

Backup and Supplemental Compressed Natural Gas Service Agreement

Avista Contract No. _____

This **Backup and Supplemental Compressed Natural Gas Service Agreement** (“Agreement”) is entered into between Avista Corporation (“Avista”) and _____ (“Customer”), sometimes, individually, the “Parties” and collectively, the “Parties” for Customer’s purchase of compressed natural gas (“CNG”) from Avista for fueling motor vehicles.

Background and Purpose: Customer utilizes CNG to fuel certain of its motor vehicles (“Vehicles”) and desires to purchase CNG from Avista’s CNG fueling facility located at Dollar Road in Spokane, WA (the “CNG Facility”) and Avista agrees to provide Customer with access to the CNG Facility to fuel its Vehicles, subject to the terms of this Agreement. **Therefore, the Parties agree as follow:**

1. **Purchase and Sale of CNG:** Customer may buy CNG from Avista, and Avista will provide CNG to Customer to fuel its Vehicles pursuant to the terms of this Agreement and to Rate Schedule No. 149 (“Schedule 149”) as it may change from time to time when approved by the Washington Utilities and Transportation Commission (“Commission”).
2. **Effective Date:** This Agreement will become effective when executed by both Parties and will continue in effect from month to month until written notice of termination is provided by the terminating Party to the other Party at least 30 days prior to the desired termination date; provided, however, that either Party may terminate, immediately, in the event of a material breach of this Agreement, including but not limited to any safety violations or in the event of non-payment.
3. **Vehicle List:** Customer shall provide to Avista, a written list of all Vehicles, including make, model, year and vehicle identification number that will be using CNG; provided, however, that Avista may accept an alternate method of identifying Customer’s Vehicles upon mutual written agreement between the Parties. Customer shall notify Avista if any of the Vehicles are taken out of service or when other vehicles are converted to CNG use.
4. **Use of CNG Facilities:**
 - 4.1 Customer acknowledges that Avista will provide access to Avista’s CNG Facility subject to the following:
 - 4.1.1 The CNG Facility is primarily intended for Avista’s use in the conduct of its utility business and the Customer’s access to the CNG Facility is dependent upon Avista’s CNG fueling requirements at the time Customer requires CNG.
 - 4.1.2 Avista will issue fueling cards to the Customer to provide Vehicles access to its CNG Facility.
 - 4.2 Customer shall not erect any building or structure of any kind at the CNG Facility, or use the CNG Facility for any purpose other than fueling its Vehicles.
 - 4.3 Customer shall comply with all federal, state and local jurisdictional laws, regulations and ordinances when using the CNG Facility, and any activities of Customer or its employees, agents or subcontractors unrelated to fueling its Vehicles, including without limitation, Vehicle cleaning, maintenance, lunch breaks, etc., is strictly prohibited. In addition, **SMOKING IS STRICTLY PROHIBITED** at or within 200 feet of the CNG Facilities.
5. **Safety:** When fueling Vehicles, Customer shall: (i) use the CNG Facility with the highest degree of care so as not to disturb or impair the structural integrity of Avista’s electrical and gas systems; (ii) maintain legal and safe clearances from Avista’s electrical and gas systems; (iii) take all prudent precautions to ensure that no persons or property come into contact with Avista’s electrical and gas systems that are not necessary for fueling Vehicles; (iv) comply with or exceed all applicable standards related to the CNG Facility; (v) ensure that Customer’s employees, agents or subcontractors are satisfactorily trained in the safe use of the CNG Facility; and (vi) report all suspected safety or security issues to Avista.

6. **Rates and Charges:** Bills for CNG service under this Agreement issued by Avista will be due and payable when rendered to Customer, and will become past due after 30 days from the due date reflected on such bills.

7. **Indemnification:**

7.1 The CNG Facility is subject to hazards incident to the operation of electrical and gas systems, and in consideration for the use of the CNG Facility, Customer acknowledges that Avista shall not be liable for any damage or injury suffered by Customer or any third party at the CNG Facility, except to the extent the injury or damage suffered is caused by the gross negligence or willful misconduct of Avista. Customer shall indemnify, hold harmless, and if requested to do so, defend Avista, its officers, directors, employees and agents from all claims, losses, harm, damages, liabilities and expenses, including without limitation, reasonable attorney's fees (collectively, "Loss") whether suffered by Avista or any other person or entity, and arising directly or indirectly out of or in connection with Customer's use of the CNG Facility, or any breach of or default under this Agreement by Customer, or any act, omission, fault, negligence or strict liability of Customer or anyone who uses or is present at the CNG Facility in connection with Customer's use of the CNG Facility. Further, Customer waives any rights of subrogation against Avista under Customer's insurance policies in connection with any such Loss.

7.2 Customer shall maintain its Vehicles so that no leakage or spillage occurs of any substance, waste or material defined or designated as hazardous, toxic or dangerous (or any similar term) by any federal, state and/or local statute, regulation, rule or ordinance now or hereafter in effect ("Hazardous Waste/Materials") at the CNG Facility. Customer shall have a spill clean-up kit on site at the CNG Facility at all times to clean up any spill which occurs. Spill clean-up kits shall be of sufficient size to handle any contingency. In the event Customer discharges any Hazardous Waste/Materials near or at the CNG Facility, Customer shall begin containment and clean-up efforts immediately and complete as soon as possible and shall be responsible for the cost of clean-up for any release of Hazardous Waste/Materials caused by Customer or its employees or subcontractors. In the event of any release of Hazardous Waste/Materials, Customer shall immediately contact the Avista Representative in Section 9 and the Avista Environmental Spill Pager must be called immediately at (509) 998-0996.

Without limiting the generality of the foregoing, Customer shall: be responsible, indemnify and hold harmless Avista from all Loss resulting from the release of any Hazardous Waste/Materials in, on or under the CNG Facility, which release results from the use of the CNG Facility by the Customer, its employees, agents or subcontractors. This Subsection shall survive the expiration or termination of this Agreement.

7.3 To the extent permitted by law, Customer waives any immunity, defense or other protection that may be afforded by Industrial Insurance or similar laws in Washington pursuant to this Agreement (including but not limited to, the Washington Industrial Insurance Act, Title 51 RCW) to the extent Customer is required under the indemnity provisions of the Agreement to indemnify and defend Avista with respect to any claim or action brought against Avista by an employee, agent or subcontractor of the Customer. *The Parties have specifically negotiated this section and Customer makes the foregoing waiver with the full knowledge of the consequences.*

7.4 Avista will not be liable for any special, indirect, incidental, punitive or consequential damages arising from Customer's use of the CNG Facility, including without limitation, Customer's loss of actual or anticipated profits, loss because of shutdown, non-operation, increased expense of its facilities or operations, cost of capital, or claims of third parties.

8. **Insurance:** Within ten (10) days of the Effective Date, Customer shall secure, and, for the duration of this

Agreement, continuously carry with insurance carriers licensed to conduct business in the state in which the Services are to be performed, the minimum level of insurance coverage identified below. Such carriers must have an A.M. Best rating of A-, Class VIII or better.

- 8.1` Workers Compensation/Employer's Liability: insurance coverage with respect to all persons performing Services in accordance with the applicable laws of the state in which the Services are to be performed.
- 8.2 Commercial General Liability: insurance coverage on an occurrence basis with a minimum single limit of \$5,000,000. The coverage must include: (i) Bodily Injury and Property Damage Liability, (ii) Contractual Liability specifically related to the indemnity provisions of this Agreement, and (iii) Products and Completed Operations Liability to extend for a minimum of three years past acceptance or termination of the Services.
- 8.3 Business Automobile Liability: insurance coverage with a minimum single limit of \$5,000,000 for bodily injury and property damage with respect to Customer's vehicles whether owned, hired, or non-owned, assigned to, or used in the performance of the Services.
- 8.4 Other Insurance Policy and Endorsement Requirements

- 8.4.1 The insurance coverages set forth above may be met by a combination of the dollar limit of the specified insurance type and an excess or umbrella insurance policy, provided that the excess or umbrella policy includes coverage for the specified insurance types to achieve the appropriate minimum coverages.
- 8.4.2 Commercial General and Business Automobile Liability Insurance policies must include provisions or endorsements naming Avista, (including its directors, officers and employees) as additional insureds.
- 8.4.3 All required insurance policies must include provisions that such insurance is primary insurance with respect to Avista's interests and that any other insurance maintained by Avista is excess and not contributory insurance with the required insurance. Customer shall notify Avista within 30 days of any cancellation or change in limits of liability of any required insurance policy.
- 8.4.4 Unless specifically waived by Avista in writing, a certificate of insurance and its respective endorsement(s) certifying to the issuance of the insurance coverage and endorsements required above must be furnished to and accepted by Avista prior to the start of Services pursuant to this Agreement. The acceptance of the certificate of insurance by Avista is not intended to and will not reduce, limit, affect, or modify the primary obligations and liabilities of Customer under the provisions of this Agreement. Noncompliance with the insurance requirements of this Agreement may, at Avista's option, be deemed a material breach of this Agreement.
- 8.4.5 Customer shall ensure that any policy of insurance that Customer or any subcontractor carries as insurance against property damage or against liability for property damage or bodily injury (including death) shall include a provision providing a waiver of the insurer's right to subrogation against Avista as the additional insured. To the extent permitted by the policies of insurance, Customer hereby waives all rights of subrogation against Avista as the additional insured.
- 8.4.6 Customer shall require all subcontractors performing Work under this Agreement to secure and, for the duration of this Agreement, continuously carry with insurance carriers licensed to conduct business in the state in which the Work is to be performed, insurance policies in the levels set forth above. Nothing in this Subsection shall relieve Customer of its obligations under this Agreement and Customer's responsibility for all subcontractors performing Work under this Agreement.

9. Notices to the Parties: All notices, demands, requests, and other communications under this Agreement must be in writing and sent by mail (postage prepaid), or delivered to the other Party either electronically or by a recognized commercial courier, addressed as set forth below. Such notices, demands, requests, and other communications will be deemed given as of the date delivered, or, if sent electronically or by mail, upon receipt.

9.1 To Avista:

Avista Utilities
1411 E. Mission Ave; PO Box 3727

Spokane, WA 99220-3727

Attn: _____

Avista Contract No _____

9.2 To Customer:

Attn: _____

Either Party may change its address by providing written notice to the other as set forth above.

- 10. **Delays:** Avista shall not be liable for delays in providing CNG service under this Agreement when such delays are not reasonably within Avista's control, including without limitation, delays caused by an inability to secure necessary material, supplies or distribution system capacity; breakages or accidents to the CNG Dispenser; and communication problems with suppliers. Delays subject to this Section shall not be deemed a breach of Avista's obligations under this Agreement.
- 11. **Applicable Rates, Rules and Regulations.** CNG service will be supplied, received and paid for in accordance with and subject to the orders of the Commission and Avista's Rates, Rules and Regulations on file with the Commission and in effect at the time CNG service is provided , including Schedule 149 and all other applicable rate schedules set forth in that Schedule. Avista's approved tariffs may be accessed on Avista's website at www.avistautilities.com.
- 12. **Assignment.** Customer shall not (by contract, operation of law or otherwise) assign this Agreement, or any right or interest in this Agreement, without Avista's prior written consent. The provisions of this Agreement extend to and bind the Parties and their respective successors and permitted assigns.
- 13. **Governing Law and Venue.** This Agreement will be interpreted in accordance with the laws of the State of Washington, excluding any choice of law rules which direct the application of laws of another jurisdiction. Litigation relating to this will be brought in a court of competent jurisdiction in Spokane County, Washington.
- 14. **Amendment and Waiver.** This Agreement contains all of the conditions bearing upon its subject matter and may not be modified except by written agreement between the Parties. If at any time the terms of this Agreement are not strictly adhered to or enforced, such requirements will not be deemed waived or modified but will, at all subsequent times and dates, be deemed in full force and effect.
- 15. **Survival.** Any provisions of this Agreement that may be reasonably interpreted as surviving the completion, termination or cancellation of this Agreement will survive such completion, termination or cancellation.
- 16. **Headings.** Section headings in this Agreement are for convenience only and will not be considered part of, or used in the interpretation of this Agreement.

This Agreement has been executed by each Party's authorized representative on the date(s) set forth below.

Avista Corporation

(Signature)

(Printed Name)

(Title)

(Date Signed)

(Signature)

(Printed Name)

(Title)

(Date Signed)