

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	)	
	)	Docket No. UE-23_____
Avista Corporation, d/b/a Avista Utilities	)	
	)	
For an Order Authorizing Deferral of Certain	)	PETITION OF AVISTA
Costs Associated with Montana Riverbed Lease	)	CORPORATION FOR DEFERRED
Agreement	)	ACCOUNTING

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**I. INTRODUCTION**

*1* In accordance with WAC 480-100-203(3) and WAC 480-07-370(3), Avista Corporation, doing business as Avista Utilities (Avista or the Company), at 1411 East Mission Avenue, Spokane, Washington, hereby petitions the Commission for an order authorizing it to utilize deferred accounting for the interest costs (presently estimated at approximately \$3.8 million) associated with the Montana Riverbed Lease Agreement (Lease) due to the State of Montana (State) in the third quarter of 2023. As described more fully below, on May 4, 2023, Avista received notice of the release of funds for the Montana Riverbed lease payments for the rent years 2016-2020 from the escrow account in which they have been held.<sup>1</sup> Additionally, the notice identified the additional amount owed by Avista that represents the interest component, calculated to be \$3,766,353 as of February 28, 2023<sup>2</sup>, which is the difference between the

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<sup>1</sup> This amount is still subject to discussion and may or may not be adjusted to bring it current up to the date of released funds from the escrow.

<sup>2</sup> Please see attached correspondence from the State of Montana, dated May 4, 2023 (Attachment A).

calculated ending escrow balance including interest of \$28,288,773 and the actual amount held in the escrow account of \$24,522,420. This interest component is due to the State within thirty days of disbursement of the escrow funds (the date of which is still to be determined). As described further below, the Company is recovering from customers the ongoing lease expense, but the calculation of the interest component was not known until the receipt of the letter (and is still under discussion). Approval of deferred accounting for these costs is necessary so the Company has the opportunity to recover these costs from customers in the future.

2 Avista is a utility that provides service to approximately 403,000 retail electric customers and 369,000 retail natural gas customers in a 30,000 square-mile service territory covering portions of Washington, Idaho, and Oregon. The largest community served by Avista is Spokane, Washington, which is the location of its corporate headquarters.

3 The Company requests that all correspondence related to this Petition be sent to the following:

David J. Meyer, Esq.  
Vice President and Chief Counsel for  
Regulatory & Governmental Affairs  
P. O. Box 3727  
1411 E. Mission Avenue, MSC 27  
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Patrick Ehrbar  
Director of Regulatory Affairs  
Avista Corp.  
P. O. Box 3727  
1411 E. Mission Avenue, MSC 27  
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4 Rules and statutes that may be brought at issue in this Petition include RCW 80.01.040, RCW 80.28.020, RCW 19.405.060, WAC 480-07-370(3), and WAC 480-100-640.

## II. BACKGROUND

5 In 2006, the State of Montana brought an action in Montana District Court against both  
Avista and PPL Montana (PPL) as owners of hydroelectric dams in the State, contending that  
these dams encroached on state-owned lands consisting of the beds and banks of what it argued  
were “navigable waters.” It argues that rent was owing for both prior trespass since the  
construction of the dams as well as prospectively for the term of the FERC license.

6 Several weeks before trial was to start against Avista and PPL Montana (PPL), District Court  
Judge Honzel entered an Order in 2007 finding that the Clark Fork River and various other rivers  
on which PPL had hydro facilities were “navigable” and therefore the bed and banks of those  
rivers were owned by the State of Montana. As a result, the only issue for trial was the amount  
of past damages and future rental payments owed by Avista and PPL.

7 Prior to trial, the State, through its expert, claimed that Avista owed \$200,374,752 in  
damages for past rent, and rent of \$8,416,510 per year starting in 2006. Faced with the District  
Court’s ruling on navigability, the significant judgment being sought, and the probability that  
the Montana Supreme Court would affirm the District Court’s ruling (which it ultimately did),  
Avista reached a settlement with the State. In exchange for Avista agreeing to pay \$4,000,000  
per year in rent (with an annual CPI adjustment), the State agreed to dismiss all of its other  
claims, including all damages for past rent. In addition, the Settlement Agreement contained a  
Most Favored Nation provision which provides, among other things, that if PPL achieved a  
more favorable outcome at trial or through settlement, Avista would receive the benefit of that  
outcome.

8 Following Avista’s settlement, the case proceeded to trial against PPL. After hearing the  
evidence, Judge Honzel entered a significant judgment against PPL for past rent of \$34,743,261

and for annual payments of \$6,207,919 starting in 2007. Based upon Judge Honzel's ruling, if Avista had remained in the case, it is likely that judgment would have been entered against it for approximately \$59 million for past rents and more than \$7 million per year in future rents beginning in 2007, which, including post-judgment interest, would have exposed Avista's ratepayers to an additional \$98 million in costs, beyond the agreed-upon level of rent. Since Avista's settlement was much more favorable than the outcome PPL obtained at trial, the Most Favored Nation provision was not triggered.

9           After the Montana Supreme Court affirmed the District Court's ruling, PPL sought review in the U.S. Supreme Court. Of the 7,713 cases filed in the U.S. Supreme Court during its 2011 Term, the Court only accepted 79 cases. PPL's appeal was one of those few cases. Had the Court not accepted review, the decision of the Montana Supreme Court against PPL would have stood.

10           The U.S. Supreme Court ultimately ruled that the determination of riverbed title, under the Equal-Footing Doctrine, should be made on a segment-by-segment basis depending on the facts. Consequently, the U.S. Supreme Court reversed the Montana Supreme Court and remanded the case against PPL back to Montana for further proceedings surrounding the navigability of each river segment.

11           Following remand, Northwestern Energy (Northwestern) was substituted as a party as the successor-in-interest of the hydropower projects previously owned and operated by PPL. The case was then removed to federal court. On August 1, 2018, the federal court found that the United States Supreme Court decision was a final decision on the merits as to the non-navigability of certain reaches. The matter went to trial on January 7, 2022, as to the remaining reaches; however, at this time, no decision has been made in the case. When there is a final

decision in the Northwestern case, Avista will again pursue recovery of any overpayments made to the State. As such, Avista has not relinquished any rights to recover any payments made to the State.

12 While the case between PPL and the State proceeded through the courts, Avista began making annual rent payments to the State in accordance with the settlement agreement. However, following the United States Supreme Court decision in 2010, it appeared likely that Avista's rental obligations would need to be adjusted. Meanwhile, from Avista's perspective, the size of the potential refund that it believed could be required by a "retroactive" adjustment was becoming significant. Accordingly, in 2017, Avista began making its rent payments into escrow rather than directly to the State. This decision was accompanied by an Escrow Agreement that governed the handling of funds that were paid into escrow, which was signed by Avista, the State and the Escrow Agent.

13 As described above, Avista agreed to pay the State of Montana \$4.0 million (electric system) annually beginning in 2007 with annual inflation adjustments. Avista's obligation to pay the State of Montana rent under the Hydropower Site Lease for the Noxon Rapids Project (effective January 1, 2007) continues for the forty-five (45) year term of the lease ending February 28, 2046, or sooner if the FERC license terminates before its scheduled expiration in 2046. Per the initial agreement, after the first ten years of the lease (2007 - 2016) the parties were to meet to attempt to renegotiate the level of payments. These renegotiations for the riverbed lease payment levels began in 2016. The obligation to pay the agreed-upon level of rent, however, did not terminate after the initial ten-year period of the Site Lease, and the Company was still required to make the scheduled rent payment in 2017 and beyond to the State of Montana, unless and until the parties both agree to an adjusted amount. Since the parties did not agree to an

adjusted amount, Avista agreed to continue making the annual payments at the original amount under protest and the Parties established an escrow account in March 2017.<sup>3</sup>

14 Per the escrow agreement, Avista would make payments into an escrow account to hold any payments that Avista made under protest. Additionally, the escrow agreement stated that at the end of the escrow period, Avista would owe the lease amounts agreed to by the parties as well as added interest reflecting the rate of return of the unified investment program administered by the Montana Board of Investments pursuant to Montana Code Annotated § 17-6-21 on an annualized basis. Should the escrow account contain insufficient funds to fund the applicable lease and interest amounts, Avista would have to pay the State directly the difference within thirty days of the escrow disbursement.

15 A summary of the payments that have been made by Avista and Washington’s allocated share follows:

Montana Riverbed Lease Payments						
Rent Year	Payment Date	Base Rent	CPI Annual Average Index	Annual Rent	WA Rent	ID Rent
2007	February 2008	\$ 4,000,000	1	\$ 4,000,000	\$ 2,633,200	\$ 1,366,800
2008	February 2009	\$ 4,000,000	1.0428	\$ 4,171,200	\$ 2,694,178	\$ 1,477,022
2009	February 2010	\$ 4,000,000	1.0431	\$ 4,172,400	\$ 2,687,860	\$ 1,484,540
2010	February 2011	\$ 4,000,000	1.0705	\$ 4,282,000	\$ 2,777,733	\$ 1,504,267
2011	February 2012	\$ 4,000,000	1.0880	\$ 4,352,000	\$ 2,835,763	\$ 1,516,237
2012	February 2013	\$ 4,000,000	1.1198	\$ 4,479,200	\$ 2,922,230	\$ 1,556,970
2013	February 2014	\$ 4,000,000	1.1376	\$ 4,550,200	\$ 2,958,085	\$ 1,592,115
2014	February 2015	\$ 4,000,000	1.1556	\$ 4,622,400	\$ 3,013,343	\$ 1,609,057
2015	February 2016	\$ 4,000,000	1.1546	\$ 4,618,400	\$ 2,988,567	\$ 1,629,833
2016	February 2017	\$ 4,000,000	1.1704	\$ 4,681,600	\$ 3,077,216	\$ 1,604,384
2017	February 2018	\$ 4,000,000	1.1997	\$ 4,798,800	\$ 3,154,189	\$ 1,644,611
2018	February 2019	\$ 4,000,000	1.2245	\$ 4,898,000	\$ 3,200,843	\$ 1,697,157
2019	February 2020	\$ 4,000,000	1.2435	\$ 4,974,000	\$ 3,258,748	\$ 1,724,809
2020	February 2021	\$ 4,000,000	1.2745	\$ 5,098,000	\$ 3,346,327	\$ 1,751,673
2021	February 2022	\$ 4,000,000	1.2923	\$ 5,169,000	\$ 3,387,763	\$ 1,781,237
2022	February 2023	\$ 4,000,000	1.3890	\$ 5,556,000	\$ 3,640,847	\$ 1,915,153

<sup>3</sup> Please see Escrow Agreement dated March 29, 2017, between Avista, the State of Montana, and the Escrow holder, U.S. Bank. (Attachment B)

16           The payments for rent years 2016 through 2020 were put into the escrow account. In May 2021, the Parties reached a settlement and as part of that settlement Avista would no longer make the annual payments under protest. The payments beginning with rent year 2021 was paid directly to the State of Montana. This was the result of secondary litigation in which a Montana trial court issued an Order in 2021 in which it concluded that the Most Favored Nations clause had not yet been triggered and did not, therefore, provide a basis for disputing or reduction Avista's annual rental rate. In addition, the Court concluded that Avista was not entitled to a credit or refund for rent paid in any previous year, and that it was required to pay the annual full market rental rate going forward. Avista appealed that ruling to the Montana Supreme Court. The Montana Supreme Court concluded that, because the Northwestern litigation was non concluded, the Most Favored Nations clause had not yet been triggered. Accordingly, the Court found that the trial court erred in reaching the merits of the retroactivity issue, and that the Most Favored Nations clause did not provide basis for making payments to the State into escrow. The case was therefore remanded to the trial court, and an Amended Judgement was entered on February 28, 2023.

17           As described above, Avista has been recovering the lease expense from customers and continues to do so today. Initially, the Commission approved deferral of lease payments beginning with 2007 payments (payable February 2008) in Docket No. UE-072131, dated January 10, 2008, until payments could be included in next general rate case. The Commission approved recovery of both the 2009 lease payment (paid in February 2010) and the amortization of the deferred 2007 and 2008 lease payments that were to be amortized over eight years in Docket No. UE-080416, Final Order 08, dated December 29, 2008. Ongoing lease payments have been included in the approved revenue requirement since then.

### III. PROPOSED ACCOUNTING TREATMENT

18 Avista proposes to defer Washington's share (\$2,468,000) of the interest component of the payment made to the State of Montana in the third quarter of 2023. Avista proposes to record the deferral as a regulatory asset in FERC Account 182.3 (Other Regulatory Assets). This deferral account will include a carrying cost equal to Avista's cost of debt set in the Company's last general rate case of 4.8% while being deferred and during the amortization period. The Company will propose recovery of these costs in its next general rate case. At that time, the Commission will be able to determine the prudence of deferred costs associated with the Lease.

### IV. REQUEST FOR RELIEF

19 WHEREFORE, Avista respectfully requests that the Commission issue an Order approving the requested deferred accounting and ratemaking treatment, as described above, without which the Company will not fully recover its reasonable costs associated with the Montana Riverbed Lease Agreement. Customer rates would not be presently impacted by this approval, and any deferral of costs will be addressed through the Company's next general rate case, where the prudence of any deferred costs will be considered.

DATED this 30<sup>th</sup> day of June 2023



By: \_\_\_\_\_

Patrick D. Ehrbar  
Director of Regulatory Affairs



ATTACHMENT A

*Sent Via Email Only*

May 4, 2023

Kathryn S. Mahe  
Garlington Lohn & Robinson PLLP  
350 Ryman St  
Missoula MT 59807-7909  
[kmahe@garlington.com](mailto:kmahe@garlington.com)

RE: *State v. Avista*, Cause No. ADV-2004-84

Ms. Mahe:

I apologize for my delayed follow-up regarding release of Avista’s 2017 - 2021 rent from escrow. The Department would like to finalize the details for release of those funds now that the 68<sup>th</sup> legislative session has concluded.

Paragraph 7 of the escrow agreement provides: “Avista affirms that at the end of the Escrow period, it owes applicable lease amount as agreed by the parties, as well as added interest reflecting the rate of return of the unified investment program administered by the Montana Board of Investments pursuant to Montana Code Annotated § 17-6-201 on an annualized basis. Should the Escrow account contain insufficient funds to fund applicable lease and interest amounts, Avista will pay the State directly the difference within 30 days of the Escrow disbursement.”

As of February 28, 2023, the balance of funds held in the escrow account is \$24,522,420.49. The Department calculated the “added interest reflecting the rate of return of the unified investment program administered by the Montana Board of Investments pursuant to Montana Code Annotated § 17-6-201 on an annualized basis” for the rental payments held in escrow for the relevant period.

FY	Rate of Return	Investment Date	Investment/Rental Amount	Balance plus the unified investment program annualized rate of return
2017	3.58%	3/31/2017	\$4,681,600.00	\$4,681,600.00
2018	3.42%	2/28/2018	\$4,798,800.00	\$9,643,319.68
2019	3.58%	2/28/2019	\$4,898,000.00	\$14,884,621.86
2020	3.35%	2/29/2020	\$4,974,000.00	\$20,367,675.93


ATTACHMENT A

2021	3.20%	2/28/2021	\$5,098,000.00	\$26,147,993.07
2022	4.65%			\$27,031,795.24 <sup>1</sup>
2023				\$28,288,773.72 <sup>2</sup>

As of February 28, 2023, the annual rent and added interest is \$28,288,773.72. Based on these calculations, in addition to release of the escrow funds, Avista is required to pay the State \$3,766,353.23 within thirty days of disbursement of the escrow funds.

The Department would like to afford Avista this opportunity to evaluate and confirm the Department's calculations prior to disbursement of the escrow funds and triggering the timeline for payment of the \$3,766,353.23 owed by Avista. Feel free to call with any questions.

Best regards,

  
Brian C. Bramblett

*Cc: via email only*  
William Schroeder  
Shawn Thomas

<sup>1</sup> 2/28/2022 value.

<sup>2</sup> 2/28/2023 value using FY22 rate of return.

## ATTACHMENT B

### ESCROW AGREEMENT

**THIS ESCROW AGREEMENT**, dated as of March 29, 2017 ("Escrow Agreement"), is by and among AVISTA CORPORATION, a Washington corporation ("Avista"); the STATE OF MONTANA, DEPARTMENT OF NATURAL RESOURCES & CONSERVATION ON BEHALF OF STATE BOARD OF LAND COMMISSIONERS (the "State"); and U.S. BANK NATIONAL ASSOCIATION, a national banking association, as escrow agent hereunder ("Escrow Agent").

### BACKGROUND

A. Avista and the State have entered into a Hydropower Site Lease (as amended, the "Lease"), dated as of January 1, 2007, pursuant to which Avista leases from the State certain lands below the water of the Clark Fork River in Sanders County, Montana. Section 4.7 of the Lease provides in the event of a dispute over rental amounts, Avista may make payments under protest. The Lease further provides that payments under protest shall be placed in an interest-bearing escrow account by the State.

B. Avista intends to make its next payment under the Lease under protest and Avista and the State desire to establish an escrow account to hold the payment that Avista makes under protest.

C. Escrow Agent has agreed to accept, hold, and disburse the funds deposited with it and the earnings thereon in accordance with the terms of this Escrow Agreement.

D. Avista and the State have appointed the Representatives (as defined below) to represent them for all purposes in connection with the funds to be deposited with Escrow Agent and this Escrow Agreement.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, for themselves, their successors and assigns, hereby agree as follows:

1. Definitions. The following terms shall have the following meanings when used herein:

"Escrow Funds" shall mean the funds deposited with Escrow Agent pursuant to Section 3 of this Agreement, together with any interest and other income thereon.

"Escrow Period" shall mean the period commencing on the date hereof and ending at the close of Escrow Agent's business day that that this Escrow Agreement shall terminate upon disbursement of all Escrow Funds.

"Indemnified Party" shall have the meaning set forth in Section 11.

"Joint Written Direction" shall mean a written direction executed by the Representatives and directing Escrow Agent to disburse all or a portion of the Escrow Funds or to take or refrain from taking any other action pursuant to this Escrow Agreement.

## ATTACHMENT B

“Avista Representative” shall mean the person(s) so designated on Schedule C hereto or any other person designated in a writing signed by Avista and delivered to Escrow Agent and the State Representative in accordance with the notice provisions of this Escrow Agreement, to act as its representative under this Escrow Agreement.

“Representatives” shall mean the Avista Representative and the State Representative.

“State Representative” shall mean the person(s) so designated on Schedule C hereto or any other person designated, in a writing signed by the State and delivered to Escrow Agent and the Avista Representative in accordance with the notice provisions of this Escrow Agreement, to act as the State’s representative under this Escrow Agreement.

2. Appointment of and Acceptance by Escrow Agent. Avista and the State hereby appoint Escrow Agent to serve as escrow agent hereunder. Escrow Agent hereby accepts such appointment and, upon receipt by wire transfer of the Escrow Funds in accordance with Section 3 below, agrees to hold, invest and disburse the Escrow Funds in accordance with this Escrow Agreement.

3. Deposit of Escrow Funds. At any time following the execution and delivery of this Escrow Agreement, Avista will transfer the Escrow Funds in the amount \$ 4,681,600, by wire transfer of immediately available funds, to an account designated by Escrow Agent.

4. Disbursements of Escrow Funds. Upon receipt by Escrow Agent from the State and Avista of complete payment instructions in writing, Escrow Agent shall distribute the Escrow Funds as directed, as promptly as practicable. Prior to any disbursement, Escrow Agent shall have received reasonable identifying information regarding the State such that Escrow Agent may comply with its regulatory obligations and reasonable business practices, including without limitation a completed United States Internal Revenue Service (“IRS”) Form W-9 or original IRS Form W-8, as applicable. All disbursements of funds from the Escrow Funds shall be subject to the fees and claims of Escrow Agent and the Indemnified Parties pursuant to Section 11 and Section 12 below.

5. Suspension of Performance; Disbursement into Court. If, at any time, (i) there shall exist any dispute between Avista, the State or the Representatives with respect to the holding or disposition of all or any portion of the Escrow Funds or any other obligations of Escrow Agent hereunder, (ii) Escrow Agent is unable to determine, to Escrow Agent's sole satisfaction, the proper disposition of all or any portion of the Escrow Funds or Escrow Agent's proper actions with respect to its obligations hereunder, or (iii) Avista and the State have not, within 10 calendar days of the furnishing by Escrow Agent of a notice of resignation pursuant to Section 8 hereof, appointed a successor Escrow Agent to act hereunder, then Escrow Agent may, in its sole discretion, take either or both of the following actions:

a. suspend the performance of any of its obligations (including without limitation any disbursement obligations) under this Escrow Agreement until such dispute or uncertainty shall be resolved to the sole satisfaction of Escrow Agent or until a successor Escrow Agent shall have been appointed.

## ATTACHMENT B

b. petition (by means of an interpleader action or any other appropriate method) any court of competent jurisdiction in the State of Montana for instructions with respect to such dispute or uncertainty, and to the extent required or permitted by law, pay into such court, for holding and disposition in accordance with the instructions of such court, all Escrow Funds, after deduction and payment to Escrow Agent of all fees and expenses (including court costs and attorneys' fees) payable to, incurred by, or expected to be incurred by Escrow Agent in connection with the performance of its duties and the exercise of its rights hereunder.

Escrow Agent shall have no liability to Avista, the State or the Representatives, their respective owners, shareholders or members or any other person with respect to any such suspension of performance or disbursement into court, specifically including any liability or claimed liability that may arise, or be alleged to have arisen, out of or as a result of any delay in the disbursement of the Escrow Funds or any delay in or with respect to any other action required or requested of Escrow Agent.

6. [reserved]

7. Investment of Funds. Based upon Avista's and the State's prior review of investment alternatives, in the absence of further specific written direction to the contrary, the Escrow Agent is directed to initially invest and reinvest the Escrow Funds in the investment identified in Schedule B. Avista and the State acknowledge that the Escrow Agent will not provide supervision, recommendations or advice relating to either the investment of Escrow Funds or the purchase, sale, retention or other disposition of any investment described herein.

Avista affirms that at the end of the Escrow period, it owes applicable lease amount as agreed by the parties, as well as added interest reflecting the rate of return of the unified investment program administered by the Montana Board of Investments pursuant to Montana Code Annotated § 17-6-201 on an annualized basis. Should the Escrow account contain insufficient funds to fund applicable lease and interest amounts, Avista will pay the State directly the difference within 30 days of the Escrow disbursement.

If Escrow Agent has not received a written instruction from the State at any time that an investment decision must be made, Escrow Agent is directed to invest the Escrow Funds, or such portion thereof as to which no written investment instruction has been received, in the investment indicated on Schedule B hereto. All investments shall be made in the name of Escrow Agent. Notwithstanding anything to the contrary contained herein, Escrow Agent may, without notice to Avista and the State, sell or liquidate any of the foregoing investments at any time for any disbursement of Escrow Funds permitted or required hereunder. All investment earnings shall become part of the Escrow Funds and investment losses shall be charged against the Escrow Funds. Escrow Agent shall not be liable or responsible for loss in the value of any investment made pursuant to this Escrow Agreement, or for any loss, cost or penalty resulting from any sale or liquidation of the Escrow Funds. With respect to any Escrow Funds received by Escrow Agent after twelve o'clock, p.m., Central Standard Time, Escrow Agent shall not be required to invest such funds or to effect any investment instruction until the next day upon which banks in St. Paul, Minnesota and the New York Stock Exchange are open for business.

8. Resignation or Removal of Escrow Agent. Escrow Agent may resign and be



## ATTACHMENT B

discharged from the performance of its duties hereunder at any time by giving thirty (30) days prior written notice to Avista and the State specifying a date when such resignation shall take effect. Similarly, Avista and the State may remove and discharge Escrow Agent from the performance of its duties hereunder at any time by jointly giving thirty (30) days prior written notice to the Escrow Agent specifying a date when such removal shall take effect. Upon any such notice of resignation or removal, Avista and the State jointly shall appoint a successor escrow agent hereunder prior to the effective date of such resignation or removal. If Avista and the State fail to appoint a successor escrow agent within such time, the Escrow Agent shall have the right to petition a court of competent jurisdiction to appoint a successor escrow agent, and all costs and expenses (including without limitation attorneys' fees) related to such petition shall be paid jointly and severally by Avista and the State. The Escrow Agent shall transmit all records pertaining to the Escrow Funds and shall pay all Escrow Funds to the successor escrow agent, after making copies of such records as the Escrow Agent deems advisable and after deduction and payment to the Escrow Agent of all fees and expenses (including court costs and attorneys' fees) payable to, incurred by, or expected to be incurred by the Escrow Agent in connection with the performance of its duties and the exercise of its rights hereunder. After the Escrow Agent's resignation or removal, the provisions of this Escrow Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Escrow Agent under this Escrow Agreement.

9. Binding Effect; Successors. This Escrow Agreement shall be binding upon the respective parties hereto and their heirs, executors, successors or assigns. If the Escrow Agent consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business (including the escrow contemplated by this Escrow Agreement) to another corporation, the successor or transferee corporation without any further act shall be the successor Escrow Agent.

10. Liability of Escrow Agent. The Escrow Agent undertakes to perform only such duties as are expressly set forth herein and no duties shall be implied. The Escrow Agent has no fiduciary or discretionary duties of any kind. The Escrow Agent shall have no liability under and no duty to inquire as to the provisions of any agreement other than this Escrow Agreement, including without limitation any other agreement between any or all of the parties hereto or any other persons even though reference thereto may be made herein. The Escrow Agent shall not be liable for any action taken or omitted by it in good faith except to the extent that a court of competent jurisdiction determines that the Escrow Agent's gross negligence or willful misconduct was the sole cause of any loss to Avista or the State. Escrow Agent's sole responsibility shall be for the safekeeping and disbursement of the Escrow Funds in accordance with the terms of this Escrow Agreement. Escrow Agent shall not be charged with knowledge or notice of any fact or circumstance not specifically set forth herein. Escrow Agent may rely upon any notice, instruction, request or other instrument, not only as to its due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained therein, which Escrow Agent shall believe to be genuine and to have been signed or presented by the person or parties purporting to sign the same. In no event shall Escrow Agent be liable for incidental, indirect, special, consequential or punitive damages or penalties (including, but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such damages or penalty and regardless of the form of action. Escrow Agent shall not be responsible for delays or failures in performance resulting from acts beyond its control, including without limitation acts of God, strikes, lockouts, riots, acts of war or terror, epidemics, governmental regulations, fire,

## ATTACHMENT B

communication line failures, computer viruses, power failures, earthquakes or other disasters. Escrow Agent shall not be obligated to take any legal action or commence any proceeding in connection with the Escrow Funds, any account in which Escrow Funds are deposited, this Escrow Agreement or the Lease, or to appear in, prosecute or defend any such legal action or proceeding. Escrow Agent may consult legal counsel selected by it in the event of any dispute or question as to the construction of any of the provisions hereof or of any other agreement or of its duties hereunder, or relating to any dispute involving any party hereto, and shall incur no liability and shall be fully indemnified from any liability whatsoever in acting in accordance with the advice of such counsel. Avista and the State, jointly and severally, shall promptly pay, upon demand, the reasonable fees and expenses of any such counsel. Avista and the State agree to perform or procure the performance of all further acts and things, and execute and deliver such further documents, as may be required by law or as Escrow Agent may reasonably request in connection with its duties hereunder.

The Escrow Agent is authorized, in its sole discretion, to comply with final orders issued or process entered by any court with respect to the Escrow Funds, without determination by the Escrow Agent of such court's jurisdiction in the matter. If any portion of the Escrow Funds is at any time attached, garnished or levied upon under any court order, or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such property or any part thereof, then and in any such event, the Escrow Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree which it is advised by legal counsel selected by it is binding upon it without the need for appeal or other action; and if the Escrow Agent complies with any such order, writ, judgment or decree, it shall not be liable to any of the parties hereto or to any other person or entity by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

11. Indemnification of Escrow Agent. From and at all times after the date of this Escrow Agreement, Avista and the State, jointly and severally, shall, to the fullest extent permitted by law, indemnify and hold harmless Escrow Agent and each director, officer, employee, attorney, agent and affiliate of Escrow Agent (collectively, the "Indemnified Parties") against any and all actions, claims (whether or not valid), losses, damages, liabilities, penalties, costs and expenses of any kind or nature (including without limitation reasonable attorneys' fees, costs and expenses) incurred by or asserted against any of the Indemnified Parties, whether direct, indirect or consequential, as a result of or arising from or in any way relating to any claim, demand, suit, action or proceeding (including any inquiry or investigation) by any person, including without limitation Avista, the State and the Representatives, whether threatened or initiated, asserting a claim for any legal or equitable remedy against any person under any statute or regulation, including, but not limited to, any federal or state securities laws, or under any common law or equitable cause or otherwise, arising from or in connection with the negotiation, preparation, execution, performance or failure of performance in connection with this Escrow Agreement or any transactions contemplated herein, whether or not any such Indemnified Party is a party to any such action, proceeding, suit or the target of any such inquiry or investigation; provided, however, that no Indemnified Party shall have the right to be indemnified hereunder for any liability finally determined by a court of competent jurisdiction, subject to no further appeal, to have resulted solely from the gross negligence or willful misconduct of such Indemnified Party. Avista and the State further agree, jointly and severally, to indemnify each

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Indemnified Party for all costs, including without limitation reasonable attorney's fees, incurred by such Indemnified Party in connection with the enforcement of Avista's and the State's indemnification obligations hereunder. Each Indemnified Party shall, in its sole discretion, have the right to select and employ separate counsel with respect to any action or claim brought or asserted against it, and the reasonable fees of such counsel shall be paid upon demand by Avista and the State jointly and severally. The obligations of Avista and the State under this Section 11 shall survive any termination of this Escrow Agreement and the resignation or removal of Escrow Agent.

The parties agree that neither the payment by Avista or the State of any claim by Escrow Agent for indemnification hereunder nor the disbursement of any amounts to Escrow Agent from the Escrow Funds in respect of a claim by Escrow Agent for indemnification shall impair, limit, modify, or affect, as between Avista and the State, the respective rights and obligations of Avista and the State under the Lease.

### 12. Compensation of Escrow Agent

(a) Fees and Expenses. Avista agrees to compensate Escrow Agent on demand for its services hereunder in accordance with Schedule A attached hereto. The obligations of Avista under this Section 12 shall survive any termination of this Escrow Agreement and the resignation or removal of Escrow Agent.

(b) Security and Offset. The State, Avista and the Representatives hereby grant to Escrow Agent and the Indemnified Parties a security interest in, lien upon and right of offset against the Escrow Funds with respect to any compensation or reimbursement due any of them hereunder (including any claim for indemnification hereunder). If for any reason the Escrow Funds are insufficient to cover such compensation and reimbursement, Avista and the State shall promptly pay such amounts to Escrow Agent or any Indemnified Party upon receipt of an itemized invoice.

13. Representations and Warranties. Avista and the State each respectively make the following representations and warranties to Escrow Agent:

(a) it has full power and authority to execute and deliver this Escrow Agreement and to perform its obligations hereunder; and this Escrow Agreement has been duly approved by all necessary action and constitutes its valid and binding agreement enforceable in accordance with its terms; and

(b) each of the applicable persons designated on Schedule C attached hereto have been duly appointed to act as authorized representatives hereunder and individually have full power and authority to execute and deliver any Joint Written Direction, to amend, modify or waive any provision of this Escrow Agreement and to take any and all other actions as authorized representatives under this Escrow Agreement, all without further consent or direction from, or notice to, it or any other party, provided that any change in designation of such authorized representatives shall be provided by written notice delivered to each party to this Escrow Agreement.

14. Identifying Information. To help the government fight the funding of terrorism



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and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust, or other legal entity, the Escrow Agent requires documentation to verify its formation and existence as a legal entity. The Escrow Agent may ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. The parties acknowledge that a portion of the identifying information set forth herein is being requested by the Escrow Agent in connection with the USA Patriot Act, Pub.L.107-56 (the "Act"), and each agrees to provide any additional information requested by the Escrow Agent in connection with the Act or any other legislation or regulation to which Escrow Agent is subject, in a timely manner.

15. Consent to Jurisdiction and Venue. In the event that any party hereto commences a lawsuit or other proceeding relating to or arising from this Escrow Agreement, the parties hereto agree to the personal jurisdiction by and venue in the First Judicial District Court, Lewis and Clark County, in the State of Montana and waive any objection to such jurisdiction or venue. The parties hereto consent to and agree to submit to the jurisdiction of any of the court specified herein and agree to accept service of process to vest personal jurisdiction over them in this court.

16. Notices. All notices, approvals, consents, requests, and other communications hereunder shall be in writing and shall be delivered (i) by personal delivery, or (ii) by national overnight courier service, or (iii) by certified or registered mail, return receipt requested, or (iv) via facsimile transmission, with confirmed receipt or (v) via email by way of a PDF attachment thereto of a manually executed document. Notice shall be effective upon receipt except for notice via email, which shall be effective only when the State, by return email or notice delivered by other method provided for in this Section 16, acknowledges having received that email (with an automatic "read receipt" or similar notice not constituting an acknowledgement of an email receipt for purposes of this Section 16.) Such notices shall be sent to the applicable party or parties at the address specified below:

If to Avista or Avista Representative at:

Avista Corporation  
Attn: Bruce Howard  
1411 East Mission Avenue  
P.O. Box 3727  
Spokane, WA 99202-3727  
Telephone: (509) 495-2941  
E-mail: Bruce.Howard@avistacorp.com

Additional copy to:

Registered Agent, State of Montana, for Avista Corporation

If to the State or the State Representative at:

Director, Department of Natural Resources and Conservation  
State of Montana  
1625 Eleventh Avenue

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P.O. Box 201601  
Helena, MT 59620-1601  
Telephone:  
Facsimile:  
E-mail:

If to the Escrow Agent at:

Attn: U.S. Bank National Association  
Global Corporate Trust Services  
Scott R Kjar  
Address: 1420 Fifth Street, 7<sup>th</sup> Floor  
Seattle, WA 98101  
Telephone: (206) 344-4686  
Facsimile: (206) 344-4630  
E-mail: scott.kjar@usbank.com

and to:

Attn: U.S. Bank National Association  
Lien Nguyen  
Trust Finance Management  
60 Livingston Avenue  
Saint Paul, MN 55107  
Telephone: (651) 466-6103  
Facsimile: (651) 312-2599  
E-mail: lien.nguyen2@usbank.com

or to such other address as each party may designate for itself by like notice and unless otherwise provided herein shall be deemed to have been given on the date received.

17. Optional Security Procedures. In the event funds transfer instructions, address changes or change in contact information are given (other than in writing at the time of execution of this Escrow Agreement), whether in writing, by facsimile or otherwise, the Escrow Agent is authorized but shall be under no duty to seek confirmation of such instructions by telephone call-back to the person or persons designated on Schedule C hereto, and the Escrow Agent may rely upon the confirmation of anyone purporting to be the person or persons so designated. The persons and telephone numbers for call-backs may be changed only in writing actually received and acknowledged by Escrow Agent and shall be effective only after Escrow Agent has a reasonable opportunity to act on such changes. If the Escrow Agent is unable to contact any of the designated representatives identified in Schedule C, the Escrow Agent is hereby authorized but shall be under no duty to seek confirmation of such instructions by telephone call-back to any one or more of Avista's or the State's executive officers ("Executive Officers"), as the case may be, which shall include the titles of Chief Executive Officer, President and Vice President, as the Escrow Agent may select. Such Executive Officer shall deliver to the Escrow Agent a fully executed incumbency certificate, and the Escrow Agent may rely upon the confirmation of anyone purporting to be any such officer. Avista and the State agree that the Escrow Agent may at its option record any telephone calls made pursuant to this Section. The Escrow Agent in any funds transfer may rely solely upon any account numbers or similar identifying numbers

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provided by Avista or the State to identify (a) the beneficiary, (b) the beneficiary's bank, or (c) an intermediary bank. The Escrow Agent may apply any of the Escrow Funds for any payment order it executes using any such identifying number, even when its use may result in a person other than the beneficiary being paid, or the transfer of funds to a bank other than the beneficiary's bank or an intermediary bank designated. Avista and the State acknowledge that these optional security procedures are commercially reasonable.

18. Amendment, Waiver and Assignment. None of the terms or conditions of this Escrow Agreement may be changed, waived, modified, discharged, terminated or varied in any manner whatsoever unless in writing duly signed by each party to this Escrow Agreement. No course of conduct shall constitute a waiver of any of the terms and conditions of this Escrow Agreement, unless such waiver is specified in writing, and then only to the extent so specified. A waiver of any of the terms and conditions of this Escrow Agreement on one occasion shall not constitute a waiver of the other terms of this Escrow Agreement, or of such terms and conditions on any other occasion. Except as provided in Section 9 hereof, this Escrow Agreement may not be assigned by any party without the written consent of the other parties.

19. Severability. To the extent any provision of this Escrow Agreement is prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Escrow Agreement.

20. Governing Law. This Escrow Agreement shall be construed and interpreted in accordance with the internal laws of the State of Montana without giving effect to the conflict of laws principles thereof.

21. Entire Agreement, No Third Party Beneficiaries. This Escrow Agreement constitutes the entire agreement between the parties relating to the holding, investment and disbursement of the Escrow Funds and sets forth in their entirety the obligations and duties of Escrow Agent with respect to the Escrow Funds. Nothing in this Escrow Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Escrow Agreement.

22. Execution in Counterparts, Facsimiles. This Escrow Agreement and any Joint Written Direction may be executed in two or more counterparts, which when so executed shall constitute one and the same agreement or direction. The delivery of copies of this Escrow Agreement and any Joint Written Direction and their respective signature pages by PDF or facsimile transmission shall constitute effective execution and delivery as to the parties and may be used in lieu of originals for all purposes.

23. Termination. This Escrow Agreement shall terminate upon the distribution of all the Escrow Funds pursuant to any applicable provision of this Escrow Agreement, and Escrow Agent shall thereafter have no further obligation or liability whatsoever with respect to this Escrow Agreement or the Escrow Funds.

24. Dealings. The Escrow Agent and any stockholder, director, officer or employee of the Escrow Agent may buy, sell, and deal in any of the securities of Avista and become pecuniarily interested in any transaction in which Avista or the State may be interested, and

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contract and lend money to Avista or the State and otherwise act as fully and freely as though it were not Escrow Agent under this Agreement. Nothing herein shall preclude the Escrow Agent from acting in any other capacity for Avista or the State or for any other entity.

25. Brokerage Confirmation Waiver. Avista and the State acknowledge that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant either the right to receive brokerage confirmations for certain security transactions as they occur, Avista and the State specifically waive receipt of such confirmations to the extent permitted by law. The Escrow Agent will furnish Avista and the State monthly transaction statements that include detail for all investment transactions made by the Escrow Agent. Such statements shall include the investment income accrued from which information Avista and the State will be able to determine the difference between such investment income and the rate of return on the Public School Trust administered by the Montana Board of Investments.

26. Tax Reporting. Escrow Agent shall have no responsibility for the tax consequences of this Agreement and Avista shall consult with independent counsel concerning any and all tax matters. Avista and the State shall provide Escrow Agent Form W-9 and an original Form W-8, as applicable, for each payee, together with any other documentation and information requested by Escrow Agent in connection with Escrow Agent's reporting obligations under applicable IRS regulations. If such tax documentation is not so provided, Escrow Agent shall withhold taxes as required by the IRS. The State and Avista have determined that any interest or income on Escrow Funds shall be reported on an accrual basis and deemed to be for the account of Avista. Avista shall prepare and file all required tax filings with the IRS and any other applicable taxing authority; provided that the parties further agree that:

(a) Escrow Agent IRS Reporting. Avista shall accurately provide the Escrow Agent with all information requested by the Escrow Agent in connection with the preparation of all applicable Form 1099 and Form 1042-S documents with respect to all distributions as well as in the performance of Escrow Agent's reporting obligations under the Foreign Account Tax Compliance Act and Foreign Investment in Real Property Tax Act or other applicable law or regulation.

(b) Withholding Requests and Indemnification. Avista agrees to (i) assume all obligations imposed now or hereafter by any applicable tax law or regulation with respect to payments or performance under this Agreement, (ii) request the Escrow Agent in writing with respect to withholding and other taxes, assessments or other governmental charges, and advise Escrow Agent in writing with respect to any certifications and governmental reporting that may be required under any applicable laws or regulations, and (iii) indemnify and hold the Escrow Agent harmless pursuant to Section 11 hereof from any liability or obligation on account of taxes, assessments, additions for late payment, interest, penalties, expenses and other governmental charges that may be assessed or asserted against Escrow Agent.

(c) Imputed Interest. To the extent that IRS imputed interest regulations apply, Avista and the State shall so inform Escrow Agent, provide Escrow Agent with all imputed interest calculations and direct Escrow Agent to disburse imputed interest amounts as Avista and the State deem appropriate. Escrow Agent shall rely solely on such provided calculations and information and shall have no responsibility for the accuracy or completeness of any such calculations or information.

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27. WAIVER OF TRIAL BY JURY. EACH PARTY TO THIS AGREEMENT HEREBY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (1) ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR (2) IN ANY WAY IN CONNECTION WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES TO THIS AGREEMENT OR IN CONNECTION WITH THIS AGREEMENT OR THE EXERCISE OF ANY SUCH PARTY'S RIGHTS AND REMEDIES UNDER THIS AGREEMENT OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES TO THIS AGREEMENT, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER IN CONTRACT, TORT OR OTHERWISE. EACH OF THE PARTIES HERETO HEREBY FURTHER ACKNOWLEDGES AND AGREES THAT EACH HAS REVIEWED OR HAD THE OPPORTUNITY TO REVIEW THIS WAIVER WITH ITS RESPECTIVE LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH SUCH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A CONSENT BY ALL PARTIES TO A TRIAL BY THE COURT.

**IN WITNESS WHEREOF**, the parties hereto have caused this Escrow Agreement to be executed under seal as of the date first above written.

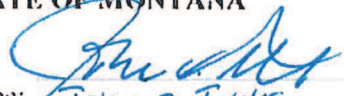


ATTACHMENT B


AVISTA CORPORATION

By:   
Name: Bruce Howard  
Title: Director of Real Estate & Environmental  
Affairs

STATE OF MONTANA

By:   
Name: John E. Tullis  
Title: Director

U.S. BANK NATIONAL ASSOCIATION  
as Escrow Agent

By:   
Name: Scott R. Kjar  
Title: Assistant Vice President

SCHEDULE A



U.S. Bank Customer Confidential

**Schedule of Fees for Services as  
Escrow Agent  
For  
[Client / Client]**

CTS01010A	<b>Acceptance Fee</b> The acceptance fee includes the administrative review of documents, initial set-up of the account, and other reasonably required services up to and including the closing. This is a one-time, non-refundable fee, payable at closing.	\$1,000
CTS04460	<b>Escrow Agent</b> Annual fee for the standard escrow agent services associated with the administration of the account. Administration fees are payable in advance.	\$1,500
	<b>Direct Out of Pocket Expenses</b> Reimbursement of expenses associated with the performance of our duties, including but not limited to publications, legal counsel after the initial close, travel expenses and filing fees.	At Cost
	<b>Extraordinary Services</b> Extraordinary Services are duties or responsibilities of an unusual nature, including termination, but not provided for in the governing documents or otherwise set forth in this schedule. A reasonable charge will be assessed based on the nature of the services and the responsibility involved. At our option, these charges will be billed at a flat fee or at our hourly rate then in effect.	

Account approval is subject to review and qualification. Fees are subject to change at our discretion and upon written notice. Fees paid in advance will not be prorated. The fees set forth above and any subsequent modifications thereof are part of your agreement. Finalization of the transaction constitutes agreement to the above fee schedule, including agreement to any subsequent changes upon proper written notice. In the event your transaction is not finalized, any related out-of-pocket expenses will be billed to you directly. Absent your written instructions to sweep or otherwise invest, all sums in your account will remain uninvested and no accrued interest or other compensation will be credited to the account. Payment of fees constitutes acceptance of the terms and conditions set forth.

**IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT:**

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a Trust or other legal entity we will ask for documentation to verify its formation and existence as a legal entity. We may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation.

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### SCHEDULE B

#### U.S. BANK NATIONAL ASSOCIATION Investment Authorization Form

#### DESCRIPTION AND TERMS

The U.S. Bank Money Market Deposit Account is a U.S. Bank National Association (“U.S. Bank”) interest-bearing money market deposit account designed to meet the needs of U.S. Bank’s Corporate Trust Services Escrow Group and other Corporate Trust customers of U.S. Bank. Selection of this investment includes authorization to place funds on deposit and invest with U.S. Bank.

U.S. Bank uses the daily balance method to calculate interest on this account (actual/365 or 366). This method applies a daily periodic rate to the principal balance in the account each day. Interest is accrued daily and credited monthly to the account. Interest rates are determined at U.S. Bank’s discretion, and may be tiered by customer deposit amount.

The owner of the account is U.S. Bank as agent for its corporate trust customers. U.S. Bank’s corporate trust department performs all account deposits and withdrawals. Deposit accounts are FDIC, as determined under FDIC Regulations, up to applicable FDIC limits.

#### AUTOMATIC AUTHORIZATION

In the absence of specific written direction to the contrary, U.S. Bank is hereby directed to invest and reinvest proceeds and other available moneys in the U.S. Bank Money Market Deposit Account. The customer(s) confirm that the U.S. Bank Money Market Deposit Account is a permitted investment under the operative documents and this authorization is the permanent direction for investment of the moneys until notified in writing of alternate instructions.





