



Agenda Sheet for City Council Meeting of:
10/21/2019

Date Rec'd	10/9/2019
Clerk's File #	OPR 2019-0889
Renews #	
Cross Ref #	OPR 2004-0586,
Project #	
Bid #	
Requisition #	

Submitting Dept	WATER & HYDROELECTRIC SERVICES
Contact Name/Phone	DAN KEGLEY 625-7821
Contact E-Mail	DKEGLEY@SPOKANECITY.ORG
Agenda Item Type	Contract Item
Agenda Item Name	4100 - POWER PURCHASE AGREEMENT-UPRIVER DAM TO SELL SUPLUS

Agenda Wording

Contract for City of Spokane Upriver Hydroelectric Project to sell surplus power to Avista Corporation beginning November 1st, 2019 through October 31st 2024.

Summary (Background)

The existing Power Purchase Agreement (PPA) between the city and Avista began January 1, 2012 and expires December 31, 2019. It is advantageous for the City to enter into an extension of the PPA with Avista by November 1, 2019 to secure the current rates available, which are substantially higher than the revised tariff that Avista is planning to file early November 2019. After power and pumping costs at Upriver Project are satisfied, total annual revenue expected is \$1.9 million.

Fiscal Impact	Grant related? NO	Budget Account
	Public Works? NO	
Revenue	\$ 1,900,000	# 4100-42460-33060-34330
Select	\$	#
Select	\$	#
Select	\$	#

Approvals		Council Notifications	
Dept Head	BURNS, STEVE	Study Session	
Division Director	FEIST, MARLENE	Other	UE 10/14/19
Finance	ALBIN-MOORE, ANGELA	Distribution List	
Legal	DALTON, PAT	sjohnson@spokanecity.org	
For the Mayor	ORMSBY, MICHAEL	colsen@spokanecity.org	
Additional Approvals		eschoedel@spokanecity.org	
Purchasing		sburns@spokanecity.org	
		steve.trabun@avistacorp.com	
		aalbinmoore@spokanecity.org	

APPROVED BY
SPOKANE CITY COUNCIL:

10/21/2019
[Signature]
CITY CLERK



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Pricing is utilizing Washington State Contract Number: 01114 - NASPO Master Contract Number: AR233(14-19). Term is November 1, 2019-April 30, 2021 for SmartNet maintenance and support contract. Term is November 1, 2019-October 31, 2024 for DNA licensing.

Summary (Background)

Fiscal Impact		Budget Account	
Select	\$		#
Select	\$		#

Distribution List

Distribution List	

POWER PURCHASE AGREEMENT
BETWEEN
AVISTA CORPORATION
AND
CITY OF SPOKANE
(UPRIVER DAM HYDROELECTRIC PROJECT)

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This Power Purchase Agreement (this “**Agreement**”) is entered into as of the ___ day of October, 2019 (the “**Effective Date**”), by and between the CITY OF SPOKANE (the “**City**”), State of Washington, a Washington municipal corporation, and AVISTA CORPORATION (“**Avista**”) of Spokane, Washington, a corporation organized and existing under the laws of the State of Washington, hereinafter sometimes referred to collectively as the “**Parties**” and individually as a “**Party**.”

WITNESSETH:

WHEREAS, the City owns and operates a hydroelectric generating project located on the Spokane River in Spokane County, Washington, known as the Upriver Hydro Project, which has a nameplate capacity of 17.7 megawatts and has been issued hydroelectric license no. 3074-WA by FERC (the “**Project**”); and

WHEREAS, the City and Avista have entered into a Small Generator Interconnection Agreement (the “**Interconnection Agreement**”) that provides for and governs the interconnection of the Project with Avista’s electric system; and

WHEREAS, the City and Avista entered into a Power Purchase Agreement dated December 8, 2011, which agreement expires on December 31, 2019; and

WHEREAS, the City desires to sell and Avista desires to purchase electric power from the Project for a delivery term beginning on January 1, 2020;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the Parties agree as follows:

1. DEFINITIONS; INTERPRETATION

(a) **Definitions.** In addition to words defined elsewhere in this Agreement as signified by initial capitalization, whenever used in this Agreement, exhibits, and attachments hereto, the terms below shall have the following meanings:

(i) “**Affiliate**” means, with respect to any Person, any other Person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, “control” means the direct or indirect ownership of 50 percent or more of the outstanding capital stock or other equity interests having ordinary voting power.

(ii) “**Agreement**” means this power purchase agreement including all exhibits, attachments and modifications thereof.

(iii) “**Applicable Program**” means a domestic, international or foreign renewable portfolio standard or renewable energy standard, or renewable energy or emissions reduction program, scheme or organization, adopted by a Governmental Authority or otherwise, or other similar program with respect to which exists a market, registry or reporting for particular Environmental Attributes.

(iv) **“Bankrupt”** means, with respect to a Party or other entity, that such Party or other entity: (A) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (B) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (C) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (D) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up or liquidation, which proceeding or proceeding is not dismissed, stayed or vacated within thirty (30) days thereafter; (E) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights; (F) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (G) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (H) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (A) to (G) inclusive; or (I) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

(v) **“Bankruptcy Code”** means Title 11 of the United States Code.

(vi) **“Business Day”** means any day except a Saturday, Sunday or a Federal Reserve Bank holiday.

(vii) **“Defaulting Party”** shall have the meaning provided in Section 16(a) of this Agreement.

(viii) **“Delivered Net Output”** shall have the meaning provided in Section 4(a) of this Agreement.

(ix) **“Delivery Term”** shall have the meaning provided in Section 3(b) of this Agreement.

(x) **“Dispute Notice”** shall have the meaning provided in Section 12 of this Agreement.

(xi) **“Effective Date”** shall have the meaning set forth in the first paragraph of this Agreement.

(xii) **“Environmental Attributes”** means 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 Project or the generation of energy by the Project, and the delivery of such energy to the electricity grid, and include 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 to the UNFCCC, 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 Project and other financial incentives in the form of credits, reductions, or allowances associated with ownership of the Project 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. 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 Project.

(xiii) “**Event of Default**” shall have the meaning provided in Section 16(a) of this Agreement.

(xiv) “**Facility Service Power**” means the electric energy generated and used by the Project during its operation to operate (A) equipment that is auxiliary to primary generation equipment including pumping, generator excitation, cooling or other operations related to the production of electric energy by the Project and the City’s underground water pumps (Well Electric and Parkwater) located at the Project, or (B) equipment at any other facilities that the City may develop, construct, install, own, and operate on the parcel containing the Project or on any adjacent parcel owned by the City, including energy storage or solar photovoltaic facilities, *provided* that any such equipment contemplated by this clause (B) does not (1) have an aggregate electric demand in excess of five (5) MW and (2) without the prior written consent of Avista, use any portion of Avista’s distribution system for the delivery of Facility Service Power from the Project.

(xv) “**FERC**” means the United States Department of Energy, Federal Energy Regulatory Commission, or any other successor agency with substantially similar jurisdiction over Avista Corporation.

(xvi) “**Force Majeure**” shall have the meaning provided in Section 8(a) of this Agreement.

(xvii) “**Forced Outage**” means any outage that either fully or partially curtails the electrical output of the Project caused by mechanical or electrical equipment failure, plant related structural failure, or unscheduled maintenance required to be performed to prevent equipment failure.

(xviii) “**Good Industry Practice**” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been

expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Industry Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

(xix) **“Governmental Authority”** means any federal, state or local government, political subdivision thereof or other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, or other entity with authority to bind a Party at law.

(xx) **“Governmental Rules”** means any law, rule, regulation, ordinance, order, code, permit, interpretation, judgment, decree, directive, guideline, policy or similar form of decision of any Governmental Authority having the effect of law or regulation, *provided that* Governmental Rules shall not include any enactment or other action of the City undertaken for the purpose of abrogating, repudiating or unilaterally amending the Agreement, but this exception does not include any power of eminent domain that the City may lawfully exercise notwithstanding this Agreement.

(xxi) **“Industrial Insurance Acts”** shall have the meaning provided in Section 10(b)(ii) of this Agreement.

(xxii) **“Interconnection Agreement”** shall have the meaning provided in the recitals of this Agreement.

(xxiii) **“Interest Rate”** means, for any date, the lesser of (a) one percent per month, and (b) the maximum rate permitted by applicable law.

(xxiv) **“Loss”** shall have the meaning provided in Section 9(a) of this Agreement.

(xxv) **“Major Maintenance”** means maintenance work upon the Project that results in more than one generating unit not operating.

(xxvi) **“NERC”** means the North American Electric Reliability Corporation or its successor organization.

(xxvii) **“Operating Year”** means the 12-month period from January 1 through December 31.

(xxviii) **“Pacific Prevailing Time”** or **“PPT”** means the prevailing time (i.e., Standard Time or Daylight Savings Time) on any given day in the Pacific Time Zone.

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

(xxx) **“Point of Delivery”** means the point at which the Project and Avista’s electric system are interconnected, as set forth in the Interconnection Agreement.

(xxxix) “Power Meter” shall have the meaning provided in Section 4(a) of this Agreement.

(xxxvii) “Premises” means the site owned and operated by the City at which the Project is located.

(xxxviii) “Project” means the electric generating facility, including all equipment and structures necessary to generate and supply electric power and the underground well water pump stations (Well Electric and Parkwater) located adjacent to the generating facility.

(xxxix) “Qualifying Facility” means a generating facility which meets the requirements for Qualifying Facility status under the Public Utility Regulatory Policies Act of 1978 and part 292 of FERC’s Regulations, 18 C.F.R. Part 292, and which has self-certified or been granted certification of its QF status.

(xl) “Representatives” means, with respect to a Party, such Party’s directors, officers, partners, members, employees, consultants, agents, advisors, successors and assigns, in each case with respect to the transactions contemplated by this Agreement.

(xli) “ROFO Notice” shall have the meaning provided in Section 12 of this Agreement.

(xlii) “ROFO Response” shall have the meaning provided in Section 12 of this Agreement.

(xliii) “Term” shall have the meaning provided in Section 3(a) of this Agreement.

(xliv) “Termination Date” means the date on which this Agreement terminates or expires.

(xlv) “WECC” means the Western Electricity Coordinating Council or its successor organization.

(xlvi) “WUTC” means the Washington Utilities and Transportation Commission or any other successor agency with substantially similar jurisdiction over Avista.

(b) **Interpretation.** Unless the context otherwise requires:

(i) Words singular and plural in number will be deemed to include the other and pronouns having masculine or feminine gender will be deemed to include the other.

(ii) Subject to Section 1(b)(vii), any reference in this Agreement to any Person includes its successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities.

(iii) Any reference in this Agreement to any Section, Exhibit, Appendix or Annex means and refers to the Section contained in, or Exhibit, Appendix or Annex attached to, this Agreement.

(iv) Other grammatical forms of defined words or phrases have corresponding meanings.

(v) A reference to writing includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words, figures or symbols in a lasting and visible form.

(vi) Unless otherwise expressly provided in this Agreement, a reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed.

(vii) A reference to a Party to this Agreement includes such Party's successors and permitted assigns.

(viii) Reference to any gender includes each other gender.

(ix) Unless otherwise expressly provided in this Agreement, a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as modified, amended, supplemented or restated from time to time.

(x) References in this Agreement to "or" will be deemed to be disjunctive but not necessarily exclusive (i.e., unless the context dictates otherwise, "or" will be interpreted to mean "and/or" rather than "either/or").

(xi) If any payment, act, matter or thing hereunder would occur on a day that is not a Business Day, then such payment, act, matter or thing will, unless otherwise expressly provided for herein, occur on the next Business Day.

(xii) "Hereunder," "hereof," "hereto" and words of similar import will be deemed references to this Agreement as a whole and not to any particular article, section or other provision hereof.

(xiii) "Including" (and with correlative meaning "include") means including without limitation on the generality of any description preceding such term.

(xiv) Relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding," and "through" means "through and including."

(c) **Technical Meanings.** Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

2. REPRESENTATIONS AND WARRANTIES; COVENANTS

(a) Representations and Warranties.

(i) The City represents that it is the sole owner of the Project, which is managed primarily for the benefit of the City Water Department ratepayers. The City warrants and represents that: (a) the City has investigated and determined that it has authority to and is capable of performing the obligations hereunder and has not relied upon the advice, experience or expertise of Avista in connection with the transactions contemplated by this Agreement; and (b) the Project is a Qualifying Facility. The City further represents that this Agreement constitutes a legal, valid and binding obligation of the City enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending, has been approved by the City Council, and that the City's signatory is authorized to execute the Agreement.

(ii) Avista represents that this Agreement constitutes a legal, valid and binding obligation of Avista enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending, and that Avista's signatory is authorized to execute the Agreement. Avista makes no warranties, expressed or implied, regarding any aspect of the City's design, specifications, equipment or facilities, including safety, durability, reliability, strength, capacity, adequacy or economic feasibility, and any review, acceptance or failure to review the City's design, specifications, equipment or Project shall not be an endorsement or a confirmation by Avista. Avista assumes no responsibility or obligation with regard to any NERC or WECC reliability standard applicable to the Project.

(b) Covenants.

(i) The City will comply with all applicable Governmental Rules and will obtain and comply with applicable licenses, permits and approvals in the design, construction, operation and maintenance of the Project; and the Project will, during the Term of this Agreement, remain a Qualifying Facility as that term is used in 18 C.F.R Part 292. The Project's failure to maintain Qualifying Facility status during the Term will be a material breach by the City of this Agreement. Avista reserves the right to review the Project's Qualifying Facility status and associated support and compliance documents at any time during the Term.

(ii) Avista will use commercially reasonable efforts to obtain approval of the WUTC (without adverse amendment or adverse condition) of this Agreement, including preparation and filing all documentation to effect all necessary notices, reports and other filings and furnishing all information as may be required by any Governmental Authority in connection with the foregoing, in each case as promptly as practicable. The City will use its commercially reasonable efforts to assist Avista, as requested by Avista from time to time, in connection with obtaining such WUTC approval. Each of Avista and the City

shall have the right to review in advance and, to the extent practicable, consult with the other on, and shall consider in good faith the views of the other in connection with, any filing to be made with, or written materials to be submitted to, any Governmental Authority in connection with the process of obtaining WUTC approval of this Agreement. In exercising the foregoing rights, each of Avista and the City shall act reasonably and as promptly as practicable.

3. TERM OF AGREEMENT; DELIVERY TERM

(a) The term of this Agreement (the “**Term**”) shall commence on the date of this Agreement and shall terminate at 2400 PPT on December 31, 2024, unless terminated earlier in accordance with the terms and conditions of this Agreement.

(b) The period during which the City will deliver Delivered Net Output to Avista under this Agreement (the “**Delivery Term**”) will commence at 00:00:01 PPT on January 1, 2020 and continue through hour ending 2400 PPT on December 31, 2024. The Delivery Term will terminate effective immediately upon termination of the Term for any reason.

(c) Avista shall have the right to terminate this Agreement within one hundred and twenty (120) days following any order of the WUTC that disapproves this Agreement or disallows recovery in Avista’s retail rates of costs arising from purchases of electric power pursuant to this Agreement. If the WUTC issues an order that approves this Agreement subject to conditions that adversely affect the financial benefit of the Agreement to either Avista or the City, and that is not in form and substance substantially the same as that requested by Avista in the applicable filing, then the adversely affected Party may terminate this Agreement by giving notice to the other Party within one hundred and twenty (120) days after the issuance of such order. Within thirty (30) days after receipt of an order from the WUTC setting forth a disapproval, disallowance or conditional approval of this Agreement, Avista shall notify the City of such order and the possible effects thereof.

(d) The City shall have a right, exercisable in the City’s sole discretion by notice to Avista not later than May 31, 2022, to terminate this Agreement effective at 2400 PPT on December 31, 2022. If the City exercises such termination right, neither Party will have any liability to the other Party for or as a result of such termination; *provided, however*, that no such termination will relieve either Party of any liability incurred by such Party prior to such termination.

(e) Effective as of the Termination Date, the Parties will no longer be bound by the terms and conditions of this Agreement, except (a) to the extent necessary to enforce any rights and obligations of the Parties, including payment obligations, arising under this Agreement prior to expiration or termination of this Agreement, and (b) that the obligations of the Parties under Sections 6(h), 9, 10, 13 and 22 will survive the expiration or termination for any reason of this Agreement; *provided that* such obligations with respect to indemnification will continue only with respect to claims for indemnification based upon events or circumstances occurring or arising on or before the Termination Date.

4. PURCHASE AND SALE OF DELIVERED NET OUTPUT

(a) The City shall sell and deliver, and Avista shall purchase and receive, at the Point of Delivery the total amount of electric power that is generated by the Project (less Facility Service Power), up to a maximum of 17.7 megawatts, and delivered by the City to Avista at the Point of Delivery during the Delivery Term (the “**Delivered Net Output**”). A power meter located at the Point of Delivery (installed at the City’s expense) (the “**Power Meter**”) shall register the Delivered Net Output on an hourly basis. The City shall deliver to Avista, and Avista shall receive, at all times all the Delivered Net Output. Notwithstanding any other provision of this Agreement, the City has no obligation to generate or sell or deliver, and Avista has no right to purchase or receive, any specified minimum amount of Delivered Net Output at any time during the Term, and the City’s sole obligation with respect to the sale and delivery of any output of the Plant and any power supply whatsoever under this Agreement is to sell to Avista all Delivered Net Output on the terms and subject to the conditions of this Agreement.

(b) The Power Meter shall record electric power that flows from and to the Project, and from and to Avista’s electric system. Avista and the City both shall have the right to read and receive readings from the Power Meter. Avista shall read the meter and record the readings at least once per month. The Delivered Net Output in any month shall be calculated based on information from such meter readings. Monthly meter readings may be adjusted by prorating metered amounts to the number of days in such month.

(c) The Parties agree that any additional amounts of electric power made available from the Project as a result of any modifications, enhancements, or expansions of or additions to the Project during the Term shall be purchased and sold pursuant to this Agreement, so long as such modifications, enhancements, or expansions do not (i) cause the Delivered Net Output to exceed 17.7 MW at any time during the Term or (ii) result in any breach or violation of the provisions of Section 2(b)(i). The City may indicate its agreement to the purchase and sale of such additional amounts of electric power by a written administrative approval, executed by a lawfully authorized city official. For the avoidance of doubt, the City may not sell any electric power from the Project to any third party during the Delivery Term.

(d) Notwithstanding any other provision of this Agreement, the City will be entitled, at its sole option, to develop, construct, install, own, and operate energy storage or solar photovoltaic facilities at or in the vicinity of the Project site. Any such facilities shall be deemed to be part of the Project, and the electric power produced by any such facilities shall be deemed to be Delivered Net Output for purposes of this Agreement, if and to the extent that (i) such treatment would not (A) cause the Delivered Net Output to exceed 17.7 MW at any time during the Term or (B) result in any breach or violation of the provisions of Section 2(b)(i) and (ii) such facilities do not, without the prior written consent of Avista, use any portion of Avista’s distribution system for the delivery of electric power to any other portion of the Project.

5. OPERATION OF PROJECT

(a) The City shall operate and maintain the Project in accordance with applicable Governmental Rules and Good Industry Practice.

(b) Interconnection of the Project with Avista's electrical system is governed by a separate Interconnection Agreement between the Parties.

(c) Either Party may interrupt, suspend or curtail delivery, receipt or acceptance of delivery of electric power at the Point of Delivery, if either Party reasonably determines that it is required to do so in order to comply with any Governmental Rule or if the failure to do so:

(i) Is reasonably likely to endanger any Person or property, or either Party's facilities or customers, or any electric system with which Avista's system is interconnected;

(ii) Is reasonably likely to cause, or contribute to, an imminent significant disruption of utility service to either Party's customers;

(iii) Is reasonably likely to interfere with any construction, installation, inspection, testing, repair, replacement, improvement, alteration, modification, operation, use or maintenance of, or addition to either Party's facilities;

(iv) Is reasonably likely to cause, contribute to, or necessitate operation of any of Avista's hydroelectric projects in violation of any license or other regulatory requirements; or

(v) Is contrary to Good Industry Practice.

(d) A Party shall promptly notify the other Party in accordance with Exhibit A of the reasons for any such disconnection, interruption, suspension or curtailment. Such Party shall use its best reasonable efforts to mitigate and limit the duration of any such disconnection, interruption, supervision or curtailment.

6. PAYMENTS

(a) Avista shall prepare and submit to the City monthly statements during the Term based upon Delivered Net Output delivered to Avista during the previous month. Payments owed by Avista shall be paid no later than the twentieth (20th) day of the month following the end of the monthly billing period or five (5) Business Days after the receipt of the applicable 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.

(b) If the City is obligated to make any payment to Avista under the terms of this Agreement, Avista shall invoice the City for such payment. The price of electric power delivered to the Project at the Point of Delivery at any time during this Agreement shall be determined in accordance with Avista's then-applicable retail tariff in effect at the time such electric power is delivered as such tariff may be changed or replaced from time to time. The applicable retail tariff in effect at the time of the execution of this Agreement is Avista's Rate Schedule 31 for the State of Washington.

(c) Either Party may, if such Party is obligated to make any payment or refund to the other Party, net and set off such payment or refund amount against any current or future payments due to the other Party under this Agreement. Avista shall prepare and present a single net bill

reflecting the offset of sums owed between the Parties as a result of the sale and delivery of electric power during a month. The Party owing funds in accordance with the net bill shall pay the other Party no later than the twentieth (20th) day of the month following the end of the monthly billing period or five (5) Business 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.

(d) Avista shall pay the City monthly for Delivered Net Output at the rates set forth in Exhibit B.

(e) If either Party is obligated to make any payment to the other Party under the terms of this Agreement for any reason other than the sale and delivery of electric power, the Party to which such payment is due shall bill the Party from which such payment is due. The Party from which such payment is due shall pay the other Party no later than the twentieth (20th) day of the month following the end of the applicable monthly billing period or five (5) Business Days after the receipt of the applicable 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. Overdue payments will accrue interest in accordance with Section 6(i) from the due date to the date of payment.

(f) All payments shall be made by ACH or wire transfer in accordance with further agreement of the Parties.

(g) A Party may in good faith dispute the correctness of any invoice (or any adjustment to any invoice) rendered under this Agreement, or adjust any invoice for any arithmetic or computational error, at any time within twelve (12) months following the date the invoice (or invoice adjustment) was rendered. In the event that either Party disputes any invoice or invoice adjustment, such Party will nonetheless be required to pay the full amount of the applicable invoice or invoice adjustment (except any portions thereof which are manifestly inaccurate or are not reasonably supported by documentation, payment of which amounts may be withheld subject to adjustment as hereinafter set forth) on the applicable payment due date, and to give notice of the objection to the other Party. Any dispute with respect to any invoice or invoice adjustment will be in writing and will state the basis for the dispute or adjustment. Upon resolution of the dispute, any required payment will be made within two (2) Business Days of such resolution, together with interest accrued at the Interest Rate from the due date to the date paid. Any Party receiving an inadvertent overpayment will return such overpayment upon request or will deduct such overpayment from subsequent payments, in each case together with interest accrued at the Interest Rate from the date of such overpayment to the date repaid or deducted by the Party receiving such overpayment. Each Party hereby waives any and all rights that it may have to dispute any invoice or invoice adjustment unless such Party notifies the other Party in accordance with this Section 6(g) within twelve (12) months after the invoice is rendered or the applicable adjustment to the invoice is made.

(h) Each Party (and its Representatives) will have the right, at such Party's sole expense, during normal working hours and upon reasonable prior written notice to the other Party, to examine or make copies of the records and data of the other Party relating to this Agreement (including all records and data relating to or substantiating any charges paid by or to either Party and including metering records of the amount of the Delivered Net Output) to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this

Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and will bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; *provided, however*, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection will be deemed waived. This Section 6(h) will survive any termination of this Agreement for a period of one (1) year from the date of such termination for the purpose of such statement and payment objections.

(i) In addition to the remedies set forth in this Agreement, any amounts owing after the due date specified in this Agreement will be subject to interest at the Interest Rate.

7. METERING

(a) Avista shall be responsible for any meter readings required by this Agreement.

(b) Avista shall own and maintain the Power Meter. The Power Meter shall be used to determine the billing hereunder, and the meter shall be located at the Point of Delivery. The City shall reimburse Avista's reasonable costs, if any, for installing the Power Meter and for any replacement of such meter. For any planned replacement of the Power Meter by Avista for which the City bears cost responsibility pursuant to this Agreement, Avista shall, prior to commencing work on any such replacement, consult with the City regarding Avista's planning, design, operation, maintenance, repair and replacement of such Power Meter, including providing estimated costs, with the City. Avista shall use its best efforts to minimize such costs. If requested by the City, Avista shall provide copies of applicable test and calibration records and calculations pertaining to the Power Meter. Avista shall permit a representative of the City to be present at all times the Power Meter is being tested.

(c) Avista agrees to test the Power Meter in accordance with, and at such intervals as are consistent with, Avista's normal procedures, and in any event not less than once every two years. Avista shall conduct additional tests of the Power Meter if requested by the City, and the City shall reimburse Avista reasonable costs not to exceed \$1,000 per test, *provided* that the City may request an additional meter test at Avista's expense if the last meter test occurred more than twelve (12) months prior to the City's request. In addition, Avista shall not charge for any meter test requested by the City if such test shows that Avista's meter operates outside of accepted tolerances as determined by Avista in accordance with Good Industry Practice.

(d) Adjustments shall be made in meter readings and billings for errors in a meter reading billing discovered within twelve (12) months of the error. For purposes of adjusting meter readings and billings, in the event that it cannot be determined when the Power Meter commenced to malfunction, it shall be assumed that the Power Meter commenced to malfunction on a date which is the most recent of: (i) twelve (12) months prior to the date of discovery of the malfunction; or (ii) one half of the interval of time that elapsed between the date of the last meter test and the date of the discovery of the malfunction.

(e) Notwithstanding any other provision of this Agreement, Avista shall be responsible, at its sole cost and expense, for installing, testing, calibrating, operating, and

maintaining any Project metering or communications equipment additions or enhancements that are required as a result of or in connection with any participation by Avista in the California Independent System Operator Energy Imbalance Market (CAISO EIM) or any other energy market; *provided, however*, that if the City exercises its right under Section 3(d) to terminate this Agreement effective at 2400 PPT on December 31, 2022, and as a result of such termination such Project metering or communications equipment additions or enhancements are no longer used by or useful to Avista, the City will reimburse Avista for any direct out-of-pocket costs and expenses incurred by Avista prior to December 31, 2022 in installing, testing, calibrating, operating, and maintaining any such Project metering or communications equipment additions or enhancements, and effective upon such reimbursement, Avista will transfer to the City all right, title, and interest of Avista in and to such metering or communications equipment additions or enhancements.

8. FORCE MAJEURE

(a) Neither Party shall be liable to the other Party for, or be considered to be in breach of or default under this Agreement, on account of any failure to perform or delay in performance that is attributable to any of the following events, which event or circumstance was not anticipated or reasonably foreseeable as of the Effective Date (“**Force Majeure**”):

(i) Any cause or condition that is beyond such Party’s reasonable control and that is not the result of such Party’s negligence and that, by the exercise of due diligence, the Party claiming Force Majeure is unable to overcome or avoid or cause to be avoided, including the following (*provided, however*, that the existence of the following factors will not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances that in the aggregate with such factors establish that a Force Majeure as defined in the foregoing clauses of this Section 8(a)(i) has occurred): fire, flood, earthquake, volcanic activity, wind, drought and other acts of the elements; court order and act of civil, military or Governmental Authority; strike, lockout and other labor dispute; riot, insurrection, sabotage or war; federal, state, or other governmental laws, orders, decrees, restraints, or regulations; Forced Outage; breakdown of or damage to facilities or equipment; or 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

(ii) Any action taken by such Party which is, in the reasonable good faith judgment of such Party, necessary or prudent in accordance with Good Industry Practice to protect the operation, performance, integrity, reliability or stability of such Party’s facilities or any electric system with which such Party’s electric system is interconnected, whether such actions occur automatically or manually.

(b) Nothing contained in this section shall require any Party to settle any strike, lockout or other labor dispute. In the event that any Force Majeure occurrence prevents performance by a Party under this Agreement, the non-performing Party shall provide the other Party written notice thereof within seven (7) days after the occurrence of the Force Majeure event. Such notice shall include the particulars of the occurrence, assurances that suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure and that the nonperforming Party is using its commercially reasonable best efforts to remedy its inability to

perform. The non-performing Party shall resume performance of the obligations prevented by the Force Majeure occurrence with all reasonable dispatch. The performing Party shall not be required to perform or resume performance of its obligations to the non-performing Party corresponding to the obligations of the performing Party excused by the Force Majeure occurrence.

(c) Force Majeure does not include changes in the ownership, occupancy, or operation of the Project or in the operation of Avista that occur because of normal business occurrences which include but are not limited to: changes in business economic cycles; recessions; bankruptcies; tax law changes; sales of businesses; closure of businesses; changes in production levels; and changes in system operations.

(d) Force Majeure does not excuse any Party from making payments of money due and payable under this Agreement.

(e) Notwithstanding anything herein, the City shall not claim Force Majeure as a result of any Governmental Rules adopted by the City.

(f) Force Majeure will not be based on (i) the loss of Avista's markets, or (ii) Avista's inability economically to use or resell any Delivered Net Output purchased hereunder; *provided, however*, that notwithstanding anything herein, Avista may claim Force Majeure in the event that Avista ceases (for any reason that is beyond Avista's reasonable control and that is not the result of Avista's negligence and that, by the exercise of due diligence, Avista is unable to overcome or avoid or cause to be avoided) providing electric power to a substantial portion of its retail electric load within the City of Spokane.

(g) The Party claiming Force Majeure shall use its commercially reasonable best efforts to mitigate and limit the duration of any Force Majeure event.

9. INDEMNITY

(a) The City shall indemnify, defend and hold harmless Avista and its Representatives from and against any and all losses, expenses, liabilities, claims or actions (hereafter "**Loss**") based upon or arising out of bodily injuries or damages to Persons, including death resulting therefrom, or physical damages to or losses of property caused by, arising out of or sustained in connection with (i) the construction, operation or maintenance of the Project, (ii) the City's negligence or intentional misconduct, or (iii) any breach of this Agreement by the City. Avista shall indemnify, defend and hold harmless the City and its Representatives from and against and from any Loss caused by, arising out of or sustained in connection with (i) the construction, operation or maintenance of Avista's electrical system, (ii) Avista's negligence or intentional misconduct, or (iii) any breach of this Agreement by Avista. In the event that any such Loss is caused by the negligence of both the City and Avista, including their employees, agents, suppliers and subcontractors, the Loss shall be borne by each of the City and Avista in the proportion that its respective negligence bears to the total negligence causing the Loss. To the extent that a Loss is caused by, results from or arises out of or in connection with any matter that is addressed in the Interconnection Agreement, each Party's rights and obligations with respect to such Loss shall be subject to and governed exclusively by the terms and conditions of the Interconnection Agreement, including any and all limitations of liability, releases and waivers appearing in such agreement.

(b) THE CITY AND AVISTA REPRESENT AND 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.

10. LIMITATION OF LIABILITY

(a) Limitation of Liability. NOTWITHSTANDING ANYTHING CONTAINED TO THE CONTRARY IN THIS AGREEMENT, THE CITY AND AVISTA AGREE THAT THE RECOVERY BY EITHER PARTY OF ANY DAMAGES SUFFERED OR INCURRED BY IT AS A RESULT OF ANY BREACH BY THE OTHER PARTY OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE ACTUAL DAMAGES SUFFERED OR INCURRED BY THE NON-BREACHING PARTY OF ITS OBLIGATIONS HEREUNDER. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING ANY DAMAGES ON ACCOUNT OF LOST PROFITS OR OPPORTUNITIES OR BUSINESS INTERRUPTION AND THE LIKE), WHETHER BY STATUTE, IN TORT OR UNDER CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE; *PROVIDED, HOWEVER*, THAT THE FOREGOING WILL NOT IN ANY EVENT LIMIT THE LIABILITY OF EITHER PARTY TO THE OTHER UNDER SECTION 9 FOR OR WITH RESPECT TO THIRD-PARTY CLAIMS.

(b) Compliance with Express Negligence Rule; RCW 4.24.115 Acknowledgement and Waiver.

(i) To the fullest extent permitted by applicable law, all releases, disclaimers, limitations on liability, and indemnities in this Agreement, including those in this Section 10, shall apply even in the event of the sole, joint, or concurrent negligence, strict liability, or fault of the party whose liability is released, disclaimed, limited, or indemnified.

(ii) Notwithstanding the foregoing, with respect to any and all claims against an indemnified Party by any Representative of an indemnifying Party, the indemnification obligations of the indemnifying Party herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the indemnifying Party under applicable law, including any workers compensation and industrial insurance acts, disability benefit acts, or other employee benefits acts (including the Washington State Industrial Insurance Act, RCW Title 51) (collectively, the “Industrial Insurance Acts”).

(iii) EACH OF THE PARTIES HEREBY SPECIFICALLY AND EXPRESSLY WAIVES ANY AND ALL IMMUNITY TO WHICH SUCH PARTY MAY BE ENTITLED UNDER THE INDUSTRIAL INSURANCE ACTS (INCLUDING SUCH PARTY’S IMMUNITY UNDER THE INDUSTRIAL INSURANCE ACT (RCW TITLE 51) AND ANY EQUIVALENT LAWS), TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, INCLUDING RCW 4.24.115, AND EXPRESSLY AGREES TO ASSUME POTENTIAL LIABILITY, EXPENSES AND DAMAGES (INCLUDING

ATTORNEYS' FEES AND COSTS) FOR ACTIONS BROUGHT AGAINST AN INDEMNIFIED PARTY BY THE INDEMNIFYING PARTY'S REPRESENTATIVES; *PROVIDED, HOWEVER*, THAT THE INDEMNIFYING PARTY'S WAIVER OF IMMUNITY BY THE PROVISIONS OF THIS SECTION 10 EXTENDS ONLY TO CLAIMS AGAINST THE INDEMNIFYING PARTY BY OR ON BEHALF OF THE INDEMNIFIED PARTY UNDER OR PURSUANT TO THIS AGREEMENT, AND DOES NOT INCLUDE ANY CLAIMS MADE BY THE INDEMNIFYING PARTY'S REPRESENTATIVES DIRECTLY AGAINST THE INDEMNIFYING PARTY. EACH PARTY ACKNOWLEDGES AND AGREES THAT THE FOREGOING WAIVER HAS BEEN SPECIFICALLY AND MUTUALLY NEGOTIATED BY THE PARTIES TO THIS AGREEMENT AND EACH PARTY HAS HAD THE OPPORTUNITY, AND HAS BEEN ENCOURAGED, TO CONSULT WITH INDEPENDENT COUNSEL REGARDING THIS WAIVER.

(iv) Notwithstanding the foregoing or anything to the contrary set forth in this Agreement, the Parties agree that if the provisions of RCW 4.24.115 apply to any claim by an indemnified Party against an indemnifying Party under this Agreement, then, with respect to such claim, (A) in no event shall the indemnifying Party be obligated to indemnify the indemnified Party for damages arising out of bodily injury to Persons or damage to property resulting from the sole negligence of the indemnified Party or its Representatives, and (B) if indemnification is sought for damages arising out of bodily injury to Persons or damage to property resulting from the concurrent negligence of the indemnifying Party (or its Representatives) and the indemnified Party (or its Representatives), the indemnifying Party shall indemnify the indemnified Party for such damages only to the extent of the negligence of the indemnifying Party or its Representatives.

11. INSURANCE

(a) **Business Insurance.** Prior to operating the Project, the City, at his 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. Avista's acceptance of the certificate of insurance is not intended to, and will not reduce, limit, affect, or modify the primary obligations and liabilities of the City under the provisions of this Agreement. The City must provide notice of cancellation or notice of change in policy terms at least thirty (30) days prior to any change or termination of the policies.

(b) **General Liability.** The City shall carry and maintain comprehensive general liability insurance in a form acceptable to Avista with coverage of not less than \$10,000,000 per occurrence, including coverage of bodily injury, property damage liability, and contractual liability specifically related to the indemnity provisions of this Agreement. The deductible will not exceed the City's financial ability to cover claims.

(c) **Property Insurance.** The City shall carry and maintain property insurance for the full replacement value of the Project in a form acceptable to Avista, a deductible not to exceed the City's financial ability.

(d) **Qualifying Insurance Coverage from Third Party Insurers.** Any insurance coverage required by this Section 11 and not provided by the City through self-insurance must be obtained from an insurance carrier licensed to conduct business in the state of Washington, must be acceptable to Avista, such acceptance not to be unreasonably withheld, but in no event have, as of the date of placement of such coverage during each year during the Term, less than an A.M. Best Rating of A-, Class VIII. The policies required under this Agreement must include (i) provisions or endorsements naming Avista and its directors, officers and employees as additional insureds, (ii) Avista as a loss payee as applicable, (iii) a cross-liability and severability of interest clause, and (iv) provisions such that the policy is primary insurance with respect to the interests of Avista and that any other insurance maintained by Avista is excess and not contributory.

(e) **Right of City to Satisfy Insurance Requirements Through Self-Insurance.** The City shall be entitled, in its sole discretion, to satisfy any or all of the insurance requirements of this Agreement through self-insurance, including through a combination of self-insurance retention and excess liability coverage, and any such self-insurance shall be deemed to satisfy the applicable requirements of this Agreement with respect to coverage by a third party insurer.

12. ENVIRONMENTAL ATTRIBUTES

The City shall own all Environmental Attributes generated by the Project during the Term. Notwithstanding the foregoing, if the City proposes during the Term to sell any such Environmental Attributes to any non-affiliated third party, the City shall give notice to Avista of such proposed sale (a "**ROFO Notice**"). The ROFO Notice will include the proposed quantity of Environmental Attributes that the City proposes to sell, and the proposed term of such sale. Avista will have five (5) Business Days following its receipt of the ROFO Notice to elect, by written notice to the City, to propose to purchase all of the Environmental Attributes that are the subject of the ROFO Notice for the term set forth in the ROFO Notice (a "**ROFO Response**"). If Avista delivers a ROFO Response within such five (5) Business Day period, then, during the ten (10) Business Day period following the delivery of the ROFO Response, Avista and the City will use commercially reasonable efforts to negotiate mutually agreeable definitive documents for such purchase and sale. If such negotiations fail to produce such mutually agreeable definitive documents within such ten (10) Business Day period, then neither the City nor Avista will have any obligation to enter into any such definitive documents. If Avista does not deliver a ROFO Response to the City within such five (5) Business Day period, or if definitive documents are not entered into within such ten (10) Business Day period, then Avista will be deemed to have waived its right of first offer with respect to the purchase of the Environmental Attributes that are the subject of the ROFO Notice, and the City will be free to sell such Environmental Attributes to any third party on terms and conditions determined in the sole discretion of the City; *provided, however,* that if Avista does deliver a ROFO Response to the City within such five (5) Business Day period but definitive documents are not entered into within such ten (10) Business Day period, then any such sale to any third party shall be required to be on terms and conditions that, taken as a whole, are no less favorable to the City than the terms and conditions offered by Avista.

13. DISPUTE RESOLUTION; ARBITRATION

(a) **Informal Dispute Resolution.** If any dispute (including any payment dispute), controversy, or claim arising out of or relating to this Agreement or the breach, termination, or

validity thereof should arise between the Parties, either Party may deliver to the other Party a written notice identifying the disputed issue. Executives of both Parties will meet at a mutually acceptable time and place within 10 days after delivery of any such dispute notice and thereafter as often as such executives deem reasonably necessary, to exchange relevant information and to attempt to resolve the dispute. In such meetings and exchanges, each Party will have the right to designate as confidential any information that such Party offers for purposes of resolving the dispute.

(b) **Binding Arbitration.** If the matter has not been resolved in accordance with the provisions of Section 13(a) within 30 days after delivery of the applicable notice of dispute, or if the Parties fail to meet within 10 days as required by Section 13(a), either Party may submit the dispute to binding arbitration. The arbitration shall be conducted pursuant to the Uniform Arbitration Act, Title 7, Chapter 9 of the Washington code, as the same may have been or may be amended.

14. **ASSIGNMENT**

(a) **Required Consent.** Neither Party shall assign this Agreement or any of its rights, interests or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; *provided, however,* that a Party may, without the consent of the other Party, and by providing prior reasonable notice under the circumstances to the other Party, assign, transfer, pledge or otherwise dispose of its rights and interests under this Agreement to: (i) any Person in connection with an assignment of the Agreement for financing or refinancing purposes; (ii) any entity created to operate the Project; or (iii) any Affiliate of such Party, so long as the creditworthiness of such Affiliate is at least equal to that of the assigning Party.

(b) **Continuing Obligations.** Any assignments authorized as provided for in this Section 14 shall not operate to relieve the Party assigning this Agreement or any of its rights, interests or obligations hereunder of the responsibility of full compliance with the requirements of this Agreement unless: (i) the other Party consents, such consent not to be unreasonably withheld; and (ii) the assignee agrees in writing to be bound by all of the obligations and duties of the assigning party provided for in this Agreement.

(c) **Reimbursement of Costs.** Either Party shall, upon request from the other Party, execute and deliver such documents as may be reasonably necessary to accomplish any assignment, transfer, pledge or disposition of rights permitted under this Section 14, so long as the rights of the non-assigning Party are not altered, amended, diminished or otherwise impaired, and so long as the requesting Party reimburses the other Party for all reasonable costs incurred in connection with the review, execution or delivery of such documents.

(d) **Approval by the City of Assignments.** The City may approve assignments under this Section 14 by written consent of the Mayor.

(e) **Binding Agreement.** This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

15. NO UNSPECIFIED THIRD PARTY BENEFICIARIES

Except as specifically provided in Section 9, Section 10 or otherwise in this Agreement, 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 14.

16. DEFAULT

(a) An “**Event of Default**” shall mean, with respect to a Party (a “**Defaulting Party**”), the occurrence of any of the following:

(i) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after delivery of written notice;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respects when made or when deemed made or repeated;

(iii) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied in accordance with Section 16(b), below;

(iv) such Party becomes Bankrupt; or

(v) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonable satisfactory to the other Party.

(b) In the Event of Default, the following shall apply:

(i) The non-defaulting Party shall give written notice to the Defaulting Party of the Event of Default in accordance with this Agreement.

(ii) Except for an Event of Default that arises from failure to make money payments or from a Party becoming Bankrupt, if, after twenty (20) days following receipt of such notice, the Defaulting Party has not cured the Event of Default, the non-defaulting Party may, at its option, terminate this Agreement; *provided, however*, if the defaulting Party, within such twenty (20)-day period, commences and thereafter proceeds with all due diligence to cure such default, such twenty (20)-day period shall be extended up to six (6) months after written notice to the defaulting Party, as may be necessary to cure the event of default with all due diligence. For an Event of Default that arises from the failure to make money payments, the non-defaulting Party may, at its option, terminate this Agreement if the Defaulting Party shall have failed to cure the failure to pay within three (3) Business Days following receipt of notice of such failure. For an Event of Default that

arises from a Party becoming Bankrupt, the non-defaulting Party may, at its option, immediately terminate this Agreement upon notice to the Defaulting Party.

(iii) Upon the Event of Default and an expiration of any period to cure granted herein, the non-defaulting Party may, but has no obligation, to terminate this Agreement effective upon notice to the Defaulting Party and may exercise all other rights and remedies available to the non-defaulting Party under applicable law. On behalf of the City, such actions may be accomplished by the Mayor. Whether or not the non-defaulting Party elects to terminate this Agreement, it may, in addition to other remedies provided for herein, pursue such remedies as are available at law or in equity including suspension of its performance so long as the Event of Default is continuing and has not been cured.

(c) Any right or remedy afforded to either Party under any provision of this Agreement on account of the breach or default by the other Party is in addition to, and not in lieu of, all other rights or remedies afforded to such Party under any other provisions of this Agreement, by law or otherwise on account of the breach or default.

17. GOVERNMENTAL AUTHORITY

This Agreement is subject to all applicable Governmental Rules. All Governmental Rules now or hereafter in effect that are required to be incorporated in agreements of this character are by this reference incorporated in this Agreement.

18. SEVERAL OBLIGATIONS

Except where specifically stated in this Agreement to be otherwise, the duties, obligations and liabilities of the Parties 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 or to impose any partnership obligation or liability upon either Party. 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.

19. IMPLEMENTATION

Each Party shall take such action (including the execution, acknowledgement and delivery of documents) as may reasonably be requested by the other Party for the implementation or continuing performance of this Agreement.

20. 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 to any extent of such Party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same shall be and remain in full force and effect.

21. ENTIRE AGREEMENT AND AMENDMENT

This Agreement together with its exhibits constitutes the entire agreement of the Parties hereto and supersedes and replaces any prior agreements or understandings between said Parties, entered into for the same or similar purposes. 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.

22. GOVERNING LAW AND VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington, without reference to conflict of laws provisions that would result in the application of the laws of any other jurisdiction. Any action at law or in equity to enforce the terms and conditions of this Agreement shall, unless subject to the exclusive jurisdiction of the WUTC, be brought in Spokane County, Washington.

23. COMPLIANCE WITH LAWS

Both Parties shall comply with all applicable laws and regulations of governmental agencies having jurisdiction over the Project and the operations of the Parties. The City shall obtain all required approvals or authorization from governmental agencies having jurisdiction over the sale of electric power from the Project.

24. FORWARD CONTRACT; FORWARD AGREEMENT

The Parties acknowledge and intend that this Agreement, the transactions contemplated hereby, and any instruments that may be provided by either Party hereunder will each, and together, constitute one and the same "forward contract" and "forward agreement" within the meaning of the Bankruptcy Code, that Avista and the City are "forward contract merchants" and "swap participants" within the meaning of the Bankruptcy Code, that all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute "settlement payments" within the meaning of the Bankruptcy Code, and that this Agreement constitutes a "master netting agreement" within the meaning of the Bankruptcy Code. Each Party agrees that it will not make any assertion or claim, in any dispute or otherwise, or otherwise take any position to the effect that this Agreement, the transactions contemplated hereby, and any instrument(s) that may be provided by either Party hereunder do not each, and together, constitute one and the same "forward contract" and "forward agreement" within the meaning of the Bankruptcy Code, or that Avista and the City are not "forward contract merchants" and "swap participants" within the meaning of the Bankruptcy Code.

25. NOTICES

All notices, requests, statements or payments will be made in writing except in the case of operational communications regarding pre-scheduling, scheduling, interruptions, curtailments, or outages, which will be made orally in accordance with the provisions of Exhibit A. Notices required to be in writing will be delivered by hand delivery, overnight delivery, or facsimile. Notice by facsimile will (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at

the place of receipt or on a day that is not a Business Day, in which case it will be deemed received on the next Business Day). Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. When notice is permitted to be provided orally, notice by telephone will be permitted and will be deemed to have been received at the time the call is received.

To Avista: Director, Energy Resources
 Avista Corporation
 P.O. Box 3727
 MSC-7
 Spokane, Washington 99220-3727
 Facsimile No.: (509) 495-4272

To the City: Director
 City of Spokane Water and Hydroelectric Services Department
 914 East North Foothills Drive
 Spokane, Washington 99207
 Facsimile No.: (509) 625-7816

with a copy (which shall not constitute notice) to:

 City Attorney
 Office of the City Attorney
 City of Spokane
 808 W. Spokane Falls Blvd.
 5th Floor, Municipal Bldg.
 Spokane, Washington 99201-3326
 Facsimile No.: (509) 625-6277

Changes in persons or addresses for submittal of written notices by a Party to this Agreement shall be made in writing to the other Party and delivered in accordance with this Section 25. Any oral notice required hereby, which affects the payments to be made hereunder shall be confirmed in writing as promptly as practicable after the oral notice is given. Exhibit A shall govern oral communications between the Parties.

26. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be an original but all of which, taken together, shall constitute only one legal instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than one counterpart.

27. EXHIBITS

This Power Purchase Agreement includes the following exhibits, which are attached and incorporated by reference herein:

- Exhibit A - Communications
- Exhibit B - Payment Schedule

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the first date herein-above set forth:

CITY OF SPOKANE

AVISTA CORPORATION

By: David A. Condon

By: Jason R. Thackston

DAVID CONDON
(Type Name)

Jason R. Thackston
(Type Name) **Senior VP, Energy Resources**

Title: MAYOR

Title: _____

Date: 10/31/2019

Date: October 24, 2019

Attest: Yeni Roffe
City Clerk

Approved as to form: Pat Dalton
Assistant City Attorney



Exhibit A

Communications

A-1. Oral Communications

All operational communications between the City and Avista regarding pre-scheduling, scheduling, interruptions, curtailments, or outages shall be made orally by notifying the following parties:

- (a) Pre-Schedule (5:30 am to approximately 1:30 pm on normal Business Days):

Avista	Pre-Scheduler (509) 495-4911 Alternate Phone Number (509) 495-4073
the City	Business Phone (509) 742-8141 Alternate Phone Number (509) 625-7800

- (b) Real-Time Schedule (available 24 hours per day):

Avista	Real-Time Scheduler (509) 495-8534
the City	Business Phone (509) 742-8141 Alternate Phone Number (509) 625-7800

- (c) During normal business hours, all oral communications relating to interruptions, curtailments, and outages:

Avista	System Operator (509) 495-4105 Alternate Phone Number (509) 495-4934
the City	Business Phone (509) 742-8141 Alternate Phone Number (509) 625-7800

- (d) Outside of normal business hours (nights, weekends, and holidays), all oral communications relating to interruptions, curtailments, and outages shall take place between the following personnel:

Avista	System Operator (509) 495-4105 Alternate Phone Number (509) 495-4934
the City	Business Phone (509) 742-8141 Alternate Phone Number (509) 625-7800

- A-2.** The City shall notify Avista's system operator, as soon as is practical, whenever the Project is or is expected to be brought on line, or taken off line.

- A-3.** Changes in persons or phone numbers for oral communications by a Party to this Agreement may be made orally to the other Party in accordance with this Exhibit but shall be confirmed in writing as an amended Exhibit A. A copy of said amended Exhibit A shall be mailed or delivered to the representatives of the Parties designated in Section 25.

Exhibit B

Power Purchase Payment Rates

For the period January 1, 2020 through December 31, 2024, Avista agrees to buy the Delivered Net Output from the City's Upriver Hydro project at the following monthly rates:

Year	Rate Jan-Feb (\$/MWh)	Rate Mar-Jun (\$/MWh)	Rate Jul-Dec (\$/MWh)
2020	\$45.22	\$30.14	\$45.22
2021	\$46.12	\$30.75	\$46.12
2022	\$47.04	\$31.36	\$47.04
2023	\$47.98	\$31.99	\$47.98
2024	\$48.94	\$32.63	\$48.94