain all charges. Seller's books and records pertaining to any charges to Buyers, adjustments thereto, invoices or billings, shall be subject to examination by any Buyer at reasonable times during normal business hours. Seller's books and records related to any charges under this Agreement shall be maintained in accordance with GAAP. Pending resolution of any dispute between the Parties regarding any amounts charged or payable under this Agreement, Seller, in the case of a payment due from Seller, or each Buyer, in the case of payment due from a Buyer, shall elect either to (i) pay the applicable invoice as if the disputed amount had been agreed upon, or (ii) withhold payment to the extent based upon the disputed portion of the proposed adjustment until resolution of the dispute. In invoking the right to withhold a disputed portion of the invoice, the disputing Party shall specifically identify the basis of the disputed amount pursuant to the categories and detail provided in the invoice along with a detailed written explanation. At the option of the other Party, the disputing Party also shall deposit funds equal to the disputed amount into a separate account maintained at a financial institution with which such Party regularly does business, and shall provide documentation of the deposit to the receiving Party. If any Party pays a disputed amount and it is later determined that such amount (or a portion thereof) was not due and payable, the receiving Party shall immediately refund the amount that was overpaid, together with interest thereon from the date paid until the date refunded by the receiving Party. If any Party withholds any disputed amount under this subsection 8.9 and it is later determined that such amount (or a portion thereof) was properly due and payable, then such Party shall immediately pay such amount (or portion), together with interest thereon from the date such amount was due (pursuant to subsection 8.7) until the date paid. Interest under this subsection 8.9 shall be computed at the prime rate quoted from time to time by Citicorp or such other financial institution as may be agreed upon by the Parties, computed monthly and compounded semi-annually.

8.10 Changes in Applicable Law.

Any Party shall promptly notify each of the other Parties in writing of any change in any applicable law, rule or regulation of which such Party becomes aware that has the potential to materially affect the present or future cost to Buyers of coal hereunder, or the cost to Buyers of generating electricity at Units 3 and 4 using coal delivered hereunder, or the transmission or sale of such electricity. A Party shall only be deemed aware of any change or proposed change if the managerial personnel of such Party that are directly involved in the administration of this Agreement have actual knowledge of such change or proposed change. Any Party may, at its expense, take such action as it deems necessary or desirable to protect its interests with respect to the implementation of such change. Without limiting Buyers' rights under any other provision of

this Agreement, Seller shall cooperate in good faith with each Buyer in such Buyer's efforts to oppose any change in an applicable law, rule or regulation that would limit, diminish or otherwise adversely affect such Buyer's rights or interests under this Agreement. Seller shall reserve all rights to protect Seller's rights and interests, including efforts to oppose any change in applicable law, rule or regulation that would limit, diminish or otherwise adversely impact Seller's rights or interests under this Agreement. In the event that a change in applicable law, rule or regulation results in a material adverse economic or other impact on a Buyer's (or Buyers') ability to utilize coal purchased under this Agreement which such Buyer (or Buyers) is unable to avoid through reasonable efforts, then Buyer(s) and Seller shall confer in good faith to agree upon appropriate modifications to this Agreement, including but not limited to the Minimum Annual Volume, to avoid or mitigate the impact of the change. If the parties are not able to reach agreement within ninety (90) days after the commencement of negotiations, then at the option of either Seller or Buyers, exercised by written notice, this Agreement shall terminate as of the date set forth in the notice, which in any event shall not be fewer than one-hundred eighty (180) days after the termination notice date, and the Parties shall have no further obligations to one another hereunder as of such termination date.

9. FORCE MAJEURE

(a) If, because of Force Majeure, any Party shall be unable to carry out one or more of its obligations under this Agreement, then the obligations of such Party shall be suspended to the extent made necessary by such Force Majeure and for its duration. The Party affected by Force Majeure shall give written notice to the other Parties of such Force Majeure event as promptly as practicable. The notice shall (i) describe the nature of the Force Majeure event in reasonable detail; (ii) explain why the Force Majeure event was not reasonably within the control of the affected Party and could not have been prevented or overcome by the exercise of reasonable diligence; and (iii) state the expected duration of the Force Majeure event.

(b) The term "Force Majeure" shall mean acts of God, legislation or lawful regulations or orders of any regulators or governmental body, court or administrator, acts of the public enemy, riots, strikes, labor disputes, labor or material shortages, fires, explosions, floods, breakdowns of or damage to plants, mines, transmission lines, equipment or facilities, including emergency maintenance to prevent such breakdowns or damage, interruptions in transportation, embargoes, or other causes beyond the affected Party's reasonable control which wholly or partially prevent the delivery of coal by Seller, the receiving or use of coal by Buyers (or any of them) in Units 3 and/or 4, or the operation of either Unit 3 or Unit 4. Nothing contained herein shall be construed so as to require a Party to settle any strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any obligation by reason of Force Majeure shall exercise due diligence to remove such inability with all reasonable dispatch.

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[REDACTED]

(e)

[REDACTED]

10. WAIVERS AND REMEDIES

10.1 Non-Waiver.

The failure of any Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights in the future, but the same shall continue and remain in full force and effect.

10.2 Right to Cure.

No default by any Party to this Agreement in the performance of any of its covenants or obligations hereunder which, except for this provision, would be the legal basis for rescission or termination of this Agreement by any other Party hereto, shall give or result in such a right unless and until the Party committing such default shall fail to correct the default within sixty (60) days after receiving written notice thereof from a non-defaulting Party, which period shall be extended to the extent reasonably necessary to complete such cure so long as the cure was commenced within sixty (60) days after written notice is given and thereafter prosecuted with due diligence.

10.3 Seller's Default.

In the event of the occurrence of one or more of the following events which materially and adversely affects or will affect the ability of Seller to perform hereunder as agreed, Buyers shall have the rights set forth in subsection 10.4, which rights shall be in addition to all other rights or remedies provided Buyers at law or in equity in the event of a default by Seller:

(a) Seller defaults in the performance of any of its obligations hereunder, which default adversely affects, or will adversely affect, the delivery by Seller of coal to Buyers at the Prices, in the required quantity, and of the required quality provided for in this Agreement;

(b) Seller becomes insolvent, or becomes the subject of a petition in bankruptcy, either voluntarily or involuntarily, or any other proceeding under the federal

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bankruptcy laws; or is named in, or the Rosebud Mine, buildings, equipment or other facilities are subjected to, a suit for an appointment of a receiver;

(c) Seller becomes delinquent in the performance of any financial obligation;
or

(d) Seller commits an anticipatory breach of any of its obligations hereunder.

Seller agrees to promptly notify Buyers of any default, financial delinquency or claimed delinquency, insolvency, or anticipatory breach as described above; provided, however, that Buyers' rights to avail themselves of remedies accorded by applicable law and the provisions of subsection 10.4 shall not be dependent on Seller's notification under this subsection 10.3.

10.4 Buyers' Remedies.

In the event of the occurrence of any of the items set forth in subsection 10.3 above, Buyers, acting individually or collectively, shall have, at each Buyer's sole discretion, all of the following rights, which may be exercised separately or in combination and are in addition to those remedies provided elsewhere in this Agreement, at law (including the Uniform Commercial Code) or in equity:

(a) to terminate this Agreement upon written notice to Seller, with no further obligations to Seller hereunder;

(b) to pay any financial obligations of Seller and to recover the amounts of such payments from Seller or offset them against any amounts due from any Buyer to Seller; and

(c) to require that Seller furnish evidence, within thirty (30) days of Buyers' request and in a form satisfactory to Buyers, of Seller's financial capability to perform its obligations under this Agreement.

The invocation of one or more of the remedies described in this subsection 10.4 by Buyers shall not release Seller of its obligations under this Agreement during the period that such remedies are being pursued or completed.

10.5 Buyer Default

In the event of the occurrence of one or both of the following events which materially and adversely affects or will affect the ability of a Buyer to perform hereunder as agreed, Seller shall have the rights set forth in subsection 10.6, which rights shall be in addition to all other rights or remedies provided Seller at law or in equity in the event of a default by a Buyer:

(a) a Buyer becomes delinquent in the performance of any financial obligation arising under this Agreement, other than the payment of a disputed charge subject to subsection 8.9; or

(b) a Buyer commits an anticipatory breach of any of its obligations hereunder.

A defaulting Buyer shall promptly notify Seller and the other Buyers of any default or anticipatory breach as described above; provided, however, that Seller's rights to avail itself of remedies accorded by applicable law and the provisions of subsection 10.6 shall not be dependent on notification under this subsection 10.5.

10.6 Seller's Remedies.

In the event of the occurrence of either of the items set forth in subsection 10.5 above, Seller shall have, at its sole discretion, all of the following rights, which may be exercised separately or in combination and are in addition to those remedies provided elsewhere in this Agreement, at law or in equity, in the event of a default by a Buyer:

(a) to require that the defaulting Buyer furnish evidence, within thirty (30) days of Seller's request and in a form satisfactory to Seller, of Buyer's financial capability to perform its obligations under this Agreement; and

(b) to terminate this Agreement with respect to the defaulting Buyer only, upon written notice to all Buyers, with no further obligations to the defaulting Buyer; provided, however, that in the event Seller elects this remedy:

(i) subject to subsection 10.6(b)(ii), this Agreement shall remain in full force and effect between Seller and all non-defaulting Buyers, in accordance with its terms;

(ii) the aggregate Minimum Annual Volume under subsection 2.1 for the remainder of the Term following Seller's termination notice pursuant to subsection 10.6(b) shall be reduced by the Allocated Share of the Minimum Annual Volume attributed to the defaulting Buyer, pro-rated for the Year in which such termination occurs; and

(iii) Seller shall hold the non-defaulting Buyers harmless from any liability to Seller whatsoever, arising from another Buyer's default, or Seller's actions in response thereto pursuant to subsection 10.5 or this subsection 10.6.

11. REPRESENTATIONS AND WARRANTIES

11.1 Mutual Representations.

Each Party represents and covenants to every other Party that:

(a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

(c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action, and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party, or any law, rule, regulation, order or the like applicable to it;

(d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses;

(e) it has made its own independent decision to enter into this Agreement and whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of another Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

(f) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; and

(g) no event of default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement.

11.2 Seller's Representations and Warranties.

Seller represents and warrants that

(a) it owns or controls the entirety of the Rosebud Mine and has in place, and will use its best efforts to maintain in place through the Term, all permits and authorities required by law to mine and sell coal from the Rosebud Mine through the Term;

(b) it shall comply with all applicable laws, rules and regulations in its performance of this Agreement and in the operation of the Rosebud Mine;

(c) it is not represented by a sales agent in respect to this Agreement; and

(d) it will deliver to Buyers pursuant to this Agreement only coal that it has the right to mine, sell and deliver free of any and all liens and encumbrances.

12. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. This Agreement may be assigned and transferred by Buyers only as set forth in subsection 12.1, and may be assigned and transferred by Seller only as set forth in subsection 12.2 herein, and not otherwise.

12.1 Assignment of Buyers' Interest.

The undivided interest of Buyers, or any of them, in this Agreement or any part thereof may be transferred or assigned to a third party only in conjunction with an assignment or transfer to said third party by Buyers, or any of them, of its ownership interest in Units 3 and/or 4, pursuant to the applicable provisions of the Ownership and Operation Agreement. Prior to the transfer, the Buyer(s) shall furnish evidence satisfactory to Seller of the assignee's financial capability to perform under this Agreement; provided, however, that an assignment or other transfer of a

Buyer's interest in Units 3 and/or 4 to another Buyer or Buyers shall not require the furnishing of evidence of financial capability to Seller, or amendment of this Agreement.

12.2 Assignment of Seller's Interest.

(a) Seller's interest in this Agreement may be transferred or assigned to a third party ("Third Party Transferee") only with the prior written consent of each of the Buyers, and only in conjunction with the assignment or transfer to said Third Party Transferee of part or all of Seller's ownership and operating interests, including mineral leases, in and to the coal reserves that are used in the performance of this Agreement.

(b) As a condition of the assignment or transfer, the Third Party Transferee must agree to be bound by each and every term and condition of this Agreement as if such Third Party Transferee were an original party to this Agreement, including the restriction on transfers and assignments.

(c) Prior to the transfer, the Third Party Transferee shall furnish evidence satisfactory to each of the Buyers of its financial capability to perform under this Agreement and shall furnish, if reasonably requested by any of the Buyers, a bond or other financial assurance in a form satisfactory to the Buyer(s) making the request, that the Third Party Transferee will perform each of the terms and conditions of this Agreement, and will meet all of its financial obligations as required, including promptly paying any royalties due under coal leases or other agreements.

13. LAW GOVERNING CONSTRUCTION OF AGREEMENT

The Parties to this Agreement are domiciled in multiple states. In order to create greater certainty with respect to their legal rights and obligations under this Agreement, the Parties agree that this Agreement shall be subject to and governed by the substantive laws of the State of New York as though this Agreement were performed in full in the State of New York, but without giving effect to New York principles of conflicts of laws.

14. NOTICES AND REPORTS

All notices or reports provided for under this Agreement shall be in writing and shall be sent by United States mail, postage prepaid, and properly addressed:

(a) If to Buyers:

Puget Sound Energy, Inc.
PO Box 97034
Bellevue, WA 98009-9734
Attn: Senior Vice-President, Policy and Energy Supply

With a copy to:

Puget Sound Energy, Inc.
PO Box 97034
Bellevue, WA 98009-9734
Attn: General Counsel

Avista Corporation
Attention: Vice President Energy Resources
1411 East Mission
PO Box 3727
Spokane, WA 99220-3727

With a copy to:

Avista Corporation
1411 East Mission
PO Box 3727
Spokane, WA 99220-3727
Attention: General Counsel

Portland General Electric Company
1WTC1701
121 SW Salmon St.
Portland, OR 97204
Attention: Coal Supply

With a copy to:

Portland General Electric Company
121 SW Salmon St.
Portland, OR 97204
Attention: General Counsel

PacifiCorp
1407 W. North Temple, Suite 110
Salt Lake City, UT 84116
Attention: Director of Fuels

NorthWestern Energy
11 East Park Street
Butte, MT 59701
Attention: Vice President, Energy Supply

With a copy to:

NorthWestern Energy
208 N. Montana Ave., Suite 205
Helena, MT 59601
Attention: General Counsel

(b) If to Seller:

Westmoreland Mining LLC
9540 S. Maroon Circle, Suite 300
Englewood, CO 80112

With a copy to:

Westmoreland Mining LLC
Attn: General Counsel
Corporate Counsel – Mining & Operations
9540 South Maroon Circle, Suite 300
Englewood, CO 80112

15. OPERATOR

Seller agrees to recognize whomever Buyers designate from time to time as the Operator of Units 3 and 4 as the agent of Buyers for purposes of scheduling deliveries and the giving of notices herein mentioned respecting all coal delivered under this Agreement, until such time as Buyers in writing designate a new or different Operator. Nothing herein shall prevent any Buyer from acting on its own behalf respecting coal deliveries hereunder, provided that it first notifies, in writing, the other Parties of its intention to do so.

16. [REDACTED]

16.1 [REDACTED]

[REDACTED]

16.2 [REDACTED]

[REDACTED]

17. SEVERAL LIABILITY

The Parties agree that the liability of Buyers for all purposes under this Agreement is several, not joint, and that if there is a breach, default, or assumption of liability hereunder by Buyers or any one of them, no other Party hereto shall have any obligation to perform for the breaching, defaulting or liable Buyer(s), and Seller shall have no claim against or power to bind any other Buyer or any other Party (other than a successor to a breaching, defaulting or liable Buyer) for the breaching, defaulting or liable Buyer's obligations hereunder. If a Buyer is more than thirty (30) days delinquent in making a payment due Seller that has not been disputed (wholly or in part) by such Buyer, then Seller may elect to reduce the volume of coal shipped hereunder

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VERSION

by up to the lesser of such Buyer's Allocated Share of deliveries pursuant to subsection 5.3(a) or such Buyer's coal requirements for the then-current Year, until the delinquent payment is made or otherwise satisfied; provided, however, that Seller shall provide the other Buyers with at least thirty (30) days prior written notice of any such reduction,

18. INDEMNIFICATION

18.1 Seller's Indemnity of Buyers.

Subject to subsection 18.3, and notwithstanding anything in this Agreement which might be read to the contrary:

(a) Seller shall defend, indemnify, and hold Buyers, their officers, employees and agents harmless from all liability and expense on account of any and all claims, damages or actions arising from Seller's actions under or related to this Agreement.

(b) Without limiting the generality of the foregoing, Seller's obligations under subsection 18.1(a) shall extend to all claims, damages or actions alleging that Buyers are liable as owners, operators, potentially responsible parties, or responsible parties, of the Rosebud Mine or of any of Seller's associated facilities.

(c) The provisions of this subsection 18.1 shall survive the expiration or other termination of this Agreement.

18.2 Buyers' Indemnity of Seller.

Subject to Section 17 and subsection 18.3, and notwithstanding anything in this Agreement which might be read to the contrary:

(a) Buyers shall defend, indemnify, and hold Seller, its officers, employees and agents harmless from all liability and expense on account of any and all claims, damages or actions arising from Buyers' actions under or related to this Agreement.

(b) Without limiting the generality of the foregoing, Buyers' obligations under subsection 18.2 (a) shall extend to all claims, damages or actions alleging that Seller is liable as owner, operator, potentially responsible party, or responsible party, of Units 3 or 4 or of any Buyer.

(c) The provisions of this subsection 18.2 shall survive the expiration or other termination of this Agreement.

18.3 No Consequential or Punitive Damages.

Regardless of anything in this Agreement which might be read to the contrary, under no circumstances shall consequential, indirect, exemplary or punitive damages be recoverable against any Party hereto arising from a breach of this Agreement.

18.4 Limitation on Claims.

All claims for breach of this Agreement shall be brought within three (3) Years of when such claim is first discovered or reasonably should have been discovered, or such claim is waived.

19. CONFIDENTIALITY

Except when required for regulatory reporting by law, subpoena, governmental or judicial order, or pursuant to regulatory audit request (such information to be provided under protective orders or provisions), the Parties shall not reveal the terms of this Agreement and shall protect the confidentiality of the information developed in connection with this Agreement; provided, however, that no Party will be precluded from revealing such information in obtaining or attempting to obtain financing or in filing reports and information with the Securities and Exchange Commission (including without limitation, in a prospectus filing), or the appropriate governmental authorities, or making public information required thereby, or when such disclosure is required by law. When required, the Parties may also submit information to consultants and contractors performing work related to this Agreement who agree to protect the confidentiality of such information. Notwithstanding the foregoing, a Party may disclose this Agreement or any information concerning this Agreement to independent accounting firms or law firms retained by such Party in connection with its business, provided such independent accounting firm or law firms have agreed to keep such terms and conditions confidential on terms no less restrictive than those set forth herein. A Party also may disclose the terms of this Agreement to its owners, affiliated companies, and members, or to members of its owners or affiliated companies as necessary in the normal course of approving and administering this Agreement.

20. RECORDS AND AUDITS

20.1 Buyers' Accounting Audit.

Buyers, individually or collectively, shall have the right to examine and audit, from time to time at reasonable times, but not more than once each Year, Seller's records and books of account relating to the determination of Prices and Price adjustments pursuant to Section 8. Any invoice not disputed by a Buyer within two (2) years of the date of Seller's original delivery of the invoice to the Buyer shall be deemed correct, and the Buyer shall have waived any claim with respect to the invoice.

20.2 Adjustments and Payments.

If any audit pursuant to subsection 20.1 discloses that an overpayment or underpayment has been made, the amount of the overpayment or underpayment shall be promptly paid to the Party to whom it is owed by the other Party, plus interest from the date of the over or under payment calculated in accordance with subsection 8.9.

20.3 Examination of Records.

Buyers shall have the right at all reasonable times, upon written notice to Seller, to examine the records kept by Seller of the weights and analyses of the coal delivered under this Agreement, provided that all the weights and analyses not disputed by a Buyer within two (2) Years of the date

the weighing or analysis was performed shall be deemed correct, and such Buyer shall have waived any claim with respect to their inaccuracy.

21. COUNTERPARTS

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any Party may execute this Agreement by signing any such counterpart.

22. ENTIRE AGREEMENT; AMENDMENTS

This Agreement (including all Exhibits referred to in this Agreement) contains the final and entire agreement and understanding of the Parties with respect to the subject matter hereof, and except as specifically referenced herein, there are no other agreements, understandings, conditions, warranties or representations, oral or written, with respect to the subject matter that are not merged herein. In the event of a conflict between the terms and conditions of this Agreement and any Exhibit referenced herein, the terms and conditions of this Agreement shall prevail. This Agreement may not be amended except by an instrument in writing signed by a duly authorized representative of each Party.

23. MISCELLANEOUS PROVISIONS

23.1 Further Assurances.

The Parties shall take such other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.

23.2 Severability.

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, such provision shall be considered severed from the rest of this Agreement, and the remaining provisions shall continue in full force and effect as if the invalid provision had not been included.

23.3 Construction.

No understandings or agreements not expressly stated in this Agreement shall be binding on the Parties in the construction or fulfillment hereof unless such understandings or agreements are reduced to writing and signed by the Parties. Because the Parties and their respective counsel have jointly participated in the negotiation and drafting of this Agreement, any rules requiring ambiguities to be construed against the drafter shall not apply to this Agreement.

23.4 No Third-Party Beneficiaries.

This Agreement is not intended to, and shall not, create rights, remedies, or any benefits of any character whatsoever, in favor of any person, corporations or entity other than the Parties hereto, and the obligations herein assumed are for the use and benefit of the Parties, their successors in interest, and permitted assigns.

23.5 Remedies Cumulative.

Except as expressly provided herein, each remedy provided for under this Agreement is cumulative and in addition to every other remedy provided for herein or available at law or equity.

23.6 Captions.

The captions to the Sections or subsections of this Agreement are for convenience of reference only, and shall not be taken or construed to define or limit any of the terms or provisions of this Agreement.

23.7 Relationship of the Parties.

Nothing herein is intended to nor shall ever be construed to create a joint venture, partnership or any other type of association among the Parties, nor shall a Party have the right to act on behalf of or bind any other Party for any liability, cost, expense or undertaking except as set forth in this Agreement.

23.8 Recitals and Exhibits.

The recitals set forth herein and Exhibits attached hereto are fully incorporated into this Agreement.

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

PORTLAND GENERAL ELECTRIC
COMPANY

PUGET SOUND ENERGY, INC.

(LM)

By: *[Signature]*

By: _____

Its: *President and CEO*

Its: _____

NORTHWESTERN CORPORATION,
DBA NORTHWESTERN ENERGY

PACIFICORP

By: _____

By: _____

Its: _____

Its: _____

23.5 Remedies Cumulative.

Except as expressly provided herein, each remedy provided for under this Agreement is cumulative and in addition to every other remedy provided for herein or available at law or equity.

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PORTLAND GENERAL ELECTRIC
COMPANY

PUGET SOUND ENERGY, INC.

By: _____

By: _____

Its: _____

Its: _____

NORTHWESTERN CORPORATION,
DBA NORTHWESTERN ENERGY

PACIFICORP

By:  _____

By: _____

Its: CEO _____

Its: _____

23.5 Remedies Cumulative.

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PORTLAND GENERAL ELECTRIC COMPANY

By: _____

Its: _____

PUGET SOUND ENERGY, INC.

By:  _____

Its: SVP POLICY & ENERGY SUPPLY

NORTHWESTERN CORPORATION,
DBA NORTHWESTERN ENERGY

By: _____

Its: _____

PACIFICORP

By: _____

Its: _____

23.5 Remedies Cumulative.

Except as expressly provided herein, each remedy provided for under this Agreement is cumulative and in addition to every other remedy provided for herein or available at law or equity.

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

PORTLAND GENERAL ELECTRIC
COMPANY

PUGET SOUND ENERGY, INC.

By: _____

By: _____

Its: _____

Its: _____

NORTHWESTERN CORPORATION,
DBA NORTHWESTERN ENERGY

PACIFICORP


By: _____

By: *[Signature]*

Its: _____

Its: President & CEO

AVISTA CORPORATION

By: 

Its: SENIOR VICE PRESIDENT, ENERGY RESOURCES

WESTMORELAND ROSEBUD MINING LLC

By: _____

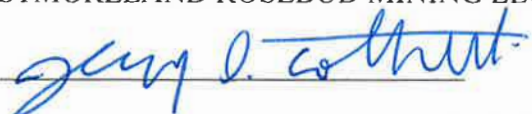
Its: _____

AVISTA CORPORATION

By: _____

Its: _____

WESTMORELAND ROSEBUD MINING LLC

By: 

Its: Secretary of Westmoreland Rosebud Mining LLC

Exhibit 1

Subsection 1.5¹

Buyer

NorthWestern Corporation	17.65%
Puget Sound Energy, Inc.	29.41%
Avista Corp.	17.65%
Portland General Electric Co.	23.53%
PacifiCorp	11.76%

¹ Capacity Share as of the Commencement Date.

Exhibit 2

Subsection 1.25

Map of the Rosebud Mine

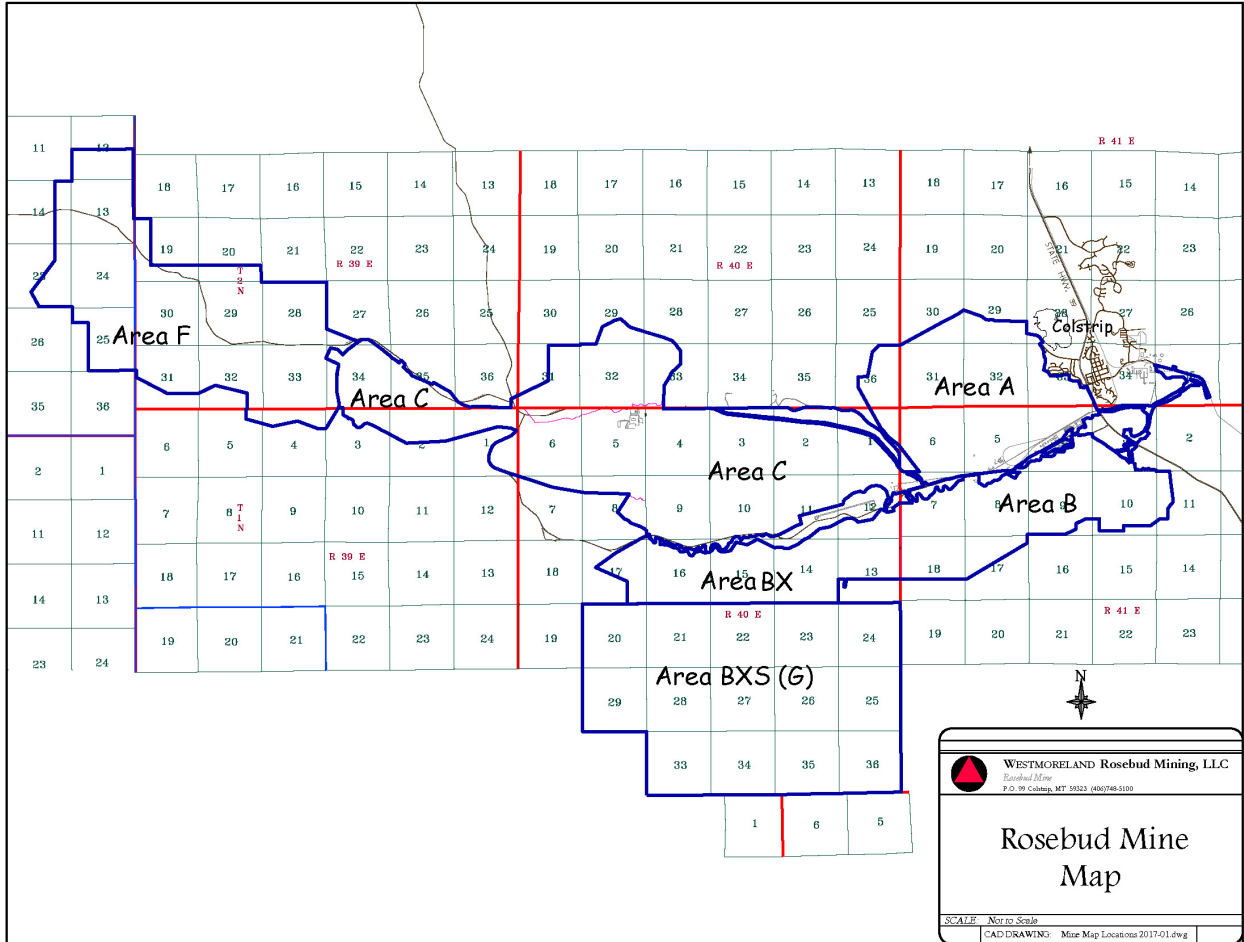


Exhibit 3

Subsection 2.2(c)

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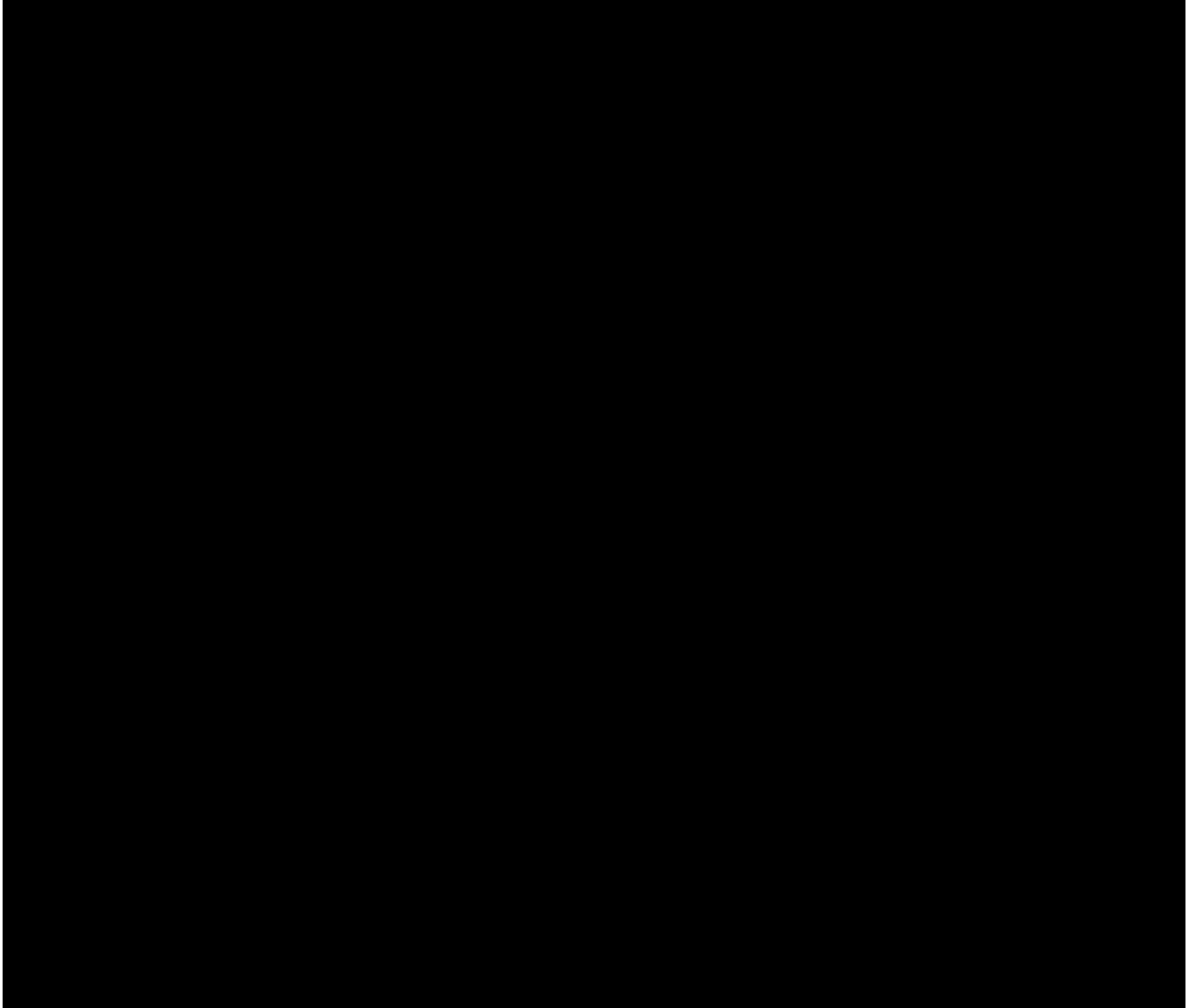
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Exhibit 4



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VERSION

Exhibit 5
Subsection 5.3(b)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

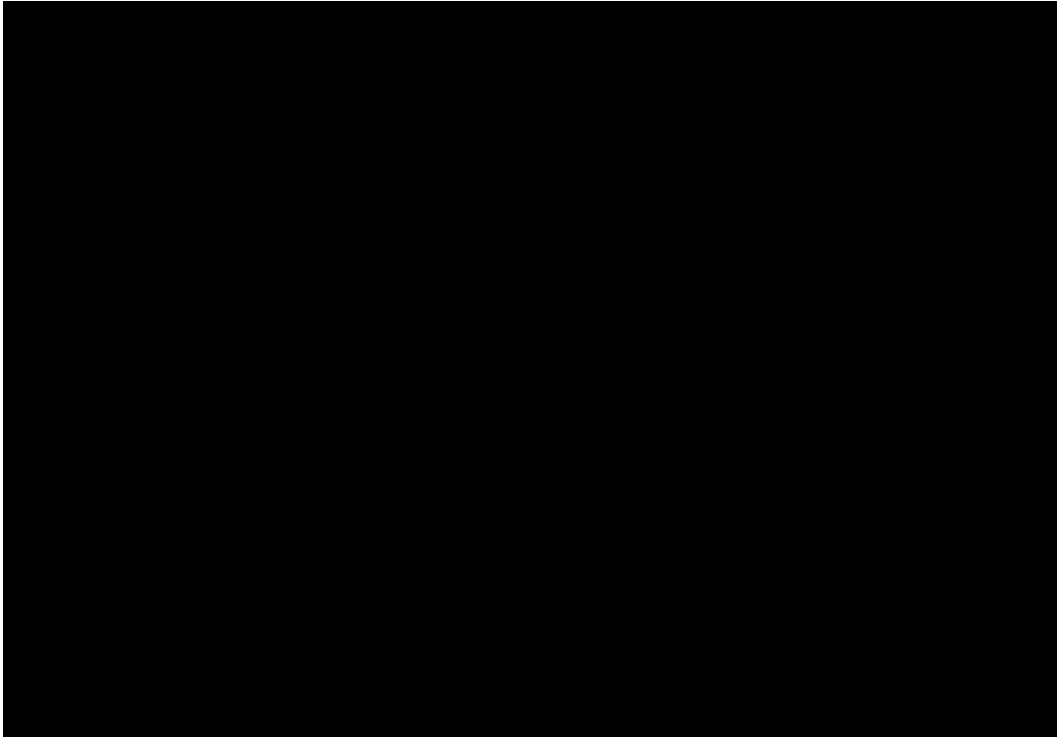
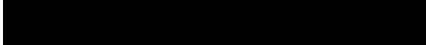
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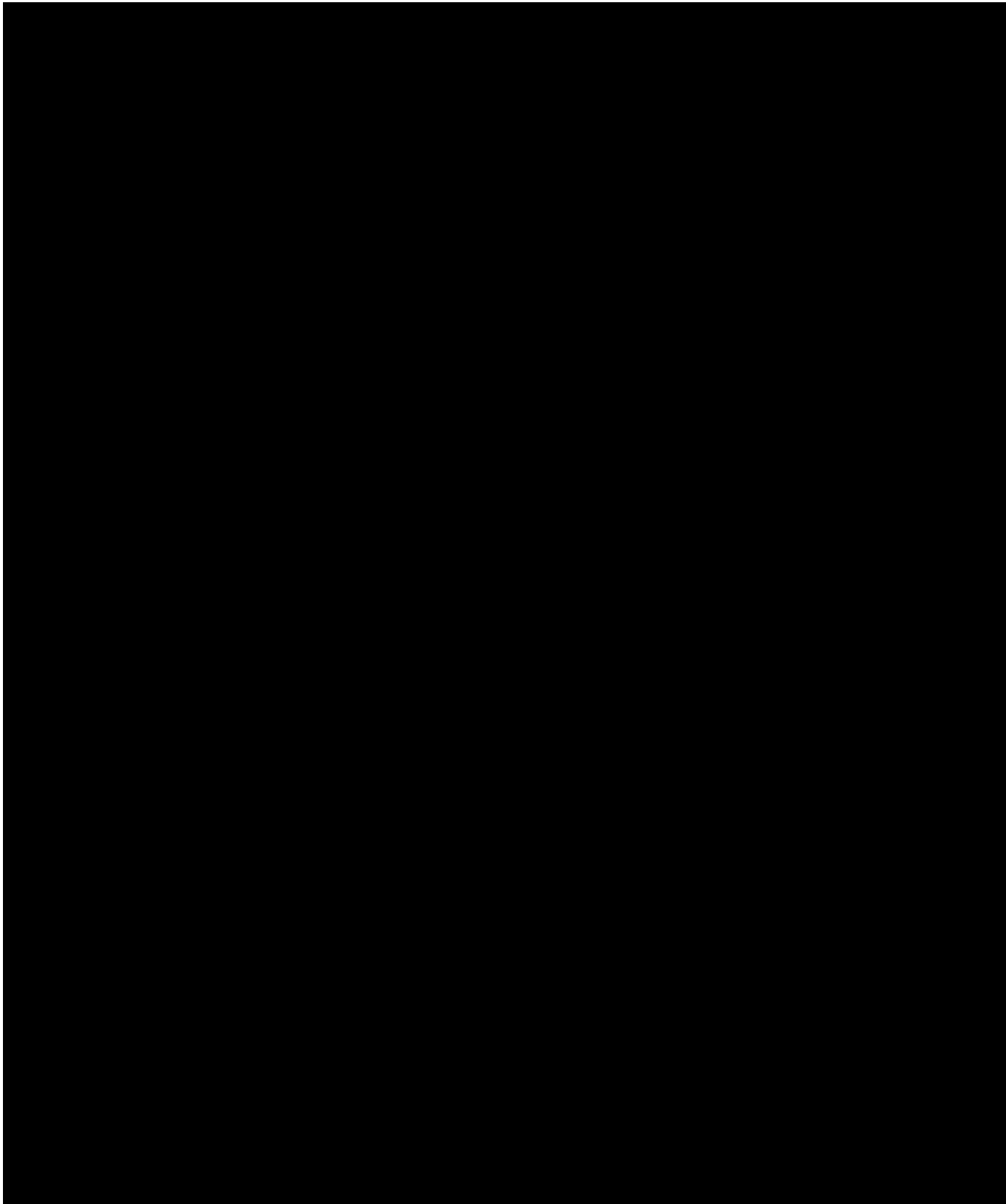
Exhibit 6

Subsection 6(i)



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VERSION

Exhibit 7
Subsection 8.3



REDACTED
VERSION