

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1742

Surprise Valley Electrification Corp.,)
Complainant,)
)
v.)
)
PacifiCorp, dba Pacific Power,)
Defendant.)
)
_____)

EXHIBIT SVEC/500

DIRECT TESTIMONY OF SHAWN DOLAN

March 15, 2016

1 **I. INTRODUCTION**

2
3 **Q. Please state your name and business address.**

4 **A.** My name is Patrick Shawn Dolan. I am the Engineering Manager at Kootenai
5 Electric Cooperative (the “Cooperative” or “Kootenai Electric”). My business
6 address is 2451 W. Dakota Ave, Hayden, Idaho 83835.

7 **Q. Please describe your background and experience.**

8 **A.** I have Bachelor’s and Master’s of Science Degrees in Electrical Engineering and I
9 am a Registered Professional Engineer in the States of Oregon, Washington,
10 Idaho, and Montana. I have worked either as an engineering consultant for or
11 directly for electric utilities for 26 years, with the last 16 years being at Kootenai
12 Electric where I am now employed.

13 At Kootenai Electric I oversaw the design, construction and presently
14 oversee the operation of the Cooperative’s landfill gas generating qualifying
15 facility (“QF”) at Fighting Creek, Idaho. As part of this, I was directly involved
16 in the negotiation and implementation of the Public Utility Regulatory Policies
17 Act (“PURPA”) power sales contracts to Avista Utilities (“Avista”) and Idaho
18 Power Company (“Idaho Power”) for the power generated by the plant.

19 A further description of my educational background and work experience
20 can be found in Exhibit SVEC/501 in this proceeding.

21 **Q. On whose behalf are you appearing in this proceeding?**

22 **A.** I am testifying on behalf of Surprise Valley Electrification Corp. (“Surprise
23 Valley”) in this Oregon Public Utility Commission (the “Commission” or
24 “OPUC”) complaint.

25

1 **Q. Have you previously testified before the Commission?**

2 **A.** No.

3 **Q. What topics will your testimony address?**

4 **A.** The physical interconnections Kootenai Electric's Fighting Creek Landfill Gas
5 Plant has with Avista, how power is transferred to Avista, and how the line losses
6 are calculated and metering is accomplished under the PURPA power sales
7 agreements Kootenai Electric has utilized to sell the output of the Fighting Creek
8 Plant.

9 **Q. What topics will your testimony not address?**

10 **A.** My testimony will not address the specific dispute between Surprise Valley and
11 PacifiCorp.

12 **II. KOOTENAI ELECTRIC COOPERATIVE**

13 **Q. Please describe Kootenai Electric.**

14 **A.** Kootenai Electric is a nonprofit member owned electric cooperative that provides
15 electric service to approximately 25,000 members in Kootenai, Bonner, and
16 Benewah Counties in northern Idaho. The Cooperative also provides electric
17 service to a handful of accounts in Spokane County, Washington.

18 Kootenai Electric buys all of its Tier 1 power from the Bonneville Power
19 Administration ("BPA") and is a full requirements customer of BPA. One
20 average megawatt ("aMW") of Tier 2 power is purchased through Northwest
21 Energy Management Services or NEMS to serve its load requirements that are
22 above its BPA Tier 1 power allocation. The Cooperative is served by general
23 transfer agreement through Avista's 115 kV transmission system. The general
24 transfer agreement is between Avista and BPA. Kootenai Electric is a winter

1 peaking utility and peaked at 115 MW in February of 2014. The utility purchased
2 450,432 MWh of energy from BPA in 2014.

3 The Cooperative has one small generation plant located at the Kootenai
4 County Landfill at Fighting Creek that consists of two reciprocating engines that
5 run off of the landfill gas produced by the decomposing garbage. The plant's
6 name plate rating is 3.2 MW. Kootenai Electric previously sold the power to
7 Avista, and currently sells the power from this plant to Idaho Power, both under a
8 PURPA contract.

9 **Q. How does BPA deliver the power to Kootenai Electric?**

10 **A.** BPA delivers its power to Kootenai Electric through its general transfer
11 agreement with Avista. Essentially, BPA delivers Kootenai's power to Avista at
12 BPA's Interties with Avista and Avista wheels the power to Kootenai Electric
13 through its 115 kV transmission system. BPA pays Avista to deliver the power to
14 Kootenai Electric. Kootenai's 115 kV transmission lines and substations are
15 interconnected to Avista's 115 kV System. The contractual power delivery points
16 are at the Kootenai Electric and Avista Substations that Kootenai Electric takes
17 power from. The meters are located at these substations. Kootenai owns 7
18 substations, Avista owns 5 substations, and one substation is jointly owned by
19 both Kootenai and Avista that serves as the Cooperative's power delivery points.
20 The Fighting Creek Landfill Gas Generation Plant is also considered a point of
21 delivery ("POD") although it is connected only to Kootenai Electric's distribution
22 system. A listing of all Kootenai Electric's PODs is provided below:

23

24

Substation	Limit (kVA)	2014 Max (kW)	2014 Min (kW)	Owner
15 th Street	8,000	5,770	1,370	Avista
Athol	41,700	13,890	6,999	KEC
Beck*	25,000	3,900	0	KEC
Dower	22,000	13,910	4,570	KEC
Fighting Creek	3,200	2,180	880	KEC
Hayden	25,000	11,737	6,910	KEC
Julia Street	20,000	7,010	4,330	KEC
O’Gara	2,000	2,789	898	Avista
Pleasant View	9,000	8,600	2,560	Avista
Plummer	5,000	1,900	645	Avista
Prairie	41,700	13,980	8,240	Avista/KEC
Rathdrum	8,000	6,070	2,675	Avista
Setters	25,000	10,772	5,430	KEC
Scarcello	25,000	20,300	11,100	KEC

1 *New Substation. Energized in Late 2014

2 The BPA metering for all of these PODs is on the low voltage side of the
3 power transformers located at each of these substations. Meter readings at
4 Kootenai Electric owned substations have a loss adjustment factor to adjust the
5 metering to the point of interconnection between Kootenai Electric and Avista.
6 Meters at Avista owned points of delivery do not include a loss adjustment factor.
7 Typically all POD meters are Rochester/Scientific Columbus JEMStar meters.

8 **III. FIGHTING CREEK GAS LANDFILL STATION**

9 **Q. Does Kootenai Electric operate the Fighting Creek Gas Landfill Station QF?**

10 **A.** Yes. Kootenai Electric owns and operates the Fighting Creek Landfill Gas
11 Generating Plant south of Coeur d’Alene, Idaho. The plant has a nameplate rating
12 of 3.2 MW and generates electricity using two Caterpillar 3520 reciprocating
13 engines each with a rating of 1.6 MW. The plant’s reciprocating engines run on
14 landfill gas produced by the decomposition of garbage in the Kootenai County
15 Landfill at Fighting Creek. The plant is a QF as defined by the Federal Energy

1 Regulatory Commission. The present plant output is approximately 1.5 MW due
2 to present fuel availability.

3 The plant is connected to Kootenai Electric's 24.9 kV power distribution
4 system. Its power is transmitted across Kootenai Electric's Dower South Feeder
5 to the Cooperative's Dower Substation and then stepped up to 115 kV and
6 wheeled to Avista's 115 kV transmission system near Post Falls, Idaho. Avista
7 currently wheels the energy to Idaho Power in Oregon near Imnaha, Oregon over
8 its Lolo-Oxbow 230 kV Transmission Intertie with Idaho Power. Both the QF
9 Plant and the delivery path to Avista are located in Avista's balancing authority.
10 The plant's power output is measured at the plant by a Rochester/Scientific
11 Columbus JEMStar meter before it is tied to Kootenai Electric's 24.9 kV power
12 distribution system. Two loss factors are applied to the meter reading to calculate
13 the net power delivered to Idaho Power. One calculates the power delivered to
14 Avista's 115 kV transmission system. The other calculates the power delivered to
15 Idaho Power at the Avista, Idaho Power transmission interconnection near
16 Imnaha, Oregon.

17 **IV. AVISTA POWER PURCHASE AGREEMENT**

18 **Q. Did Kootenai previously sell Fighting Creek's net output to Avista?**

19 **A.** Yes. Kootenai sold the net output to Avista as a QF contract under PURPA from
20 March 2012 to April 1, 2014. The power output of the plant as recorded by the
21 JEMStar meter at the plant was adjusted by a 2.48% Meter Location Adjustment
22 Factor ("MLAF") to account for the line losses getting the power to the point
23 where Kootenai Electric Cooperative's and Avista's 115 kV transmission systems
24 interconnect near Post Falls, Idaho.

1 A copy of the contract is attached to my testimony as Exhibit SVEC/502.

2 **Q. Did Kootenai Electric negotiate an earlier contract with Avista?**

3 A. Yes. Avista was in fact willing to enter into a long-term PPA for sale at the Idaho
4 Public Utility Commission's full avoided costs with this same type of delivery
5 arrangement. They offered a final contract for execution. Kootenai chose not to
6 execute this contract due to a disagreement with Avista over ownership of
7 environmental attributes. I have attached a copy of this contract to my testimony
8 as Exhibit SVEC/503.

9 **Q. Were there any contractual or scheduling changes made with BPA for the**
10 **delivery of Kootenai's full requirements power when the power was sold to**
11 **Avista?**

12 A. The only contractual change that was made was that the Fighting Creek Landfill
13 Gas Generating Plant meter was added as a meter point with the MLAF to Exhibit
14 A of BPA Contract No. 96MS-95360.

15 Avista accepted deliveries through metering transactions without
16 schedules or other ancillary services. Avista read the Fighting Creek Meter
17 through their MV90 system and determined the amount of power purchased from
18 the plant based on the meter readings and MLAF. BPA showed the Fighting
19 Creek Metering Point meter readings on its invoice to Kootenai Electric as if BPA
20 had provided the power to Kootenai Electric under its full requirements contract.

21 **Q. From an electrical engineering perspective, please explain what happens**
22 **when the Fighting Creek QF generates power.**

23 A. The power generated by the plant is fully consumed by Kootenai Electric's load
24 since Kootenai Electric's load out of the substation that Fighting Creek is
25 electrically connected to the Dower Substation is larger than the amount of power

1 generated by Fighting Creek (Dower's minimum load is 4.57 MW while the
2 maximum that Fighting Creek can generate is 3.2 MW). Energy generated by the
3 plant never actually leaves Kootenai Electric's distribution system. It does,
4 however, offset the power provided by BPA to Kootenai Electric under its BPA
5 Full Requirements Contract. It essentially reduces the amount of BPA power that
6 is delivered to Kootenai Electric's system by Avista through the General Transfer
7 Agreement between BPA and Avista. It is this offset power that is actually being
8 delivered to the purchaser of the QF facility output.

9 **Q. Please explain how Avista determined how much net output that it should pay for.**

10 **A.** Avista reads the Fighting Creek Plant meter through its MV90 system. It adjusted
11 the meter readings down by a MLAF of 2.48% to accommodate the losses
12 associated with getting the power to the point at which Kootenai Electric's and
13 Avista's 115 kV lines are interconnected. The 2.48 % MLAF number was
14 obtained by calculating the percent line loss obtained by wheeling the full
15 nameplate power of the Fighting Creek Landfill Gas Generating Plant from the
16 plant to the point of interconnection between Kootenai and Avista assuming that
17 distribution and transmission facilities were unloaded except for the Fighting
18 Creek Plant's output.

19 **Q. Therefore, Avista did not pay for power that only electrically flowed from Kootenai**
20 **Electric to Avista?**

21 **A.** Correct, deliveries and sales were not limited to physical power flows to the
22 Avista system. Electrically speaking, the "delivery" to Avista was merely a
23 displacement of electrical flow that is always going in the opposite direction and
24 that fact did not limit Avista's ability to make the necessary arrangements to

1 accept title to such a “delivery” without any ancillary services, schedules or e-tags
2 provided by Kootenai Electric.

3 **Q. What contractual arrangements were entered into to ensure that Avista could take**
4 **title to the entire Fighting Creek net output?**

5 **A.** These included: 1) an interconnection agreement between Kootenai Electric and
6 Avista; 2) a construction agreement to complete the upgrades to the meters; and
7 3) for the long-term contract, Kootenai Electric was asked to guarantee that
8 capacity be available on our system for the entire seven years.

9 Kootenai Electric and Avista had an interconnection agreement to a
10 accommodate Avista’s acceptance of the power. It is Attachment F to the PPA.
11 It states in the last recital that it was amended to allow for acceptance of deliveries
12 from the generator: “WHEREAS, Avista and KEC are amending and restating the
13 Interconnection and Operating Agreement between the Parties (Avista Contract
14 No. AV-TR05-0205) originally dated November 29, 2005, to incorporate, among
15 other things, provisions regarding Generating Projects.” And “Generating
16 Projects” is defined as “Any electric generating facility, except an electric
17 generating facility that is net metered pursuant to applicable state law that is
18 electrically connected to KEC and operated in parallel with Avista's electric
19 system through the Points of Delivery.” This interconnection agreement is FERC
20 jurisdictional and on file in FERC in ER12-1654.

21 Kootenai Electric and Avista also entered into a construction agreement to
22 complete the necessary upgrades to the meters. This is contained in Exhibit G to
23 the PPA. These arrangements allow Avista to take title to the electricity as an

1 Avista designated network resource. This construction agreement is FERC
2 jurisdictional and on file in ER12-977.

3 In order to enter our second contract, Kootenai Electric was later asked to
4 guarantee that the capacity be available on the line to get the power to Avista for
5 the seven year contract period.

6 **Q. Did Avista raise any concerns or issues regarding the measuring of the net**
7 **output or tracking and transferring energy across Kootenai's system?**

8 **A.** No, they did not. The only concerns raised were by Kootenai. We argued that the
9 MLAF factor should have been lower as the actual net effect of the plant was to
10 reduce the feeder loads and therefore the losses would be less than the unloaded
11 case used to determine the MLAF factor. Avista argued that the MLAF factor
12 was a construct of the manner in which the power purchase contracts calculated
13 losses. Bonneville contract staff agreed with the Avista argument, so Kootenai
14 relented and agreed to the manner in which the MLAF was calculated.

15 **Q. Did Avista raise any concerns or issues regarding the need to verify the BPA**
16 **schedules to deliver power to meet Kootenai's actual load?**

17 **A.** No. The topic never came up. Avista read the plant's meter directly and tracked
18 the plant's output through their SCADA system. As far as BPA was concerned
19 they were delivering power to Kootenai as scheduled.

20 **Q. Does Kootenai have an open access transmission, or wholesale distribution**
21 **tariff?**

22 **A.** No. Kootenai Electric does have agreements with Avista, Northern Lights
23 Electric Cooperative, and East Green Acres Irrigation District, for wheeling their
24 load across Kootenai's system. In the case of Northern Lights the wheel is across

1 Kootenai's 115 kV Athol system. For Avista and East Green Acres their load is
2 wheeled across Kootenai's distribution system.

3 **Q. Did Avista raise any issues or concerns regarding whether Kootenai was an on**
4 **system or off system QF?**

5 **A.** No.

6 **Q. Did Avista charge Kootenai Electric, or require that Kootenai Electric purchase**
7 **from a third party, any ancillary services?**

8 **A.** No. Neither the short-term or the proposed long-term PPA required Kootenai
9 Electric to purchase ancillary services as it was located within Avista's balancing
10 authority. Kootenai Electric would have only been responsible for ancillary
11 services if it was located outside of Avista's balancing authority. See PPA section
12 3.5 ("Ancillary Services. In the event that the Facility is located outside of
13 Avista's Balancing Authority Area, Seller shall be responsible at its sole expense
14 for obtaining any and all necessary Ancillary Services. Seller shall demonstrate its
15 compliance with this Section prior to the delivery of any Net Output to Avista.").
16 Also, the costs to enable Avista to accept the output were detailed in Section 11.3
17 and Exhibit G of the PPA – namely the construction agreement to upgrade the
18 meters.

19 **V. CONCLUSION**

20 **Q. Does this conclude your testimony?**

21 **A.** Yes.

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Surprise Valley Electrification Corp.,)
Complainant,)
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v.)
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PacifiCorp, dba Pacific Power,)
Defendant.)
)
_____)

EXHIBIT SVEC/501

QUALIFICATIONS OF PATRICK SHAWN DOLAN

March 15, 2016

PROFESSIONAL AFFILIATIONS

Toastmasters International
Registered Professional Engineer in Washington, Oregon, Idaho & Montana
Eta Kappa Nu—Electrical Engineering Honor Society
Institute of Electrical and Electronics Engineers

SUMMARY OF EXPERIENCE

26 years of professional experience in electric utility management and engineering

Utility General Manager

- Oversaw all company operations for a municipally owned electric utility.
- Prepared company annual budgets and financial documents.
- Proposed and administrated company policies and union contracts.
- Hired and fired personnel as well as made personnel job assignments.
- Resolved customer complaints and employee conflicts.
- Handled customer service disconnections for nonpayment and worked with debtors to ensure payment of their past due account balances.
- Operated and maintained a 5 MW hydroelectric facility.
- Developed and implemented a hazardous waste management program in accordance with 40 CFR Part 761 of the Federal Register.
- Created a system wide computer data base covering all system equipment, poles and installations.

Utility Manager of Engineering

- Supervised and administrated an engineering department of up to 13. The department included professional engineers, designers, drafters, staking technicians, meter technicians, and the equipment maintenance and rebuild shop.
- Negotiated and prepared contracts, including transmission access and power delivery contracts.

Utility Manager of Engineering Continued:

- Prepared and administrated company annual capital and engineering department budgets.
- Oversaw the construction and operation of the Fighting Creek Landfill Gas Generation Plant.
- Revamped company work order system.
- Made daily employee job and task assignments to accomplish company goals.
- Implemented a WECC/NERC/FERC Reliability Compliance Program.

Utility Power Systems Engineer / Chief Engineer

- Designed and oversaw the construction of electrical substations.
- Designed and oversaw the construction of 115 kV, 69 kV, & 33 kV transmission lines.
- Negotiated transmission line and distribution line right-of-way easements.
- Designed and installed a TWACS Automated Meter Reading System
- Prepared cost of service and rate studies.
- Developed utility long range and construction work plans. Plans detailed system projected load growth, system analysis, and recommended system improvements and cost estimates.
- Performed power flow, voltage drop and protective system coordination studies.
- Developed computer software to perform radio system terrain path profiles.
- Designed, specified and assisted in the installation of supervisory control and data acquisition systems. Programmed system master station including setting up the station databases, displays and various reports. Administrated a BPA sponsored residential load control program.
- Created and implemented a computerized outage management system.
- Responded to and resolved customer power quality complaints.
- Developed a computerized outage management system

EDUCATION

NRECA Management Internship Program, 2010-2011

Master's of Science, Electrical Engineering, Power and Control Systems Option
Montana State University, Bozeman, MT, 1993. GPA (overall) 3.95 on a 4.0 scale.

Bachelor's of Science, Electrical Engineering,
Montana State University, Bozeman, MT, 1987.

WORK HISTORY

Kootenai Electric Cooperative, Inc., Hayden, ID 83835 Manager of Engineering, Chief Engineer, System Engineer	1999-Present
SSR Engineers, Inc., Bismarck, ND 58501 Project Engineer	1994-1999
Control Technologies, Inc., Bozeman, MT 59717 Power Systems Engineer	1993-1994
Department of Electrical Engineering, Montana State University, Bozeman, MT 59717 Teaching and Research Assistant (While working on Master's Degree)	1991-1993
Troy Power and Light, Troy, MT 59935 General Manager	1989-1991
General Dynamics Space Systems Division, San Diego, CA Design Engineer	1987-1989

HONORS AND AWARDS

Board President, Emerald Estates Water Association (2001-2008)
Conference Committee Member, Western Power Distribution Conference (2000-2010)
Chairman, IEEE Missouri Slope Section (1998)
President, Bismarck Toastmasters (1997-1998)
Best Technical Paper of Conference (North American Power Symposium—1993)
Outstanding Graduate Teaching Assistant of the Year Award (1993)
Member of Eta Kappa Nu-The Electrical Engineering Honor Society (1993)
Corporate Pacesetter Award - General Dynamics (1989)
Chairman, Cystic Fibrosis Bike-a-thon (1981)
Eagle Scout (1981)
Bob Kennedy Scouting Award for the Most Outstanding Boy Scout in Cascade District (1980)

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Surprise Valley Electrification Corp.,)
Complainant,)
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PacifiCorp, dba Pacific Power,)
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EXHIBIT SVEC/502

**POWER PURCHASE AGREEMENT BETWEEN KOOTENAI ELECTRIC
COOPERATIVE INC. AND AVISTA CORPORATION**

March 15, 2016

POWER PURCHASE AGREEMENT
BETWEEN
KOOTENAI ELECTRIC COOPERATIVE, INC.
AND
AVISTA CORPORATION

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POWER PURCHASE AGREEMENT

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

RECITALS

WHEREAS, Seller will design, construct, own, operate and maintain a 3.2 MW nameplate capacity (“Expected Capacity”) electric power generating facility (“Facility”) at the Kootenai County Solid Waste Facility near Bellgrove, Idaho, as more fully described in Exhibit C; and

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

WHEREAS, Seller will deliver and sell, and Avista will purchase, Net Output generated by the Facility on an non-firm as available basis subject to the terms of this Agreement; and

WHEREAS, Seller and Avista are parties to the Interconnection and Operating Agreement dated November 15, 2011 (Avista Contract No. AV-TR11-0205-1) (“Interconnection and Operating Agreement”); and

WHEREAS, Seller and Avista are parties to the Facilities for Integration and Operation of Fighting Creek Facility Letter Agreement dated December 5, 2011 (incorporated as Exhibit G) which sets forth the scope of work and responsibilities of the Parties regarding the construction and installation of the Parties’ respective facilities for the integration and operation of Seller’s Facility.

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

1. **DEFINITIONS**

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

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

1.2 “Alternate Point of Delivery” shall have the meaning provided in Section 11.2 of this Agreement and is further clarified in Exhibit C of this Agreement.

1.3 “Ancillary Services” means those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation

of the electrical systems in accordance with Prudent Utility Practices and any existing or future WECC requirements.

1.4 “Avoided Cost Rates” shall have the meaning provided in Section 7.3 of this Agreement.

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

1.6 “Balancing Authority Area” means an electrical system or systems bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other Balancing Authority Areas and contributing to frequency regulation of the interconnection. A Balancing Authority Area must be certified by the applicable reliability council (such as WECC or other reliability council).

1.7 “Base Energy” means all monthly Net Output except Net Output that is Excess Energy.

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

1.9 “Commission” means the Idaho Public Utilities Commission, or its successor.

1.10 “Effective Date” shall have the meaning provided in Section 4.1 of this Agreement.

1.11 “Excess Energy” shall have the meaning provided in Section 7.4 of this Agreement.

1.12 “Expected Capacity” shall have the meaning provided in the recitals of this Agreement.

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

1.14 “Facility Output” means the capability and electric energy generated by the Facility expressed in kilowatt-hours.

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

- 1.16 “**Force Majeure**” shall have the meaning provided in Section 12 of this Agreement.
- 1.17 “**FERC**” means the Federal Energy Regulatory Commission, or its successor.
- 1.18 “**Independent Engineering Certification**” means certifications detailed in Section 3.3 provided by a professional engineer registered in the state in which the Facility is located and who has no direct or indirect, legal, or equitable ownership interest in the Facility.
- 1.19 “**Initial Capacity Determination**” shall have the meaning provided in Section 3.4 of this Agreement.
- 1.20 “**Interconnection and Operating Agreement**” means, as applicable, the agreement between Seller and Avista or Seller and a Transmitting Entity that is providing interconnection service which governs how the Net Output is delivered to Avista’s or the Transmitting Entity’s electrical system at the point of interconnection during the Term of this Agreement and that is attached hereto as Exhibit F.
- 1.21 “**Losses**” means the loss of electrical energy expressed in kilowatt hours (kWh), including the Meter Location Adjustment Factor (“MLAF”) as described in section 7.2, occurring as a result of the transformation and transmission of energy between the point of interconnection on Seller’s system and the Point of Delivery.
- 1.22 “**MW**” means megawatt. One thousand kilowatts equals one megawatt.
- 1.23 “**MWh**” means megawatt-hour. One thousand kilowatt-hours equals one megawatt-hour.
- 1.24 “**Market Energy Rate**” means an energy price that shall be 85 percent (85%) of the weighted average of the daily on-peak and off-peak Dow Jones Mid-Columbia Non-Firm Index (Dow Jones Mid-C Non-Firm Index), or its successor, or as agreed by the Parties if no successor exists.
- 1.25 “**Nameplate Capacity Rating**” means the maximum generating capacity of the Facility, as determined by the manufacturer, and expressed in kilowatts (kW).
- 1.26 “**NERC**” means the North American Electric Reliability Corporation or its successor.
- 1.27 “**Net Output**” means the capability and electric energy generated by the Facility, less Facility Service Power and Losses, that is delivered to the Point of Delivery, or at the Alternate Point of Delivery if applicable under Section 11.2, expressed in kilowatt-hours. Net Output is further described in Section 7.2.
- 1.28 “**Off-Peak**” means all hours other than On-Peak hours.

1.29 **“On-Peak”** means the hours ending 0700 through 2200 Pacific Prevailing time, Monday through Sunday, including national holidays.

1.30 **“Point of Delivery”** means the location, as specified in Exhibit C of this Agreement, where the electric energy produced by the Facility is delivered to Avista’s electrical system.

1.31 **“Prudent Utility Practices”** means the practices, methods, and acts commonly and ordinarily used in electrical engineering and operations by a significant portion of the electric power generation and transmission industry, in the exercise of reasonable judgment in the light of the facts known or that should have been known at the time a decision was made, that would have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy, and expedition.

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

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

1.34 **“Transmitting Entity”** means any entity or entities including Seller that provide transmission and/or interconnection service to deliver electric energy from the Facility to Avista’s electrical system at the Point of Delivery or at the Alternate Point of Delivery if applicable under Section 11.2. For purposes of this Agreement, Seller is the Transmitting Entity.

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

2. **WARRANTIES**

2.1 **No Warranty by Avista.** Avista makes no warranties, expressed or implied, regarding any aspect of Seller’s design, specifications, equipment or facilities, including, but not limited to, safety, durability, reliability, strength, capacity, adequacy or economic feasibility, and any review, acceptance or failure to review Seller's design, specifications, equipment or Facility shall not be an endorsement or a confirmation by Avista. Avista assumes no responsibility or obligation with regard to any NERC and/or WECC reliability standard associated with the Facility or the delivery of electric energy from the Facility to the Point of Delivery or at the Alternate Point of Delivery if applicable under Section 11.2.

2.2 **Seller’s Warranty.** Seller warrants and represents that: (a) Seller has investigated and determined that it is capable of performing and will perform the obligations hereunder and has not relied upon the advice, experience or expertise of Avista in connection with the transactions contemplated by this Agreement; (b) all professionals and experts including, but not limited to, engineers, attorneys or accountants, that Seller may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Seller; (c) Seller will comply with all applicable laws and regulations and shall obtain

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

3. CONDITIONS PRIOR TO DELIVERY OF NET OUTPUT

3.1 Licenses, Permits and Approvals. Prior to the delivery of any Net Output to Avista, Seller shall submit to Avista written proof that all licenses, permits or approvals necessary for Seller's operations have been obtained from applicable federal, state, tribal or local authorities, including, but not limited to, evidence of compliance with Subpart B, 18 C.F.R. § 292.207, tribal, state and local business licenses, environmental permits, easements, leases and all required approvals by the Commission. Avista and Seller shall cooperate in petitioning the Commission for any required approvals

3.2 Opinion of Counsel. Prior to the delivery of any Net Output to Avista, Seller shall submit to Avista an opinion letter signed by an attorney admitted to practice and in good standing in the state where the Facility is located providing an opinion that Seller's licenses, permits and approvals as set forth in Section 3.1 above are legally and validly issued, are held in the name of the Seller, and based on a reasonable independent review, counsel is of the opinion that Seller is in substantial compliance with said permits as of the date of such opinion letter. The opinion letter will be in a form acceptable to Avista and will acknowledge that the attorney rendering the opinion understands that Avista is relying on said opinion. Avista's acceptance of the form shall not be unreasonably withheld.

3.3 Independent Engineering Certifications. Prior to the delivery of any Net Output to Avista, Seller shall submit to Avista applicable Independent Engineering Certifications for (a) Construction Adequacy for a Qualifying Facility, and (b) Operations and Maintenance Policy for a Qualifying Facility as described in Commission Order No. 21690. Each Independent Engineering Certification shall be signed by a licensed professional engineer in good standing submitted in a form acceptable to Avista and will acknowledge that the licensed professional engineer rendering the opinion understands that Avista is relying on said opinion. Avista's acceptance of such forms shall not be unreasonably withheld.

3.4 Initial Capacity Determination. Seller shall design and operate the Facility in a manner such that under normal design conditions the Net Output does not exceed 10 aMW in any calendar month. Prior to delivery of any Net Output, Seller shall submit to Avista the maximum hourly generation capability of the Facility ("Initial Capacity Determination"). Such Initial Capacity Determination shall be determined by use of the Nameplate Capacity Rating and shall be documented and submitted to Avista by Seller. Such documentation shall include the information listed in Exhibit E. Upon receipt of Seller's Initial Capacity Determination, Avista will review such determination within a reasonable time and, if acceptable to Avista, Avista shall issue to Seller its written approval of the Initial Capacity Determination. If the Initial Capacity

Determination submitted by Seller is not acceptable to Avista, Avista will promptly notify Seller that Avista will not accept its Initial Capacity Determination. In such event, Avista shall engage, at Seller's sole expense, an independent qualified consultant to determine the Initial Capacity Determination. During the Term of this Agreement, Seller shall not cause the capacity of the Facility to be greater than the Initial Capacity Determination by any means, including by addition, upgrade, or replacement of any turbines.

3.5 Ancillary Services. In the event that the Facility is located outside of Avista's Balancing Authority Area, Seller shall be responsible at its sole expense for obtaining any and all necessary Ancillary Services. Seller shall demonstrate its compliance with this Section prior to the delivery of any Net Output to Avista.

3.6 Insurance. Prior to the delivery of any Net Output to Avista, Seller shall submit to Avista evidence of compliance with Section 8, Insurance.

3.7 Network Resource Designation. At Avista's request, Seller shall provide to Avista all data required by Avista to enable the Facility to be designated by Avista as a network resource.

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

4. TERM OF AGREEMENT AND COMMERCIAL OPERATION DATE

4.1 This Agreement shall be effective on the date last signed below or such other date set by Commission order (the "Effective Date") and shall continue until December 31, 2012 ("Term"), unless terminated by Seller with 30 days prior written notice to Avista or otherwise terminated as provided herein.

4.2 The Parties agree that this Agreement will be construed in accordance with Section 210 of PURPA and other applicable laws and regulations. This Agreement shall become finally effective upon the Commission's approval of all terms and provisions herein without change or condition and declaration that all payments to be made to Seller hereunder shall be allowed as prudently incurred expenses for ratemaking purposes.

5. (Reserved)

6. SCHEDULING

6.1 Seller will make reasonable efforts to contact Avista Real-Time Scheduler to update Avista Real-Time Scheduler regarding any schedule estimates for generation, outage timeframes/duration, and return to service estimates. .

6.2 Email contact information with regard to scheduling and telephone contact information with regard to generation changes, interruptions or outages are specified in Exhibit A, Communication and Reporting.

7. PURCHASE PRICES AND PAYMENT

7.1 Except when either Party's performance is excused as provided herein, for the Term of this Agreement, Seller shall deliver all Net Output from the Facility to Avista at the Point of Delivery, or at the Alternate Point of Delivery if applicable under Section 11.2. For all Net Output delivered to Avista at the Point of Delivery, or at the Alternate Point of Delivery if applicable under Section 11.2, Avista shall pay the applicable rate specified in Sections 7.3 and 7.4 of this Agreement.

7.2 **Net Output.** Net Output shall be determined by measuring the Facility Output and reducing that amount by Facility Service Power and the Meter Location Adjustment Factor ("MLAF") which is the product of all applicable loss factors for the distribution system, transformation and transmission system between the metering point and the Point of Delivery. Net Output shall be calculated in accordance with the following formula:

$$\begin{aligned} \text{Net Output} &= (\text{Facility Output}) - (\text{Facility Service Power}) \times \text{MLAF} \\ \text{MLAF} &= 1 - [(\text{Distribution Line Loss Factor of } 0.0203) \\ &\quad + (\text{Dower Transformer No Load Loss of } 0.0030) \\ &\quad + (\text{Dower Transformer Load Loss of } 0.0010) \\ &\quad + (\text{Transmission Line Loss of } 0.0005)] \\ \text{MLAF} &= 1 - 0.0248 \\ \text{MLAF} &= 0.9752 \end{aligned}$$

7.3 **Base Energy.** For all Base Energy delivered to Avista at the Point of Delivery, or at the Alternate Point of Delivery if applicable under Section 11.2, Avista shall pay Seller the lesser of (i) the current month's Market Energy Rate or (ii) the applicable rate based upon the On-Peak or Off-Peak Avoided Cost Rates For Non-Fueled Projects Smaller Than Ten Average Megawatts - Non-Levelized in effect on the Effective Date ("Avoided Cost Rates") as specified in Exhibit D.

7.4 **Excess Energy.** Excess Energy is Net Output, expressed in MWh, which Seller delivers to Avista at the Point of Delivery and/or at the Alternate Point of Delivery if applicable under Section 11.2 that exceeds 10 aMW in a calendar Month. Avista, at its sole discretion, may accept Excess Energy, but Avista will not pay for any Excess Energy. Where Avista does not elect to accept Excess Energy, and Seller delivers such energy after notification by Avista in accordance with Exhibit A, Seller shall pay Avista liquidated damages equal to \$100 per MWh of Excess Energy delivered to Avista. The Parties agree that the damages that Avista would

incur due to Seller's delivery of Excess Energy when Avista does not elect to accept Excess Energy would be difficult or impossible to predict with certainty and the liquidated damages contemplated by this provision are a fair and reasonable calculation of such damages and are not a penalty.

7.5 Payments to Seller. Avista shall prepare and submit to Seller monthly statements during the Term of the Agreement based upon Net Output delivered to Avista during the previous month. Payments owed by Avista shall be paid no later than the 15th day of the month following the end of the monthly billing period or five days after the receipt of a monthly statement, whichever is later. If the due date falls on a non-Business Day, then the payment shall be due on the next Business Day.

7.6 Payments to Avista and Right of Set Off. If Seller is obligated to make any payment or refund to Avista, Seller agrees that Avista may set off such payment or refund amount against any current or future payments due Seller under this Agreement. If Avista does not elect to set off, or if no current or future payment is owed by Avista, Avista shall submit an invoice to Seller for such payments. Seller shall pay Avista no later than the 15th day of the month following the end of the monthly billing period or five days after the receipt of a monthly statement, whichever is later. If the due date falls on a non-Business Day, then the payment shall be due on the next Business Day.

7.7 Interest. In addition to the remedies set forth in Section 16 of this Agreement, any amounts owing after the due date specified in Sections 7.5 and 7.6 will be subject to interest in the amount of one and one half percent (1.5%) per month, not to exceed the maximum rate allowed by the law, multiplied by the unpaid balance.

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

8. INSURANCE

8.1 Insurance. Prior to operating the Facility, Seller, at its own cost, shall obtain and maintain the following insurance in force over the term of this Agreement and shall provide certificates of all insurance policies. All insurance policies required to fulfill the requirements of this Section 8 shall include language requiring that any notice of cancellation or notice of change in policy terms be sent to Avista by the insurance carrier(s) at least sixty days prior to any change or termination of the policies.

8.1.1 General Liability. Seller shall carry commercial general liability insurance for bodily injury and property damage with a minimum limit equal to \$2,000,000 for each occurrence. The deductible shall not exceed the Seller's financial ability to cover claims and shall not be greater than prevailing practices for similar operations in the State of Idaho.

8.1.2 Property. Seller shall carry all-risk property insurance for repair or replacement of the Facility. The limit of property insurance shall be sufficient to restore

operations in the event of reasonably foreseeable losses from natural, operational, mechanical and human-caused perils. The deductible shall not exceed the Seller's financial ability to fund the cost of losses and shall not be greater than prevailing practices for similar operations in the State of Idaho.

8.1.3 Qualifying Insurance. The insurance coverage required by this Section 8 shall be obtained from an insurance company reasonably acceptable to Avista and shall include an endorsement naming Avista as an additional insured and loss payee as applicable.

8.1.4 Notice of Loss or Lapse of Insurance by Seller. If the insurance coverage required by this Section 8 is lost or lapses for any reason, Seller will immediately notify Avista in writing of such loss or lapse. Such notice shall advise Avista of (i) the reason for such loss or lapse and (ii) the steps Seller is taking to replace or reinstate coverage. Notice provided by the insurer required by Section 8.1 shall not satisfy the notice requirement of this Section and Seller's failure to provide the notice required by this Section and/or to promptly replace or reinstate coverage will constitute a material breach of this Agreement.

8.2 Ongoing Security for Performance. For the Term of this Agreement, Seller will provide Avista with the following:

8.2.1 Insurance. Upon Avista's request, Seller shall provide Avista evidence of compliance with the provisions of Section 8.1. If Seller fails to comply, such failure will be a material breach and may only be cured by Seller promptly supplying evidence that the required insurance coverage has been replaced or reinstated.

8.3 Licenses and Permits. During the Term of this Agreement, Seller shall maintain compliance with all permits and licenses described in Section 3.1 of this Agreement. In addition, Seller will obtain, and supply Avista with copies of, any new or additional permits or licenses that may be required for Seller's operations. If at any time Seller fails to maintain compliance with the permits and licenses described in Section 3.1 or this Section, or to provide documentation required by this Section, such failure will be a material breach of this Agreement that may only be cured by Seller submitting to Avista evidence of compliance.

9. CURTAILMENT, INTERRUPTION OR REDUCTION OF DELIVERY

Avista may require Seller to curtail, interrupt or reduce delivery of Net Output if, in accordance with Section 10.2, Avista determines that curtailment, interruption or reduction is necessary because of a Force Majeure event or to protect persons or property from injury or damage, or because of emergencies, necessary system maintenance, system modification or special operating circumstances. Avista shall use commercially reasonable efforts to keep any period of curtailment, interruption, or reduction to a minimum. In order not to interfere unreasonably with Seller operations, Avista shall, to the extent practical, give Seller reasonable prior notice of any curtailment, interruption, or reduction, the reason for its occurrence and its probable duration. Seller understands and agrees that Avista may not be able to provide notice to

Seller prior to interruption, curtailment, or reduction of electrical energy deliveries to Avista in emergency circumstances, real-time operations of the electric system, and/or unplanned events.

10. OPERATION

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

10.2 Excuse From Acceptance of Delivery of Energy.

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

(a) endanger any person or property, or Avista's electric system, or any electric system with which Avista's system is interconnected;

(b) cause, or contribute to, an imminent significant disruption of electric service to Avista's or another utility's customers;

(c) interfere with any construction, installation, inspection, testing, repair, replacement, improvement, alteration, modification, operation, use or maintenance of, or addition to, Avista's electric system or other property of Avista; or

(d) cause, contribute to, or necessitate operation of any of Avista's hydro electric projects in violation of any license or other regulatory requirements.

10.2.2 Avista shall promptly notify Seller of the reasons for any such curtailment, interruption, reduction or suspension provided for in Section 10.2. Avista shall use reasonable efforts to limit the duration of any such curtailment, interruption, reduction or suspension.

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

10.4 Avista's Right to Inspect. Seller shall permit Avista to inspect and audit the Facility, any related production, delivery and scheduling documentation or the operation, use or maintenance of the Facility at any reasonable time and upon reasonable notice.

10.5 Seller Obligations in Accordance with Prudent Utility Practices. Seller shall own, operate and maintain the Facility and any Seller-owned facilities in accordance with Prudent Utility Practices.

11.0 INTERCONNECTION AND TRANSMISSION

11.1 Seller shall make all necessary arrangements and pay all costs to interconnect its Facility with the electrical system of the Transmitting Entity. Attached as Exhibit F is the Interconnection and Operating Agreement.

11.2 In the event that Seller or Avista is required to curtail, interrupt or reduce delivery of Net Output to the Point of Delivery, Seller may use reasonable commercial efforts to arrange, at Seller's sole expense, for delivery of Net Output at a secondary point of delivery ("Alternate Point of Delivery"). Avista will use reasonable commercial efforts to accept Net Output at such Alternate Point of Delivery; *provided, however*, that the Parties have enabled and established the use of such Alternate Point of Delivery pursuant to Section 11.3.

11.3 Seller shall be responsible for any and all costs and expenses related to the transmission of Net Output to the Point of Delivery or any Alternate Point of Delivery under this Agreement, including but not limited to Ancillary Services and any costs or expenses incurred by Avista resulting from enabling and establishing Avista's ability to accept Net Output at the Point of Delivery and any Alternate Point of Delivery. Such costs and expenses shall include those for metering and other parallel operation facilities specified in Exhibit G.

12. FORCE MAJEURE

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

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

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

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

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

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

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

13. INDEMNITY

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

(a) No Indemnitee shall be indemnified for any loss, liability, injury, or damage resulting from its sole negligence, gross negligence, fraud or willful misconduct; and

(b) The Indemnitor shall be entitled, at its option, to assume and control the defense and any settlement of such suit.

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

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

13.3 EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE UNDER ANY PROVISION OF THIS AGREEMENT FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT, SAVINGS OR REVENUE, LOSS OF THE USE OF EQUIPMENT, COST OF CAPITAL, OR COST OF TEMPORARY EQUIPMENT OR SERVICES, WHETHER BASED IN WHOLE OR IN

**PART IN CONTRACT, IN TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY,
OR ANY OTHER THEORY OF LIABILITY.**

14. ASSIGNMENT

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

14.2 Seller shall have the right, subject to the obligations in Section 8, without Avista's consent, but with a thirty days prior written notice to Avista, to make collateral assignments of its rights under this Agreement to satisfy the requirements of any development, construction, or other reasonable long term financing. A collateral assignment shall not constitute a delegation of Seller's obligations under this Agreement, and this Agreement shall not bind the collateral assignee. Any collateral assignee succeeding to any portion of the ownership interest of Seller shall be considered Seller's successor in interest and shall thereafter be bound by this Agreement.

15. NO UNSPECIFIED THIRD PARTY BENEFICIARIES

There are no third party beneficiaries of this Agreement. Nothing contained in this Agreement is intended to confer any right or interest on anyone other than the Parties, and their respective successors, heirs and assigns permitted under Section 14.

16. DEFAULT AND TERMINATION

16.1 In addition to any other breach or failure to perform under this Agreement that is not otherwise excused under this Agreement, each of the following events shall constitute a Default:

- (a) Seller abandons the Facility;
- (b) The Facility ceases to be a Qualifying Facility;
- (c) A Party becomes insolvent (e.g., is unable to meet its obligations as they become due or its liabilities exceed its assets);
- (d) Seller makes a general assignment of substantially all of its assets for the benefit of its creditors, files a petition for bankruptcy or reorganization or seeks other relief under any applicable insolvency laws;
- (e) Seller has filed against it a petition for bankruptcy, reorganization or other relief under any applicable insolvency laws and such petition is not dismissed or stayed within sixty days after it is filed;

(f) Seller is in default under any Agreement related to this Agreement;

(g) Termination, cancellation or expiration of any agreement required for Seller to deliver Net Output to Avista under this Agreement, including but not limited to the Interconnection and Operating Agreement;

16.2 Notice and Opportunity to Cure. In the event of a Default, the non-Defaulting Party shall give written notice to the Defaulting Party of a Default in accordance with Section 29. Except where the applicable section provides a cure period for the applicable default, if the Defaulting Party has not cured the breach within thirty days after receipt of such written notice, the non-Defaulting Party may, at its option, terminate this Agreement and/or pursue any remedy available to it in law or equity; *provided* that, if a Default occurs under Sections 16.1(a), 16.1(d) and/or 16.1(e), Avista may immediately terminate this Agreement without opportunity to cure, and such termination shall become effective upon written notice of Default.

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

17. DISPUTE RESOLUTION

Each Party shall strive to resolve any and all differences during the term of the Agreement through meetings and discussions. If a dispute cannot be resolved within a reasonable time, not to exceed thirty days, each Party shall escalate the unresolved dispute to a senior officer designated by each Party. If the senior officers are not able to resolve the dispute within ten Business Days of escalation then either Party may either agree to mediate or arbitrate the dispute or request a hearing before the Commission.

18. RELEASE BY SELLER

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

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

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

18.3 Disconnection, interruption, suspension or curtailment by Avista pursuant to terms of this Agreement or the Interconnection and Operating Agreement.

19. GOVERNMENTAL AUTHORITY

This Agreement is subject to the rules, regulations, orders and other requirements, of all governmental authorities having jurisdiction over the Facility, this Agreement, the Parties or either of them, including Section 210 of PURPA. All laws, ordinances, rules, regulations, orders and other requirements of governmental authorities that are required to be incorporated in agreements of this character are by this reference incorporated in this Agreement.

20. SEVERAL OBLIGATIONS

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

21. IMPLEMENTATION

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

22. NON-WAIVER

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

23. AMENDMENT

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

24. CHOICE OF LAWS AND VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the State of Idaho without reference to its choice of law provisions. Venue for any litigation arising out of or related to this Agreement shall lie in the District Court of the Fourth Judicial District of Idaho in and for the County of Ada.

financial obligations, and the provisions of Section 13 (Indemnity) and Section 17 (Dispute Resolution).


31. ENTIRE AGREEMENT

This Agreement, including the following exhibits which are attached and incorporated by reference herein, constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous oral or written agreements between the Parties with respect to the subject matter hereof.

- | | |
|-----------|--|
| Exhibit A | Communications and Reporting |
| Exhibit B | Independent Engineering Certifications for Construction Adequacy for a Qualifying Facility and Operations and Maintenance Policy |
| Exhibit C | Project Description and Point of Delivery |
| Exhibit D | Avoided Cost Rates |
| Exhibit E | Initial Capacity Determination Documentation |
| Exhibit F | Interconnection and Operating Agreement |
| Exhibit G | Facilities for Integration and Operation of Fighting Creek Facility |
-

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

**KOOTENAI ELECTRIC
COOPERATIVE, INC**

By: 
Printed Name: Douglas A. Elliott
Title: General Manager
Date: January 3, 2012

AVISTA CORPORATION


By: 
Printed Name: Robert J. Lafferty
Title: Director, Power Supply
Date: 1/5/2012

Exhibit A
Communication and Reporting

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

Avista: kim.mattern@avistacorp.com; or
robert.follini@avistacorp.com

Seller: delliot@kec.com
Alternate: sdolan@kec.com

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

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

Avista Pre-Scheduler: (509) 495-4911
Alternate Phone: (509) 495-4073

Seller: (208) 292-3276 (Shawn Dolan)
Alternate Phone: (208) 292-3227 (Doug Elliott)

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

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

Seller: (208) 292-3276 (Shawn Dolan)
Alternate Phone: (208) 292-3227 (Doug Elliott)

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

Exhibit B

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

1. I, _____ am a licensed professional engineer registered to practice and in good standing in the State of _____. I have substantial experience in the design, construction and operation of electric power plants of the same type as Fighting Creek Landfill Gas to Energy Facility sited at the Kootenai County Solid Waste Facility, near Bellgrove, Idaho (the "Facility").

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

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

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

Signed and Sealed

DATE: _____

SIGNATURE: _____

PRINTED NAME: _____

**Independent Engineering Certification for
Operations and Maintenance Policy for a Qualifying Facility**

1. I, _____ am a licensed professional engineer registered to practice and in good standing in the State of _____. I have substantial experience in the design, construction and operation of electric power plants of the same type as Fighting Creek Landfill Gas to Energy Facility sited at the Kootenai County Solid Waste Facility, near Bellgrove, Idaho (the "Facility").

2. I have reviewed and/or supervised the review of the Policy for Operation and Maintenance ("O&M Policy") for the Facility and it is my professional opinion that, provided said Facility has been designed and built to appropriate standards, adherence to said O&M Policy will result in the Facility's producing at or near the design electrical output, efficiency, and capacity factor for twenty years, barring unforeseeable Force Majeure.

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

4. I have supplied the owner of the Plant with at least one copy of said O&M Policy bearing my Stamp and the words "CERTIFIED FOR IDAHO P.U.C. SECURITY ACCEPTANCE" on each sheet thereof.

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

Signed and Sealed

DATE: _____

SIGNATURE: _____

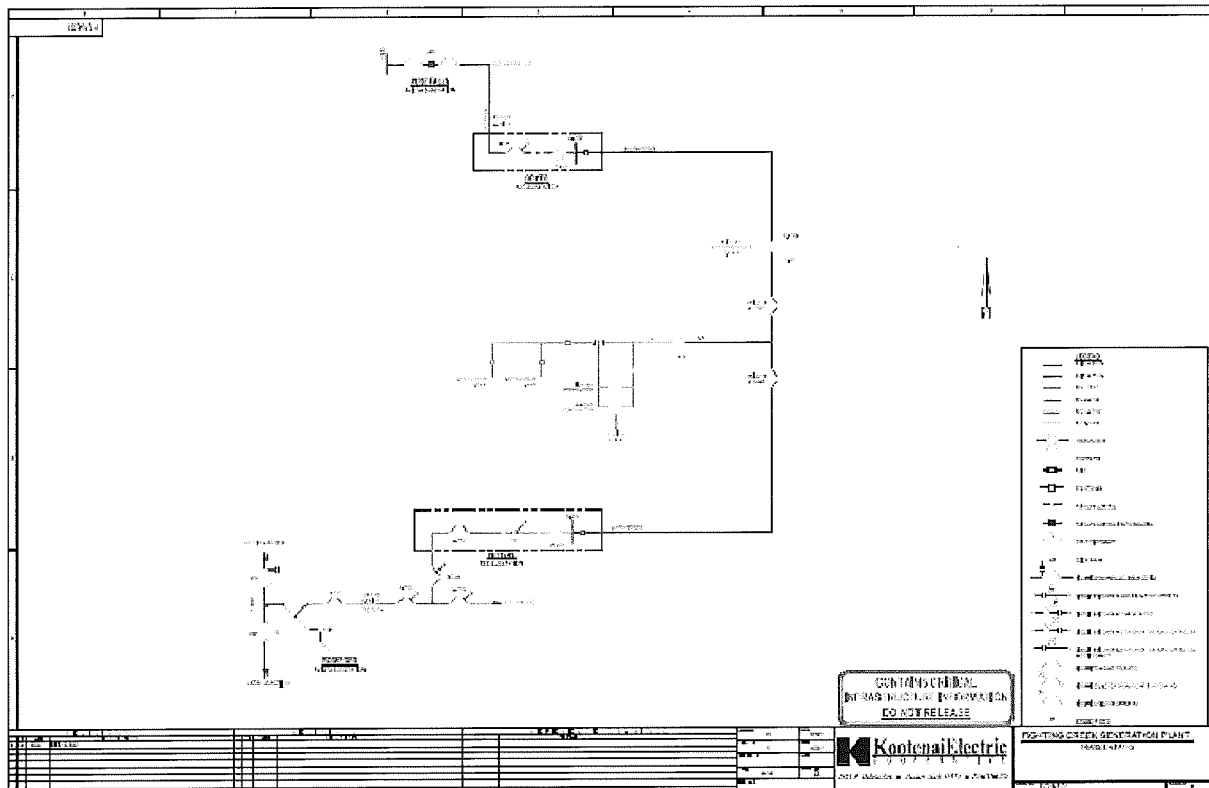
PRINTED NAME: _____

Exhibit C

Project Description and Point of Delivery

Description of the Facility:

Seller's Facility is described as the Fighting Creek Landfill Gas to Energy Facility and consists of: Two 1.6 MW generators each powered by a Caterpillar Model 3520, spark ignited, reciprocating internal combustion engines electrically interconnected to Seller's 24.9 kV distribution facilities terminated on the project busbar. The Project will use methane gas produced by decomposition of waste interred within landfill. The Project is located at Kootenai County Solid Waste Facility (W116.93 , N47.532), near Bellgrove, Idaho.



Location:

Seller's Facility is located at: Kootenai County Solid Waste Facility (W116.93 , N47.532), near Bellgrove, Idaho.

Point of Delivery:

Point of Delivery Location: The point where Avista's Dower – Post Falls 115kV Tap Transmission Line and KEC's Dower – Post Falls 115kV Tap Transmission Line are connected.

Alternate Point of Delivery:

Alternate Point of Delivery Location: The point where Avista's Dower – Post Falls 115kV Tap Transmission Line served via Avista's Post Falls – Ramsey 115kV Transmission Line and KEC's Dower – Post Falls 115kV Tap Transmission Line are connected.

Point of Metering:

Metering Location: In Seller's Facility, on the 24.9 kV side of the generator step-up transformer over which electric power and energy flows.

Exhibit D

Avoided Cost Rates

Period	Heavy Load Hours \$/MWh	Light Load Hours \$/MWh
Jan 2012 - Feb 2012	\$59.55	\$54.15
Mar 2012 - Jun 2012	\$46.32	\$42.12
Jul 2012 - Dec 2012	\$59.55	\$54.15

Exhibit E

Initial Capacity Determination Documentation

Within fifteen (15) days after a Commission order specified in Section 4.2 approving this Agreement, the Seller shall provide to Avista;

1. the manufacturer's serial number and specifications for each engine - generator installed at the Facility.
2. the Initial Capacity Determination of the Facility, expressed in kilowatts at the Point of Delivery, which is equal to the sum of the Facility's gross output values identified and provided in Exhibit C, less Facility Service Power and Losses.

Exhibit F

Interconnection and Operating Agreement

INTERCONNECTION AND OPERATING AGREEMENT

between

AVISTA CORPORATION

and

KOOTENAI ELECTRIC COOPERATIVE, INC.

AMENDED AND RESTATED

This AMENDED AND RESTATED INTERCONNECTION AND OPERATING AGREEMENT ("Agreement") is executed by and between AVISTA CORPORATION ("Avista") and KOOTENAI ELECTRIC COOPERATIVE, INC. ("KEC"), which hereinafter may be referred to individually as "Party" or collectively as "Parties".

RECITALS

WHEREAS, Avista and KEC currently operate interconnected electric systems; and

WHEREAS, the terms and conditions governing the operation and maintenance of the interconnected electric systems of Avista and KEC have historically been pursuant to a power sales agreement between KEC and the Bonneville Power Administration ("Bonneville") and a General Transfer Agreement between Avista and Bonneville (Bonneville Contract No. DE-MS79-86BP91970) (collectively the "Historical Power and Transfer Agreements"); and

WHEREAS, KEC and Bonneville have executed new power sales and network transmission service agreements effective October 1, 2001 and October 1, 2011 (collectively the "Power and Transmission Agreements"); and

WHEREAS, upon the expiration of the General Transfer Agreement between Avista and Bonneville at 2400 hours on December 31, 2005, the Historical Power and Transfer Agreements no longer provide for terms and conditions governing the operation and maintenance of the interconnected electric systems of Avista and KEC; and

WHEREAS, in order to facilitate the continued delivery of electric power from Bonneville to KEC, Avista and Bonneville have executed a service agreement under Avista's Open Access Transmission Tariff - FERC Electric Tariff Volume No. 8 ("Tariff") pursuant to which Avista provides network integration transmission service to Bonneville for such deliveries to KEC; and

WHEREAS, at some future point in time KEC may elect to execute a service agreement under Avista's Tariff, replacing the aforementioned agreement between Avista and Bonneville, to facilitate the delivery of electric power to KEC; and

WHEREAS, Avista and KEC desire to provide for the terms and conditions for the operation and maintenance of their interconnected electric systems; and

WHEREAS, Avista and KEC are amending and restating the Interconnection and Operating Agreement between the Parties (Avista Contract No. AV-TR05-0205), originally dated November 29, 2005, to incorporate, among other things, provisions regarding Generating Projects.

NOW, THEREFORE, the Parties agree as follows:

Section 1 - Definitions

- 1.1 **Ancillary Services** – Those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of Avista's transmission system in accordance with Industry Standards and Good Utility Practice.
- 1.2 **Commission** – The Federal Energy Regulatory Commission, or its regulatory successor.

- 1.3 Direct Assignment Facilities – Facilities or portions of facilities that are constructed by Avista for the sole use or benefit of KEC.
- 1.4 Generating Project – Any electric generating facility, except an electric generating facility that is net metered pursuant to applicable state law, that is electrically connected to KEC and operated in parallel with Avista's electric system through the Points of Delivery.
- 1.5 Good Utility Practice – The practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or 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 Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a range of acceptable practices, methods or acts.
- 1.6 Industry Standards – The standards, criteria and requirements of NERC, WECC and the NWPP, as such standards, criteria and requirements may be revised from time to time.
- 1.7 Native Load Customers – The wholesale and retail power customers of either Party on whose behalf that Party, by statute, franchise, regulatory requirement, or contract, undertakes an obligation to construct and operate that Party's system to meet the reliable electric needs of such customers.
- 1.8 NERC – The North American Electric Reliability Council, or its successor.
- 1.9 NWPP – The Northwest Power Pool, or its successor.
- 1.10 Point(s) of Delivery – Those points of interconnection as specified in Exhibit A of this Agreement.
- 1.11 Service Commencement Date – The date whereupon Avista first commences providing network integration transmission service to KEC or to Bonneville pursuant to a service

agreement under the Tariff for the delivery of electric power to KEC, which is January 1, 2006.

- 1.12 Tariff - Avista's Open Access Transmission Tariff - FERC Electric Tariff Volume No. 8, as such may be amended or replaced.
- 1.13 Transmission Service – Network integration transmission service, including transfer service over substation facilities, distribution facilities, or Direct Assignment Facilities, provided pursuant to the Tariff or any other agreement between the Parties.
- 1.14 WECC – The Western Electricity Coordinating Council, or its successor.

Section 2 - Term of Agreement

- 2.1 Effective Date – The effective date of this Agreement shall be the later of:
 - (a) the date this Agreement is executed by both Parties; or
 - (b) the date this Agreement is accepted for filing by the Commission, without any change or condition by the Commission which is unacceptable to either Avista or KEC, provided, however, that by executing this Agreement KEC does not consent to any jurisdiction by the Commission that the Commission does not already have over KEC.
- 2.2 Term – The term of this Agreement shall commence on the effective date and shall continue for ten (10) years from the Service Commencement Date, except as provided in Section 2.3 below.
- 2.3 Continuation of Term – The term of this Agreement shall continue beyond ten (10) years from the Service Commencement Date unless affirmatively terminated in writing upon two (2) years' written notice by either Party to the other Party.

Section 3 - Exhibits

The following Exhibits are attached and incorporated by reference herein:

Exhibit A - Points of Delivery

Exhibit B - Meter Reading and Meter Test Procedures

Exhibit C - Substation Construction and Ownership Guidelines

Exhibit D - Generating Projects

Exhibit E - Generation Interconnection Guidelines and Standards

Section 4 - Services Provided by Avista or Other Parties

- 4.1 Transmission Service – KEC, or Bonneville on behalf of KEC, requires Transmission Service to the Points of Delivery in order to serve KEC's Native Load Customers. Transmission Service is not provided for under this Agreement, but shall be provided for pursuant to the Tariff or other agreement between the Parties or between Avista and Bonneville.
- 4.2 Ancillary Services – KEC, or Bonneville on behalf of KEC, requires Ancillary Services in order to serve KEC's Native Load Customers via the Points of Delivery. Ancillary Services are not provided for under this Agreement, but shall be provided for pursuant to the Tariff or another agreement between the Parties or between Avista and Bonneville.

Section 5 - Points of Delivery and Facilities

- 5.1 Additional Points of Delivery – During the term of this Agreement, KEC may, in accordance with Good Utility Practice and, when applicable, upon Avista's approval, add new Points of Delivery such as to facilitate Transmission Service under the Tariff. Subject to the foregoing, the Parties shall add any such new Point of Delivery concurrent with the commencement of Transmission Service under the Tariff to such new Point of Delivery.

5.2 Ownership of Facilities

- (a) Except as otherwise expressly provided, ownership of any and all equipment and all salvable facilities installed or previously installed by either Party on the property of the other Party shall be and remain with the owning Party.
- (b) Each Party shall identify all movable equipment and, to the extent agreed upon by the Parties, all other salvable facilities that are installed by such Party on the property of the other, by permanently affixing thereto suitable markers plainly identifying the owner of the equipment. Within a reasonable time subsequent to initial installation, and subsequent to any modification of such installation, representatives of the Parties shall jointly prepare an itemized list of said movable equipment and salvable facilities so installed.
- (c) Each Party shall be responsible for the cost of compliance with the requirements of all applicable Federal, State, and local environmental laws for its own facilities, even when such facilities are located on the property of the other Party.
- (d) Construction and ownership of facilities inside an Avista substation shall be subject to the Substation Construction and Ownership Guidelines outlined in Exhibit C.

5.3 Addition of Facilities – Any incremental costs of additions or modifications to Avista's equipment and facilities in order to provide Transmission Service or Ancillary Services at the Points of Delivery or for Generating Projects shall be provided for pursuant to the Tariff or another agreement between the Parties.

5.4 Permits

- (a) If any equipment or facilities associated with any Point of Delivery and belonging to a Party are, or are planned to be, located on the property of the other Party, a permit to install, test, maintain, inspect, replace, repair, and operate during the term of this Agreement and to remove such equipment and facilities at the

expiration of the Term, together with the right of entry to said property at all reasonable times, is hereby granted by the other Party, provided, however, that permits to perform ground excavation are exempted from this Section 5.4(a).

- (b) Each Party shall have the right at all reasonable times to enter the property of the other Party for the purpose of reading any and all meters mentioned in this Agreement that are installed on such property, provided, however, that such right shall be consistent with and subject to any applicable national security requirements.
- (c) If either Party is required or permitted to install, test, maintain, inspect, replace, repair, remove, or operate equipment on the property of the other, the owner of such property shall furnish the other Party with accurate drawings and wiring diagrams of associated equipment and facilities, or, if such drawings or diagrams are not available, shall furnish accurate information regarding such equipment or facilities. The owner of such property shall notify the other Party of any subsequent modification that may affect the duties of the other Party in regard to such equipment, and furnish the other Party with accurate revised drawings, if possible.

5.5 Inspection of Facilities – Either Party may inspect the other Party's electric installation for any reasonable purpose at any reasonable time upon reasonable notice to the other Party. Such inspection, or failure to inspect, shall not render such Party, its officers, agents, or employees, liable or responsible for any injury, loss, damage, or accident resulting from defects in such electric installation, or for violation of this Agreement. The inspecting Party shall observe written instructions and rules posted in facilities and such other necessary instructions or standards for inspection as the Parties may agree upon. Only Generating Projects and those electric installations used in complying with the terms of this Agreement shall be subject to inspection.

Section 6 – Metering

- 6.1 Meters and Meter Reading – As of the Effective Date, meters at the Points of Delivery are provided for under the Power and Transmission Agreements. Unless provided by Bonneville pursuant to the Power and Transmission Agreements or any subsequent agreement between Bonneville and KEC, Avista and/or KEC shall own and maintain all meters, including meters for Generating Projects, used to determine any billing associated with this Agreement, a service agreement under the Tariff providing for the delivery of electric power to the Point(s) of Delivery, or any other agreement between the Parties. Meters at the Point(s) of Delivery and Generating Project(s) shall be read pursuant to the Meter Reading and Meter Test Procedures outlined in Exhibit B.
- 6.2 Tests of Metering Installations – Each Party shall, at its expense, test its measuring installations associated with this Agreement, a service agreement under the Tariff providing for the delivery of electric power to the Point(s) of Delivery, or any other agreement between the Parties, in accordance with the Meter Reading and Meter Test Procedures outlined in Exhibit B. The Parties may mutually agree to use a single set of meters. In the event that a single set of meters are utilized, tests of such meters shall be conducted jointly by the Parties in accordance with Exhibit B and shall be witnessed and agreed to by representatives of each Party.
- 6.3 Metering and Communications Required for Ancillary Services – To the extent not provided by Bonneville pursuant to its agreements with KEC, KEC shall be responsible for all costs associated with the installation, operation, and maintenance of any metering and communications equipment necessary for the provision of Ancillary Services either by Avista, KEC, or by a third party. All such metering installations shall be installed, operated, and maintained pursuant to Industry Standards and Good Utility Practice.

6.4 Measurements and Installation of Avista Meters – Notwithstanding any other provision in this Section 6, Avista may at any time install meters or metering equipment to make any measurements for any Point of Delivery or Generating Project required for any computation or determination mentioned in this Agreement, a service agreement under the Tariff providing for the delivery of electric power to the Point(s) of Delivery, or any other agreement between the Parties, and if such meters or metering equipment are so installed, such measurements shall be used thereafter in such computation or determination.

6.5 Real-Time Data Acquisition

- (a) Point(s) of Delivery - For the purpose of enabling Avista to monitor the loads on its transmission system, Avista may require the acquisition of real-time load data (MW and Mvar) at Points of Delivery at or above 69kV. The Parties shall facilitate such data acquisition pursuant to the Substation Construction and Ownership Guidelines outlined in Exhibit C.
- (b) Generating Project(s) - Real-time data acquisition, which shall include at a minimum real power and energy (MW, MWh) and reactive power (Mvar, Mvarh), is required for any Generating Project of aggregate output equal to or exceeding 3 MVA. Avista may specify real-time data acquisition needs on a case by case basis for Generating Projects that remain below 3 MVA. The Parties shall facilitate such data acquisition pursuant to the Generation Interconnection Guidelines and Standards outlined in Exhibit E.

Section 7 - Operation and Maintenance

7.1 Operation and Maintenance of Interconnected Facilities – Avista and KEC shall maintain the facilities enabling the Point(s) of Delivery described in Exhibit A in good working order and shall operate and maintain their respective interconnected facilities pursuant

to Industry Standards and Good Utility Practice. The Parties shall adhere to the Substation Construction and Ownership Guidelines outlined in Exhibit C.

7.2 Operation of KEC's Points of Delivery – Avista shall have primary operating responsibility in all Avista substations. This responsibility specifically includes the distribution feeder protective device at each Point of Delivery in Avista substations, and all switching operations in such substations. Operation of apparatus owned by KEC in Avista's substations shall be the responsibility of KEC, subject to switching orders received from Avista system operations personnel. KEC personnel shall adhere to the Avista requirement that anyone entering an Avista substation notify Avista system operations of their presence and their operational intentions. Operation of KEC equipment at each Point of Delivery not located in an Avista substation shall be coordinated with Avista system operations personnel to the extent practicable pursuant to Industry Standards and Good Utility Practice.

7.3 Operator's Qualifications – KEC's personnel who perform operations in Avista's substations or on line facilities at a Point of Delivery are required to meet the applicable operating requirements of KEC. Such personnel shall be familiar with the operation of all substation or line facilities and equipment that concerns his or her position and be fully aware of the hazards connected therewith, or have passed a journeyman's examination for the particular branch of the electrical trades with which he or she may be connected.

7.4 Power Quality – The interconnection of Avista and KEC facilities requires mutual responsibilities with respect to quality of service to both Parties' customers.

(a) Character of Service – Unless otherwise provided in this Agreement, Avista will make electric power available to KEC in the form of three-phase alternating current at a nominal frequency of sixty (60) hertz.

- (b) Abnormal Voltage Magnitudes – Both Parties shall operate and maintain their facilities such that the other Party's steady-state voltage levels at the Points of Delivery at or above 100 kV are manageable to within $\pm 5\%$ of the steady-state operating voltage and at the Points of Delivery below 100kV are manageable to within $\pm 10\%$ of the steady-state operating voltage specified for each Point of Delivery. Both Parties shall also design, construct, operate and maintain its electric facilities in accordance with Industry Standards and Good Utility Practice to reduce to acceptable levels any momentary voltage fluctuations that affect the other Party's facilities.
- (c) Frequency Control – Both Parties shall operate and maintain their systems to enable the Avista control area to maintain its frequency control obligations to applicable regional operating criteria.
- (d) Harmonic Control – Each Party shall design, construct, operate, maintain and use its electric facilities in accordance with the IEEE 519 standard and Good Utility Practice to reduce to acceptable levels the harmonic currents and voltages which pass into the other Party's facilities. Harmonic reductions shall be accomplished with equipment that is specifically designed and permanently operated and maintained as an integral part of the facilities of the Party that owns the system on which harmonics are generated.

7.5 Reactive Power – The Parties shall jointly plan and operate their interconnected electrical facilities pursuant to Industry Standards and Good Utility Practice in order to minimize the reactive power requirements placed upon the other Party. Pursuant to such joint planning and operation, Avista may require KEC to install necessary equipment or implement necessary operating practices on KEC's system to assure that deliveries at the Points of Delivery, pursuant to any transmission service agreement, are at a power factor no less than 0.95 leading or lagging.

- 7.6 Balancing Phase Demands – If required by Avista at any time during the term of this Agreement and pursuant to Industry Standards and Good Utility Practice, KEC shall make such changes as are necessary on its system to balance the phase currents at any Point of Delivery such that the current of any one phase not deviate by more than five (5) percent from the average of the currents on all three phases, unless otherwise agreed upon by the Parties.
- 7.7 Remedial Actions – Avista may require KEC to participate in or carry KEC's pro rata share of any remedial action scheme that may be required to support the reliability of Avista's system or the regional or sub-regional transmission systems. In such case, Avista and KEC shall jointly plan and coordinate the implementation of the required remedial action scheme pursuant to Industry Standards and Good Utility Practice.
- 7.8 Automatic Under-frequency Load Shedding Protection
- (a) Avista may require KEC to participate, up to its pro rata share, in the WECC Coordinated Off-Nominal Frequency Load Shedding and Restoration Plan or a successor program that is required to support the reliability of Avista's system or the regional or sub-regional transmission systems.
 - (b) Such pro-rata share shall be determined by the proportion of the total load of KEC's Native Load Customers to the sum of the total loads of Avista's Native Load Customers, KEC's Native Load Customers and the native load customers of other parties served directly by Avista's Transmission System. Avista and KEC shall jointly plan and coordinate the implementation of such protection pursuant to Industry Standards and Good Utility Practice, provided, however, that KEC shall have the right to specify which of its loads are to apply to meet its pro rata obligation for automatic under-frequency load shedding. If such loads are served via a Point of Delivery where KEC owns the distribution feeder protection device, KEC shall provide, install, operate and maintain the necessary relay

equipment on KEC's distribution system, at KEC's cost, pursuant to Industry Standards.

- (c) Generating Projects shall remain online during abnormal frequency conditions or KEC shall trip an equivalent amount of load at the frequency point at which each Generating Project trips, consistent with Industry Standards.

7.9 Generating Projects

- (a) All Generating Projects shall be listed in Exhibit D of this Agreement.
- (b) KEC shall plan and interconnect, and shall require that any third-party Generating Project agree by contract to plan and interconnect, such Generating Project consistent with Industry Standards and Good Utility Practice, and the Generation Interconnection Guidelines and Standards outlined in Exhibit E.
- (c) The Parties shall establish operating procedures for each Generation Project which shall include, but not be limited to, specifying system configuration and conditions under which the Generating Project may and may not operate.

7.10 Maintenance Responsibility – The owner of any equipment shall retain maintenance responsibility for such equipment, except for any required earth excavation inside a substation as provided below.

- (a) Excavation Inside an Avista Substation – Any earth excavation inside an Avista substation shall be performed by Avista or Avista's authorized agents and shall be the responsibility of Avista. To the extent that excavation is performed on behalf of KEC, for KEC's sole or joint benefit, KEC shall reimburse Avista for an appropriate share of the costs associated with such excavation.
- (b) Excavation Inside a KEC Substation – Any earth excavation inside a KEC substation shall be performed by KEC or KEC's authorized agents and shall be the responsibility of KEC. To the extent that excavation is performed on behalf of

Avista, for Avista's sole or joint benefit, Avista shall reimburse KEC for an appropriate share of the costs associated with such excavation.

7.11 Maintenance Scheduling and Continuity of Service – The Parties shall coordinate their respective equipment maintenance schedules so as to minimize any effects upon either Party due to temporary interruptions associated with such maintenance. Avista may temporarily interrupt or curtail service at the Points of Delivery:

- (a) upon reasonable notice to KEC in order to install equipment in, make repairs, replacements, investigations, and inspections of or perform other maintenance work on Avista's system; provided, however, that Avista shall give KEC prior notice thereof, the reason therefore, and the probable duration thereof; and
- (b) without prior notice of such interruption or curtailment as may be necessary because of uncontrollable forces as provided in Section 8. Avista shall use reasonable efforts to avoid interference with the operations of KEC and to repair the cause of any such interruption or curtailment. The Parties shall use reasonable efforts to provide for effective communication protocols between their respective operating personnel for the purpose of communicating any apparent cause and expected duration of any such interruption or curtailment of an extended nature.

Section 8 - Uncontrollable Forces and Liability

8.1 Uncontrollable Forces – Neither Party to this Agreement shall be considered to be in default in performance of any obligation hereunder if failure of performance shall be due to uncontrollable forces. The term "uncontrollable forces" means any cause beyond the control of the Party affected, including, but not limited to, failure or loss of facilities, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court order or public authority, which by exercise of due

foresight, such Party could not reasonably have been expected to avoid, and which by exercise of due diligence it shall be unable to overcome. A Party shall not, however, be relieved of liability for failure of performance if such failure is due to causes arising out of its own negligence or to removable or remediable causes which it fails to remove or remedy with reasonable dispatch. Nothing contained herein, however, shall be construed to require a Party to prevent or settle a strike against its will. Damage to the electrical system of either KEC or Avista caused by or arising out of an electrical disturbance shall be governed under Section 8.2 and not under the provisions of this Section 8.1.

8.2 Electric Disturbances

- (a) For the purposes of this section, an electric disturbance is any sudden, unexpected, changed, or abnormal electric condition occurring in or on an electric system that causes automatic operation or damage.
- (b) Each Party shall design, construct, operate, maintain and use its electric system in conformance with Industry Standards and Good Utility Practice:
 - (i) to minimize electric disturbances such as, but not limited to, the abnormal flow of power which may damage or interfere with the electric system of the other Party or any electric system connected with such other Party's electric system; and
 - (ii) to minimize the effect on its electric system and on its customers of electric disturbances originating on its own or another electric system.

8.3 Release and Limitation of Liability – If both KEC and Avista are parties to the Western Interconnected Systems Agreement Limiting Liability, that agreement shall continue in full force and effect as between the Parties to the extent that such provisions may apply under this Agreement. If either KEC or Avista is not a party to the Western Interconnected Systems Agreement Limiting Liability, then the following provisions shall

apply:

- (a) Release by Avista – Avista hereby releases each of KEC and the directors, employees, agents and legal representatives of KEC from any and all claims, losses, harm, liabilities, damages, costs and expenses to the extent resulting from any:
- (i) operation of KEC's electric system in parallel with Avista's electric system;
 - (ii) electric disturbance or fluctuation that migrates, directly or indirectly, from KEC's electric system to Avista's electric system;
 - (iii) interruption, suspension or reduction of delivery of power from KEC's electric system to Avista's electric system, regardless of whether such interruption, suspension or reduction is caused or contributed to by Avista's electric system or the interconnection of Avista's electric system with KEC's electric system; or
 - (iv) disconnection, interruption, suspension or curtailment, through manual operation, automatic operation or otherwise, by KEC in the event that KEC, in the exercise of its sole discretion, determines or has determined that an emergency condition exists or may exist that is contrary to Industry Standards and Good Utility Practice, and failure to do so:
 - (A) may cause imminent harm to any person or property, or
 - (B) may cause the disruption of reliable operation of KEC's or Avista's electric system (including, but not limited to, any transmission or distribution line thereof) or any electric system with which KEC is interconnected.

The foregoing release shall not be effective to the extent any claims, losses, harm, liabilities, damages, costs, and expenses are the result of the KEC's willful misconduct.

- (b) Release by KEC – KEC hereby releases each of Avista and the directors, employees, agents and legal representatives of Avista from any and all claims, losses, harm, liabilities, damages, costs and expenses to the extent resulting from any:
- (i) operation of Avista's electric system in parallel with KEC's electric system;
 - (ii) electric disturbance or fluctuation that migrates, directly or indirectly, from Avista's electric system to KEC's electric system;
 - (iii) interruption, suspension or reduction of delivery of power from Avista's electric system to KEC's electric system, regardless of whether such interruption, suspension or reduction is caused or contributed to by KEC's electric system or the interconnection of KEC's electric system with Avista's electric system; or
 - (iv) disconnection, interruption, suspension or curtailment, through manual operation, automatic operation or otherwise, by Avista in the event that Avista, in the exercise of its sole discretion, determines or has determined that an emergency condition exists or may exist that is contrary to Industry Standards and Good Utility Practice, and failure to do so:
 - (A) may cause imminent harm to any person or property, or
 - (B) may cause the disruption of reliable operation of Avista's or KEC's electric system (including, but not limited to, any transmission or distribution line thereof) or any electric system with which Avista is interconnected.

The foregoing release shall not be effective to the extent any claims, losses, harm, liabilities, damages, costs, and expenses are the result of Avista's willful misconduct.

8.4 Mutual Negotiation – KEC and Avista specifically warrant that the terms and conditions of the foregoing release 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 this Agreement.

8.5 Insurance

- (a) KEC and Avista shall obtain and maintain commercial liability insurance with a single limit of coverage of not less than \$5,000,000 for each occurrence. A certificate of such insurance shall be provided to either Party upon request by the other Party. Each Party shall promptly notify the other Party of any changes in its commercial liability insurance policies.
- (b) Upon the request by either Party, the minimum coverage limits for commercial liability insurance shall be reviewed by the Parties and adjusted according to Good Utility Practice.

Section 9 - Miscellaneous

9.1 Notices – Any notice to be served, given or made in connection with this Agreement, shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by United States mail, properly addressed and stamped with the required postage, as follows:

If to Avista: Attention: Manager, Transmission Services
Avista Corporation
1411 East Mission Avenue
Spokane, WA 99202-2600

- or -

P. O. Box 3727
Spokane, WA 99220-3727

If to KEC: Attention: General Manager
Kootenai Electric Cooperative, Inc.
2451 West Dakota Avenue
Hayden, ID 83835

- or -
P. O. Box 278
Hayden, ID 83835-0278

Either Party may change its address specified in this section by giving the other Party notice of such change in accordance with this section.

- 9.2 Notices of an Operating Nature – Any notice associated with day-to-day electric utility operations, such as for outage coordination or the need to enter a jointly-owned substation, may be provided by telephone, electronic mail or facsimile between appropriate operations personnel representing both Parties.
- 9.3 Amendment – No change, modification or amendment of this Agreement shall be valid unless set forth in a written instrument signed by both Parties.
- 9.4 Assignment – Neither Party shall assign this Agreement without the prior written consent of the other Party. Subject to the foregoing restriction on assignment, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties and their successive successors and assigns; provided, however, that each Party hereby consents to assignment of this Agreement to a successor where a Party sells or transfers all or substantially all of its electric utility operating plant to a third party.
- 9.5 No Third-Party Beneficiary – There are no third-party beneficiaries of this Agreement. This Agreement shall not confer any right or remedy upon any person or entity other than the Parties and their respective successors and assigns permitted under Section 9.4. No action may be commenced or prosecuted against any Party by any third party claiming to be a third-party beneficiary of this Agreement or the transactions contemplated hereby. This Agreement shall not release or discharge any obligation or liability of any third party to any party or give any third party any right of subrogation or action over or against any Party.

9.6 Implementation – Avista shall timely file this Agreement with the Commission. Each Party shall take such additional action as may be reasonably required for the implementation and performance of this Agreement in accordance with its terms.

9.7 Arbitration – Whenever Avista and KEC are both members of a Regional Transmission Association, Regional Transmission Organization, or Independent Transmission Provider, the determination of any disputed matter between the Parties arising out of or relating to this Agreement, except an obligation arising out of Section 8.3, shall be resolved in a manner provided in the dispute resolution procedures contained in the governing agreement for that organization. The determination of any other disputed matter between the Parties arising out of or relating to this Agreement, except an obligation arising out of Section 8.3, shall be subject to binding arbitration in accordance with subsections 9.7(a), 9.7(b) and 9.7(c) below.

(a) Initiation and Selection of Arbitrators - The Party calling for arbitration shall serve notice in writing upon the other Party, setting forth in detail the question or questions to be arbitrated, the relief sought, and the arbitrator appointed by such Party. The other Party shall, within twenty-five (25) business days after the receipt of such notice, appoint the second arbitrator by notice in writing to the Party calling for arbitration, and the two so appointed shall choose and appoint a third (if the Parties have not agreed upon and appointed a third). If such other Party fails to appoint the second arbitrator within said twenty-five (25) business days, or if a third arbitrator has not been appointed by agreement between the Parties within twenty-five (25) business days after receipt of notice of appointment of the second arbitrator (or, in the absence of such agreement, by the two arbitrators who have been appointed), either Party, upon five (5) business days' written notice delivered to the other Party, may apply to the Federal District Court for the District of Idaho for appointment of the second or

third arbitrator, as the case may be. Neither Party may discuss any matter to be arbitrated with any arbitrator after such arbitrator is appointed but prior to the arbitrators' determination, without providing notice to the other Party and reasonable opportunity to participate. The Parties intend that every arbitrator be an unbiased person with experience in the subject matter to be arbitrated.

(b) Procedure – The rules of procedure for the conduct of the arbitration shall be determined by a majority of the arbitrators. Such rules of procedure shall direct the expeditious evaluation of the merits of the matter and rendering of decision consistent with the complexity of the matter being arbitrated. In any such arbitration, each Party thereto shall have:

- (i) full access to the records of the other Party that pertain to the subject matter or the controversy;
- (ii) the power to call for testimony of any director, officer, employee, agent, or representative of the other Party having knowledge relevant to the controversy, and
- (iii) all other rights of discovery afforded to Parties in civil actions under the then applicable Federal Rules of Civil Procedure (or rules or laws applicable to the Federal District Court for the District of Idaho).

Disputes regarding the extent of discovery shall be resolved by the arbitrators. Unless otherwise agreed upon by the Parties, the Parties hereby instruct the arbitrators that they should render a determination of the matters submitted and the relief awarded within thirty (30) calendar days of the completion of the arbitration proceeding. In determining matters submitted for arbitration, no arbitrator shall be required to adhere to or advance the position of any particular Party. The determination of the matters submitted for arbitration shall be made by a majority of the arbitrators, and shall be binding as between the Parties. The

determination shall be writing and shall affirm or deny each contention of the Parties and shall set forth the reasons therefore. The determination of the arbitrators shall be final and binding and shall be enforceable by a court of competent jurisdiction at the request of either Party.

- (c) Costs – Each Party shall pay for the services and expenses of the arbitrator appointed by or for it, and for all of its own costs including its own attorney fees, and compensation for its witnesses and consultants. The costs for the services and expenses of the third arbitrator and all administrative costs of the arbitration shall be paid equally by the Parties.

Section 10 - Default

In the event that either KEC or Avista commits a material breach of or default under this Agreement (the "Defaulting Party"), the following shall apply:

- (a) The other Party (the "Non-Defaulting Party") may give written notice to the Defaulting Party of the material breach or default.
- (b) If after thirty (30) days following receipt of such notice, the Defaulting Party has not taken the steps necessary to cure such breach or default, the Non-Defaulting Party may, at its option, terminate this Agreement; provided, however, that if the Defaulting Party within such 30-day period commences and thereafter proceeds with all due diligence to cure such default, such 30-day period shall be extended up to six (6) months after written notice to the Defaulting Party, as may be necessary to cure the material breach or default with all due diligence. 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.
- (c) The Non-Defaulting Party may, at its option, cure (or cause to be cured) any material breach or default hereunder within the appropriate time period, without waiver of any

remedy at law or in equity including the right of reimbursement. The right of the Non-Defaulting Party to cure any breach or default by the Defaulting Party shall not be construed or interpreted as obligating such Non-Defaulting Party to make any such cure.

- (d) A Defaulting Party shall be liable to the Party claiming default for all costs, including costs of collection and reasonable attorney fees incurred by such Party claiming default. The proceeds paid by any Defaulting Party to remedy any such default shall be distributed to the Party claiming default equal to the additional cost actually paid by the Party claiming default as a result of the default.

Section 11 - Waiver

A waiver at anytime by a Party of its rights with respect to a default by another Party under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default or matter. No delay, short of the statutory period of limitations, in asserting or enforcing any right hereunder shall be deemed a waiver of such right.

Section 12 - Relationship of Parties

- 12.1 Nothing contained herein shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to any one or more of the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement.
- 12.2 All rights of the Parties are several, not joint. No Party shall be under the control or shall be deemed to control another Party. Except as expressly provided in this Agreement, no Party shall have a right or power to bind another Party without its express written consent.

Section 13 - No Dedication of Facilities

Any undertaking by one Party to another Party under any provision of this Agreement shall not constitute the dedication of the electric system or any portion thereof of the undertaking Party to the public or to the other Party, and it is understood and agreed that any such undertaking under any provision of this Agreement by a Party shall cease upon the termination of such Party's obligations under this Agreement.

Section 14 - Governing Law

This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Idaho or the law of the United States of America, whichever is applicable, as if executed and to be performed wholly within the State of Idaho.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names by their duly authorized representatives as of the date first noted above.

AVISTA CORPORATION

By: JA Schlect

Jeff Schlect

Manager, Transmission Services

Signed this 14th day of October, 2011.

KOOTENAI ELECTRIC COOPERATIVE, INC.

By: Douglas A. Elliott

Douglas A. Elliott

General Manager

Signed this 15th day of November, 2011.

**EXHIBIT A
POINTS OF DELIVERY**

1) Athol Point of Delivery

Location: The point near Spirit Lake, Idaho, where Avista's Pine Street-Rathdrum 115 kV Transmission Line and KEC's Athol 115 kV Tap Transmission Line are connected

Voltage: 115 kV

Metering: In KEC's Athol Substation, in the distribution circuit(s) over which electric power and energy flows

2) Coeur d'Alene 15th Street Point of Delivery

Location: The point in Avista's Coeur d'Alene 15th Street Substation where the 13.8 kV facilities of Avista and KEC are connected

Voltage: 13.8 kV

Metering: In Avista's 15th Street Substation, in the 13.8 kV circuit over which electric power and energy flows

3) Dower Point of Delivery

Location: The point where Avista's Dower-Post Falls 115 kV Tap Transmission Line and KEC's Dower-Post Falls 115 kV Tap Transmission Line are connected

Voltage: 115 kV

Metering: In KEC's Dower Substation, in the distribution circuit(s) over which electric power and energy flows

4) Hayden Point of Delivery

Location: The point where Avista's Coeur d'Alene-Ramsey 115 kV Transmission Line and KEC's Hayden 115 kV Tap are connected

Voltage: 115 kV

Metering: In KEC's Hayden Substation, in the distribution circuit(s) over which electric power and energy flows

5) **Julia Street Point of Delivery**

Location: The point where Avista's Appleway-Ramsey 115 kV Transmission Line and KEC's Julia Street 115 kV Tap are connected

Voltage: 115 kV

Metering: In KEC's Julia Street Substation, in the distribution circuit(s) over which electric power and energy flows

6) **O'Gara Point of Delivery**

Location: The point in Avista's O'Gara Substation where the 13.8 kV facilities of Avista and KEC are connected

Voltage: 13.8 kV

Metering: On KEC's distribution pole adjacent to Avista's O'Gara Substation in the 13.8 kV circuit over which electric power and energy flows

7) **Pleasant View Point of Delivery**

Location: The point in Avista's Pleasant View Substation where the 13.8 kV facilities of Avista and KEC are connected

Voltage: 13.8 kV

Metering: In Avista's Pleasant View Substation, in the 13.8 kV circuit over which electric power and energy flows

8) **Plummer Point of Delivery**

Location: The point in Avista's Plummer Substation where the 13.8 kV facilities of Avista and KEC are connected

Voltage: 13.8 kV

Metering: In Avista's Plummer Substation, in the 13.8 kV circuit over which electric power and energy flows

9) **Prairie Point of Delivery**

Location: The point in the jointly-owned Prairie Substation, at the supply side of KEC's 115 kV circuit switcher, where the 115 kV facilities of Avista and KEC are connected

Voltage: 115 kV

Metering: In KEC's portion of the jointly-owned Prairie Substation, in the distribution circuit(s) over which electric power and energy flows

10) **Rathdrum Point of Delivery**

Location: The point in Avista's Rathdrum Substation where the 13.8 kV facilities of Avista and KEC are connected

Voltage: 13.8 kV

Metering: In Avista's Rathdrum Substation, in the 13.8 kV circuit over which electric power and energy flows

11) **Scarcello Point of Delivery**

Location: The point where Avista's Pine Street-Rathdrum 115 kV Transmission Line is connected to KEC's Scarcello Substation 115 kV Tap

Voltage: 115 kV

Metering: In KEC's Scarcello Substation, in the distribution circuit(s) over which electric power and energy flows

12) **Setters Point of Delivery**

Location: The point where Avista's Rockford Tap 115 kV Transmission Line is connected to KEC's Setters Substation 115 kV Tap

Voltage: 115 kV

Metering: In KEC's Setters Substation, in the distribution circuit(s) over which electric power and energy flows

**EXHIBIT B
METER READING AND METER TEST PROCEDURES**

B1. Meter Readings

Meter readings associated with the delivery of electric power to the Point(s) of Delivery and for Generating Project(s) shall be the responsibility of the Party owning such meters. In the event such meters are owned by Bonneville pursuant to the Power and Transmission Agreements, KEC shall request that Bonneville provide such meter reading information directly to Avista. Alternatively, KEC shall, upon request by Avista, provide to Avista any such meter reading information made available to KEC by Bonneville. Electric power deliveries in any month shall be calculated on information based on meter readings, with any necessary date adjustments made by pro-rating metered amounts to the number of days in such month. In the event a recording metering device is installed, actual monthly energy deliveries shall be determined from the record developed.

B2. Meter Testing

Unless provided by Bonneville pursuant to its agreements with KEC, Avista and/or KEC shall own and maintain all meters used to determine any billing associated with the delivery of electric power to the Point(s) of Delivery and Generating Project(s).

Avista meters shall be tested and inspected in accordance with Avista's meter testing program ("Avista Program") as filed with the Washington Utilities and Transportation Commission and/or the Idaho Public Utilities Commission. If requested by KEC, Avista shall provide copies of applicable test and calibration records and calculations. Avista shall permit representatives of KEC, and/or Bonneville to be present at all times the meters are being tested. Additionally, Avista shall test any or all such meters as may reasonably be requested by KEC. Reasonable costs for such requested test shall be paid by KEC unless any of the meters are found to be inaccurate, as defined in the Avista Program, in which case Avista shall pay for the test.

KEC's meters shall be tested and inspected in accordance with the KEC meter testing program ("KEC Program"). If requested by Avista, KEC shall provide copies of applicable test and calibration records and calculations. KEC shall permit a representative of Avista to be present at all times the meters are being tested. Additionally, KEC shall test any or all such meters as may reasonably be requested by Avista. Reasonable costs for such requested test shall be paid by Avista unless any of the meters are found to be inaccurate, as defined in the KEC Program, in which case KEC shall pay for the test.

For meters owned by Bonneville, Avista and KEC consent to the testing and inspection of such meters in accordance with Bonneville's applicable meter testing program ("Bonneville Program"). If requested by Avista, KEC shall provide copies of applicable test and calibration records and calculations made available to KEC by Bonneville. KEC shall permit a representative of Avista to be present at all times such meters are being tested. Additionally, KEC shall request a test of any or all such meters as may reasonably be requested by Avista. Reasonable costs for such requested test shall be

paid by Avista unless any of the meters are found to be inaccurate, as defined in the Bonneville Program, in which case Avista shall not be required to pay for the test.

B3. Adjustments

Adjustments shall be made in meter readings and billings for errors in a meter reading or billing discovered within twelve (12) months of the error. Each Party shall permit representatives of the other Party to inspect all of the records, including any records made available by Bonneville to KEC or Avista, relating to the delivery of electric power to KEC, and the transmission of electric power by Avista to the Points of Delivery.

**EXHIBIT C
SUBSTATION CONSTRUCTION AND OWNERSHIP GUIDELINES**

FOR SUBSTATIONS OWNED BY AVISTA (Points of Delivery under 69kV):

1. Avista shall be responsible to provide reclosers or other protection apparatus to protect Avista's power transformers.
2. Avista shall provide all equipment and materials (including voltage regulator by-pass switches) to construct a feeder position, except as noted below. This will ensure compatibility with spare parts for installed equipment.
3. Voltage regulators shall be provided by KEC, but shall be installed by Avista.
 - (a) Regulators are classified as a failure mode change-out item and as such are not regularly maintained by Avista. KEC shall maintain its regulators at its discretion.
 - (b) KEC's regulator settings shall be calculated and set by KEC.
 - (c) Regulators provided by KEC shall be complete with connectors for the appropriate conductor, as specified by Avista.
4. Insulation coordinated surge arresters shall be provided by KEC to protect its voltage regulators or underground cables.
5. Metering CTs shall be supplied by Avista.
6. Metering PTs shall be supplied by Avista and may be shared with KEC.
7. KEC shall provide the hardware and conductor to connect to the source at the Point(s) of Delivery, including, but not limited to, the following:
 - (a) Hardware for overhead line pull-offs/getaways (Avista will provide eye bolts on distribution structures).
 - (b) Potheads and brackets for underground take-offs/getaways.
8. Underground conduits and vaults adjacent to a substation shall be provided or approved by Avista.

FOR SUBSTATIONS OWNED BY KEC (Points of Delivery at 69kV or above):

For the purpose of enabling Avista to monitor the loads on its transmission system in real time, KEC shall provide either of the following to Avista:

1. Megawatt and megavar indications for total substation load from KEC's supervisory control and data acquisition (SCADA) system, if existing, in a format agreed upon by the Parties,

or
2. The following:
 - (a) Metering CTs,
 - (b) Metering PTs,
 - (c) Space in KEC's substation control house for an Avista remote terminal unit or such other equipment that performs a comparable function ("Avista Equipment"), to be supplied by Avista,
 - (d) Voltage and current indications from KEC's CTs and PTs to the Avista Equipment, and
 - (e) Space for any conduit needed by Avista for its communications out of the substation.

**EXHIBIT D
GENERATING PROJECTS**

1) **Fighting Creek Landfill Generating Project**

Location: Connected to KEC's Dower Substation distribution facilities near the Fighting Creek Landfill

Generator Rating: Total rated output of 3.2 MVA

Metering: In KEC's Fighting Creek Landfill Generating Project, in the 24.9 kV circuit over which electric power and energy flows

EXHIBIT E GENERATION INTERCONNECTION GUIDELINES AND STANDARDS

These Generator Interconnection Guidelines and Standards shall apply, as appropriate pursuant to Industry Standards and Good Utility Practice, to generating projects connected to Avista's electric system and to Generating Projects defined pursuant to Section 1.4 of this Agreement.

1. INTERCONNECTION REQUIREMENTS

- 1.1. All Generating Projects shall be constructed and operated in accordance with Industry Standards and Good Utility Practice.
- 1.2. A Generating Project shall not cause any reduction in the quality of service being provided to other Avista projects or customers. The Generating Project shall not cause abnormal voltage magnitudes, frequencies, excessive interruptions, or excessive harmonics. This shall include not injecting communications signals associated with operation of the Generating Project into Avista's electric system.
- 1.3. When the Generating Project is connected to Avista's electric system the Generating Project shall follow Avista's local system frequency which is a nominal 60 hertz.
- 1.4. Any voltage flicker caused from the operation of the Generating Project shall not exceed the limits defined by the latest revision of IEEE 519 or IEEE 1547, whichever is applicable.
- 1.5. For salient pole generators with a capacity of 5,000 kVA or larger or for any size cylindrical rotor synchronous generator, the harmonics shall not exceed the limits as outlined for telephone influence factor (TIF) in the latest revision of ANSI standards C50.12, C50.13, or C50.14, whichever is applicable. For all generators, voltage distortion limits and current harmonic limits shall be as specified in the latest revision of IEEE 519 or IEEE 1547, whichever is applicable.
- 1.6. When the Generating Project is operating in parallel with the Avista electric system, the Generating Project shall operate at a power factor within the range of 0.95 leading to 0.95 lagging.
- 1.7. Each Party and the Generating Project shall be responsible for protection of its facilities from any system voltage or frequency excursions consistent with Industry Standards and Good Utility Practice.

2. EQUIPMENT REQUIREMENTS

- 2.1. KEC or the Generating Project shall supply, install, own, operate and maintain all equipment at the Generating Project as appropriate and pursuant to applicable electric codes, Industry Standards and Good Utility Practice.
- 2.2. The Generating Project shall maintain its equipment in good working order and keep adequate maintenance records. The Generating Project and maintenance records shall be subject to inspection by Avista. Avista may also witness or review any acceptance tests of Generating Project.

3. PROTECTION REQUIREMENTS

- 3.1. KEC or Generating Project shall furnish, install, operate, and maintain in good order and repair, and without cost to Avista such relays, instrument transformers, breakers, automatic synchronizers, and other control and protection apparatus as shown by Avista to be reasonably necessary for the operation of the Generating Project in parallel with Avista's system. The minimum protection requirements for the Generating Project may change based on system configuration or other special circumstances. At a minimum the protection requirements, based on the size of the Generating Project, shall be as follows.
- a. Small generator connected to a distribution feeder (rated output less than 25 kVA): The Generating Project must provide adequate protection to protect its own facility for faults at the facility or on either Party's electric system. KEC or the Generating Project shall provide an appropriate disconnect switch available to Avista.
 - b. Medium generator connected to a distribution feeder (rated output less than one quarter of the distribution feeder load): The Generating Project must meet all requirements of a small generator, plus the Generating Project relaying shall include over/under voltage and over/under frequency (islanding detection) and synchronism check.
 - c. Large generator connected to a distribution feeder (rated output greater than or equal to 3 MVA or one quarter of the distribution feeder load): The Generating Project must meet all requirements of a medium generator, plus phase and ground overcurrent relays to detect and clear for faults on the Avista system.
 - d. Generator connected to a transmission line: The Generating Project must provide a level of protection equivalent to the most current standard of similar terminals on the Avista system. Necessary upgrades to Avista's remote line terminal relaying to interface with the Generating Project will be at the expense of KEC unless provided for in another agreement.
- 3.2. The Generating Project's protection system shall coordinate with Avista's protection system without adverse affect to the Avista system or its customers. The Generating Project shall provide Avista with all proposed relay design and settings for the protection system related to the Generating Project. Avista shall approve the Generating Project's protection system prior to the Generating Project being operated in parallel with the Avista system.
- 3.3. If parallel operation of the Generating Project to Avista's electric system requires upgrades to Avista's protection system, the upgrades shall be at the expense of KEC unless provided for in another agreement, including, but not limited to, upgrades to Avista's reclosing relaying.
- 3.4. The Generating Project's protection system must be operated, tested, and maintained in accordance with Industry Standards and Good Utility Practice and shall be at the expense of KEC unless provided for in another agreement.

- 3.5. Each relay responsible for disconnecting the Generating Project from the local power system shall be connected to an appropriately installed GPS time source, with accuracy better than 8 ms or some type of Sequence of Events recorder shall be made available. Avista may request and KEC or the Generating Project shall provide event reports at the Generating Project.
- 3.6. The Generating Project shall provide adequate means or devices that will prevent the Generating Project from being closed into or energizing a de-energized Avista System or de-energized phase of the Avista system.
- 3.7. The Generating Project may be manually or automatically started and operated in parallel to Avista's electric system any time Avista's electric system is in a normal operating condition. A "normal" operating condition exists when Avista's electric system through which the Generating Project will be operated in parallel is energized and no local conditions exist on Avista's electric system such as abnormal voltages, frequencies, single phasing, etc. that would prevent acceptable synchronization.

4. COMMUNICATIONS

- 4.1. The Generating Project shall maintain satisfactory operating communications with Avista's dispatcher or representative designated by Avista. The Generating Project shall provide standard voice line, dedicated voice line and facsimile communications at its Generating Project control room or central dispatch facility through use of either the public telephone system or a voice communications system that does not rely on the public telephone system.
- 4.2. For generation that will require telemetering, prior to the initial synchronization of the Generating Project, a remote terminal unit, or equivalent data collection and transfer equipment acceptable to the Parties, shall be installed by KEC or the Generating Project, or by Avista at KEC's expense unless provided for in another agreement, to gather accumulated and instantaneous data to be telemetered to the location(s) designated by Avista through use of a dedicated point-to-point data circuit(s) or other equivalent communication medium acceptable to the Parties as indicated in section 4.4 below. The communication protocol for the data circuit(s) shall be specified by Avista. Instantaneous bi-directional analog real power and reactive power flow information must be telemetered directly to the location(s) specified by Avista.
- 4.3. For generation that will require telemetering, KEC or the Generating Project shall provide the dedicated data circuit(s) or other equivalent communication medium acceptable to the Parties necessary to provide the Generating Project's data to Avista. The data circuit(s) shall extend from the Generating Project to the location(s) specified by Avista. Any required maintenance of such communications equipment shall be the responsibility of KEC unless provided for in another agreement. Operational communications shall be activated and maintained under, but not be limited to, the following events: system paralleling or separation, scheduled and unscheduled shutdowns, equipment clearances, and hourly and daily load data.
- 4.4. Unless provided for in another agreement, KEC shall have Avista listed on record with any third-party communication provider so that Avista has the ability to call in trouble tickets. Each Party shall promptly advise the other Party if it detects or otherwise learns of any metering, telemetry or communications equipment errors or malfunctions

that require the attention and/or correction by the other Party. The Party owning such equipment shall correct such error or malfunction as soon as reasonably feasible unless provided for in another agreement.

5. MISCELLANEOUS REQUIREMENTS

- 5.1. Avista reserves the right to open the main disconnecting device and/or cease parallel generation with reasonable notice provided to KEC or the Generating Project (when notice is practicable) for any of the following reasons:
 - a. System emergency.
 - b. Generating Project's generating equipment interferes with other projects or the operation of the Avista system.
 - c. Any quality of service reduction.
- 5.2. Unless provided for in another agreement, KEC shall supply Avista with the following data and machine parameters for each Generating Project as needed:
 - a. Rated kVA output.
 - b. Rated voltage.
 - c. Rated power factor.
 - d. Type of generator (induction motor, DC motor, synchronous generator, etc.).
 - e. Proposed protective equipment (breakers, fuses, instrument transformers, relay types and settings, etc.).
 - f. Generator's contribution to faults (saturation, subtransient, transient and synchronous resistances and reactances and the associated time constraints, sequence impedance (positive, negative, zero), system resistance and reactance from Avista system to the Generating Project).
 - g. Inertia constants.
 - h. Estimated schedule of operation and estimated annual kWh.
 - i. Governor and exciter control system parameters.
- 5.3. Unless provided for in another agreement, KEC shall supply Avista with the following generator transformer nameplate data for the Generating Project:
 - a. Rated kVA, including base and any forced oil / forced air ratings.
 - b. Voltage rating, available tap settings, and proposed tap setting.
 - c. Test Impedance, including X/R ratio or measured load loss Watts.
- 5.4. KEC shall require the installation and operation of a power system stabilizer at the Generating Project if required pursuant to Industry Standards.

Exhibit G

Facilities for Integration and Operation of Fighting Creek Facility

Transmission Services
Avista Corporation
1411 E Mission Avenue
Spokane, WA 99202



December 5, 2011

Mr. Doug Elliott
General Manager
Kootenai Electric Cooperative
P.O. Box 278
Hayden, Idaho 83835-0278

SUBJECT: Facilities for Integration and Operation of Fighting Creek Facility

Dear Mr. Elliott:

This Letter Agreement ("Agreement") sets forth the scope of work and responsibilities of Avista Corporation ("Avista") and Kootenai Electric Cooperative, Inc. ("KEC"), hereinafter sometimes referred to collectively as "Parties" and individually as "Party," regarding the construction and installation of the Parties' respective facilities for the integration and operation of KEC's new 3.2 MW Fighting Creek Landfill Gas to Energy Facility ("Facility") at the Kootenai County Solid Waste Facility near Bellgrove, Idaho.

I. PROJECT COORDINATION AND SCHEDULE

KEC and Avista shall coordinate all requirements for this project and consult with one another regarding the duties listed under this Agreement. The Parties intend to complete construction and enable operation of the Facility by December 30, 2011. While neither Party makes any express commitment to meet such date to energize the facilities outlined within, the Parties shall make good faith efforts to complete this project within the time frame identified.

II. EFFECTIVE DATE

This Agreement shall be effective upon the date this Agreement is executed by both Parties. This Agreement shall terminate upon receipt by Avista of all invoiced amounts pursuant to Section V.

III. AVISTA'S RESPONSIBILITIES AT KEC'S EXPENSE

Avista shall provide, at KEC's expense, a relay to provide synch check functionality and add equipment to provide dial-up access to the new relay on Avista's Post Falls A-320 circuit breaker.

Avista shall provide, at KEC's expense, material and labor to program, check-out, and test the metering and data acquisition equipment provided by KEC at the Facility.

Avista shall, at KEC's expense, provide materials and labor to program the Cybectec SMP-4, test and check-out all metering and SCADA equipment provided by KEC, and terminate the 4-wire communication circuit provided by KEC at Avista's Coeur d'Alene Service Center.

Avista shall, at KEC's expense, provide labor to revise relay settings on Avista's Post Falls A-211 circuit breaker on the Post Falls – Ramsey 115 kV line to provide an alternate point of receipt.

IV. KEC'S RESPONSIBILITIES AT KEC'S EXPENSE

KEC shall, at KEC's expense, acquire rights of way and permitting for, construct and own the new Facility. This construction shall include metering CTs, metering PTs, space in Seller's Facility control house for Avista metering equipment, voltage and current indications from KEC's CTs and PTs to the Avista metering equipment, 4-wire communication circuit, 2-wire communication circuit, appropriate isolation protection for communication circuits, and a 48 VDC circuit for power supply.

KEC shall, at KEC's expense, provide and install a Jemstar revenue grade meter, test switch, Cybectec SMP-4, and other data acquisition equipment as approved by Avista which shall be owned, operated, and maintained by Avista.

KEC shall, at KEC's expense, provide labor for the commissioning of this equipment and the termination of the 4-wire circuit.

V. FINANCIAL TERMS AND CONDITIONS

The estimated cost of the work to be performed by Avista at KEC's expense, as identified in Section III, is \$65,000, including applicable overheads and taxes. Upon completion of all work performed by Avista, Avista shall invoice KEC for the actual costs Avista incurred to complete such work, including applicable overheads and taxes.

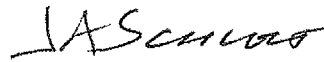
Invoices from Avista shall reference this Agreement and shall be sent to the following address:

Kootenai Electric Cooperative
Attention: Shawn Dolan
Kootenai Electric Cooperative
P.O. Box 278
Hayden, Idaho 83835-0278

Remittances from KEC shall be within the timeframe specified in the invoice and shall be sent to the address named in the invoice.

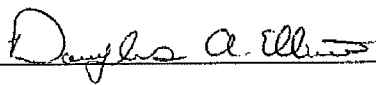
Please indicate KEC's concurrence by executing the two originals of this Agreement where indicated below. Please retain one original for your files and return one original to Avista at the address listed above. Should you have any questions regarding this Agreement, please do not hesitate to contact me at (509) 495-4851.

Respectfully,



Jeff Schlect
Senior Manager, Transmission Services

KOOTENAI ELECTRIC COOPERATIVE, INC.

Concur: 
Name: Doug Elliot
Title: General Manager
Date: December 8, 2011

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1742

Surprise Valley Electrification Corp.,)
Complainant,)
)
v.)
)
PacifiCorp, dba Pacific Power,)
Defendant.)
)
_____)

EXHIBIT SVEC/503

**DRAFT POWER PURCHASE AGREEMENT BETWEEN KOOTENAI
ELECTRIC COOPERATIVE INC. AND AVISTA CORPORATION**

March 15, 2016

POWER PURCHASE AGREEMENT
BETWEEN
KOOTENAI ELECTRIC COOPERATIVE, INC.
AND
AVISTA CORPORATION

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POWER PURCHASE AGREEMENT

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

RECITALS

WHEREAS, Seller will design, construct, own, operate and maintain a 3.2 MW nameplate capacity (“Expected Capacity”) electric power generating facility (“Facility”) at the Kootenai County Solid Waste Facility near Bellgrove, Idaho, as more fully described in Exhibit C; and

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

WHEREAS, Seller will deliver and sell, and Avista will purchase, electric energy generated from the Facility subject to the terms of this Agreement; and

WHEREAS, Seller and Avista are parties to the Interconnection and Operating Agreement dated November 29, 2005 (Avista Contract No. AV-TR05-0205) (“Interconnection and Operating Agreement”).

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

1. DEFINITIONS

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

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

1.2 “Alternate Point of Delivery” shall have the meaning provided in Section 11.3 of this Agreement and is further clarified in Exhibit C of this Agreement.

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

1.4 “Avoided Cost Rates” shall have the meaning provided in Section 7.3 of this Agreement.

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

1.6 “**Balancing Authority Area**” means an electrical system or systems bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other Balancing Authority Areas and contributing to frequency regulation of the interconnection. A Balancing Authority Area must be certified by the applicable reliability council (such as WECC or other reliability council).

1.7 “**Base Energy**” means monthly Net Output that is greater than or equal to 90 percent and less than or equal to 110 percent of the Monthly Net Output Estimate.

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

1.9 “**Commercial Operation**” means that at least one of the two generators that comprise the Facility is fully operational and reliable, is a Qualified Facility and Seller has fulfilled all of the conditions required by Section 4.2 of the Agreement.

1.10 “**Commercial Operation Date**” means the day following the date that the Facility first achieves Commercial Operation.

1.11 “**Commission**” means the Idaho Public Utilities Commission, or its successor.

1.12 “**Declared Suspension of Net Output**” shall have the meaning provided in Section 10.3.1 of this Agreement.

1.13 “**Delay Liquidated Damages**” means the damages payable to Avista due to Seller’s failure to achieve Commercial Operation by the Scheduled Operation Date as set out in Section 4 of this Agreement.

1.14 “**Delay Period**” means all hours within a given calendar month for all months and partial months past the Scheduled Operation Date until Seller’s Facility achieves Commercial Operation.

1.15 “**Delay Price**” means the positive difference, if any, of the Market Energy Price minus the Avoided Cost Rate applicable for the Delay Period. If this calculation results in a value less than 0, the result of this calculation will be 0.

1.16 “**Effective Date**” shall have the meaning provided in Section 4.1 of this Agreement.

1.17 “**Environmental Attributes**” means any and all certificates, credits, benefits, emissions reductions, environmental air quality credits and emissions reduction credits, offsets and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas,

chemical, or other substance attributable to the Facility or the generation of energy by the Facility, and the delivery of such energy to the electricity grid, and include without limitation, any of the same arising out of any current or future legislation or regulation concerned with oxides of nitrogen, sulfur, or carbon, with particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change (“UNFCCC”) or the Kyoto Protocol to the UNFCCC or crediting “early action” with a view thereto, or laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or successor administrator (collectively with any state or federal entity given jurisdiction over a program involving transferability of Environmental Attributes, the “CAMD”), but specifically excluding federal and state tax credits, benefits, cash grants or other financial incentives, 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 (1) MWh of energy. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility.

1.18 “**Excess Energy**” shall have the meaning provided in Section 7.6 of this Agreement.

1.19 “**Expected Capacity**” shall have the meaning provided in the recitals of this Agreement.

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

1.21 “**Facility Output**” means the capability and electric energy generated by the Facility expressed in kilowatt-hours.

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

1.23 “**Force Majeure**” shall have the meaning provided in Section 12 of this Agreement.

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

1.25 “**Independent Engineering Certification**” means certifications detailed in Section 3.4 provided by a professional engineer registered in the state in which the Facility is located and who has no direct or indirect, legal, or equitable ownership interest in the Facility.

1.26 “**Initial Capacity Determination**” shall have the meaning provided in Section 3.5 of this Agreement.

1.27 “Initial Year Monthly Net Output Estimates” shall have the meaning provided in Section 5.1 of this Agreement.

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

1.29 “Letter of Credit Default” means any of the following with respect to a Letter of Credit:

- (a) the issuer of the Letter of Credit fails to meet the standards for a Letter of Credit contained in the Agreement definition of Letter of Credit;
- (b) the issuer of the Letter of Credit fails to comply with or perform its obligations under the Letter of Credit;
- (c) the issuer of the Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of the Letter of Credit;
- (d) the issuer of the Letter of Credit fails to honor a properly documented request to draw on the Letter of Credit; or
- (e) the issuer of the Letter of Credit becomes bankrupt.

1.30 “Losses” means the loss of electrical energy expressed in kilowatt hours (kWh), including the Meter Location Adjustment Factor (“MLAF”) as described in section 7.2, occurring as a result of the transformation and transmission of energy between the point of interconnection on Seller’s system and the Point of Delivery.

1.31 “MW” means megawatt. One thousand kilowatts equals one megawatt.

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

1.33 “Market Energy Price” means the monthly weighted average, based on daily on- and off-peak Net Output, of the Intercontinental Exchange daily On- and Off-Peak Firm Index prices for energy at the Mid-Columbia hub, or its successor, or as agreed by the Parties if no successor exists .

1.34 “Monthly Net Output Estimate” means, as applicable, the Initial Year Monthly Net Output Estimates provided pursuant to Section 5.1 or the subsequent Monthly Net Output Estimates provided pursuant to Section 5.2.

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

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

1.37 “**Net Output**” means the capability and electric energy generated by the Facility, less Facility Service Power and Losses, that is delivered to the Point of Delivery, or at the Alternate Point of Delivery if applicable under Section 11.3, expressed in kilowatt-hours. Net Output is further described in Section 7.2.

1.38 “**Off-Peak**” means all hours other than On-Peak hours.

1.39 “**On-Peak**” means the hours ending 0700 through 2200 Pacific Prevailing time, Monday through Sunday, including national holidays.

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

1.41 “**Point of Delivery**” means the location, as specified in Exhibit C of this Agreement, where the electric energy produced by the Facility is delivered to Avista’s electrical system.

1.42 “**Prudent Utility Practices**” means the practices, methods, and acts commonly and ordinarily used in electrical engineering and operations by a significant portion of the electric power generation and transmission industry, in the exercise of reasonable judgment in the light of the facts known or that should have been known at the time a decision was made, that would have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy, and expedition.

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

1.44 “**Qualified Institution**” shall mean a United States commercial bank, or if a foreign bank, having a domestic branch in the United States that can issue Letters of Credit; and such issuing bank shall have a Credit Rating on its long-term senior unsecured debt of at least “A-“ by S& P and “A3” by Moody’s.

1.45 “**Scheduled Operation Date**” means the date specified in Section 3.1 when Seller anticipates achieving the Commercial Operation.

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

1.47 “**Shortfall Energy**” shall have the meaning provided in section 7.5 of this Agreement.

1.48 “**Shortfall Energy Price**” shall mean the price Avista will pay Seller for Shortfall Energy as provided in section 7.5 of this Agreement.

1.49 “**Start-Up Testing**” means the start-up tests required by the manufacturer that proves that generators of the Facility are reliably producing electric energy.

1.50 “**Surplus Energy**” means Net Output during any month which exceeds 110 percent of the Monthly Net Output Estimate for the corresponding month up to 10 aMW.

1.51 “**Surplus Energy Price**” shall have the meaning provided in section 7.4 of this Agreement.

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

1.53 “**Test Energy**” is Net Output produced by the Facility before the Commercial Operation Date.

1.54 “**Transmitting Entity**” means any entity or entities that provide transmission and/or interconnection service to deliver electric energy from the Facility to Avista’s electrical system at the Point of Delivery or at the Alternate Point of Delivery if applicable under Section 11.3. For purposes of this Agreement, Seller is the Transmitting Entity.

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

2. **WARRANTIES**

2.1 **No Warranty by Avista.** Avista makes no warranties, expressed or implied, regarding any aspect of Seller’s design, specifications, equipment or facilities, including, but not limited to, safety, durability, reliability, strength, capacity, adequacy or economic feasibility, and any review, acceptance or failure to review Seller’s design, specifications, equipment or Facility shall not be an endorsement or a confirmation by Avista. Avista assumes no responsibility or obligation with regard to any NERC and/or WECC reliability standard associated with the Facility or the delivery of electric energy from the Facility to the Point of Delivery or at the Alternate Point of Delivery if applicable under Section 11.3.

2.2 **Seller’s Warranty.** Seller warrants and represents that: (a) Seller has investigated and determined that it is capable of performing and will perform the obligations hereunder and has not relied upon the advice, experience or expertise of Avista in connection with the transactions contemplated by this Agreement; (b) all professionals and experts including, but not limited to, engineers, attorneys or accountants, that Seller may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Seller; (c) Seller will comply with all applicable laws and regulations and shall obtain and comply with applicable licenses, permits and approvals in the design, construction, operation

and maintenance of the Facility; and (d) the Facility is, and during the Term of this Agreement will remain, a Qualifying Facility as that term is used in 18 C.F.R Part 292. Seller's failure to maintain Qualifying Facility status will be a material breach of this Agreement. Avista reserves the right to review the Seller's Qualifying Facility status and associated support and compliance documents at anytime during the Term of this Agreement.

3. CONDITIONS PRIOR TO COMMERCIAL OPERATION

3.1. Time is of the Essence. Time is of the essence in the performance of this Agreement and Seller understands and agrees that Avista is relying on Seller to meet the requirements of Sections 4.2 and 4.3 on or before June 1, 2012 (the "Scheduled Operation Date"). Seller understands and agrees that Avista's acceptance of deliveries of energy from Seller is contingent upon Seller fully satisfying each of the requirements in Section 4.2 of this Agreement prior to the Commercial Operation Date.

3.2 Licenses, Permits and Approvals. Prior to Commercial Operation, Seller shall submit to Avista written proof that all licenses, permits or approvals necessary for Seller's operations have been obtained from applicable federal, state, tribal or local authorities, including, but not limited to, evidence of compliance with Subpart B, 18 C.F.R. § 292.207, tribal, state and local business licenses, environmental permits, easements, leases and all required approvals by the Commission. Avista and Seller shall cooperate in petitioning the Commission for any required approvals

3.3 Opinion of Counsel. Prior to Commercial Operation, Seller shall submit to Avista an opinion letter signed by an attorney admitted to practice and in good standing in the state where the Facility is located providing an opinion that Seller's licenses, permits and approvals as set forth in Section 3.2 above are legally and validly issued, are held in the name of the Seller, and based on a reasonable independent review, counsel is of the opinion that Seller is in substantial compliance with said permits as of the date of such opinion letter. The opinion letter will be in a form acceptable to Avista and will acknowledge that the attorney rendering the opinion understands that Avista is relying on said opinion. Avista's acceptance of the form shall not be unreasonably withheld.

3.4 Independent Engineering Certifications. Prior to Commercial Operation, Seller shall submit to Avista applicable Independent Engineering Certifications for (a) Construction Adequacy for a Qualifying Facility, and (b) Operations and Maintenance Policy for a Qualifying Facility as described in Commission Order No. 21690. Each Independent Engineering Certification shall be signed by a licensed professional engineer in good standing submitted in a form acceptable to Avista and will acknowledge that the licensed professional engineer rendering the opinion understands that Avista is relying on said opinion. Avista's acceptance of such forms shall not be unreasonably withheld.

3.5 Initial Capacity Determination. Seller shall design and operate the Facility in a manner such that under normal design conditions the Net Output does not exceed 10 aMW in any calendar month. Prior to Commercial Operation, Seller shall submit to Avista the maximum hourly generation capability of the Facility ("Initial Capacity Determination"). Such Initial

Capacity Determination shall be determined by use of the Nameplate Capacity Rating and shall be documented and submitted to Avista by Seller. Such documentation shall include the information listed in Exhibit E. Upon receipt of Seller's Initial Capacity Determination, Avista will review such determination within a reasonable time and, if acceptable to Avista, Avista shall issue to Seller its written approval of the Initial Capacity Determination. If the Initial Capacity Determination submitted by Seller is not acceptable to Avista, Avista will promptly notify Seller that Avista will not accept its Initial Capacity Determination. In such event, Avista shall engage, at Seller's sole expense, an independent qualified consultant to determine the Initial Capacity Determination. During the Term of this Agreement, Seller shall not cause the capacity of the Facility to be greater than the Initial Capacity Determination by any means, including by addition, upgrade, or replacement of any turbines.

3.6 Reserved.

3.7 Ancillary Services. In the event that the Facility is located outside of Avista's Balancing Authority Area, Seller shall be responsible at its sole expense for obtaining any and all necessary Ancillary Services. Seller shall demonstrate its compliance with this Section prior to Commercial Operation.

3.8 Security. Prior to Commercial Operation, Seller shall submit to Avista evidence of compliance with Section 8, Security.

3.9 Start-Up Testing. Prior to Commercial Operation, Seller shall submit to Avista evidence of completed Start-Up Testing of the generator or generators of the Facility that are complete and able to provide energy in a consistent, reliable, and safe manner.

3.10 Network Resource Designation. Prior to Commercial Operation, Seller shall provide to Avista all data required by Avista to enable the Facility to be designated by Avista as a network resource.

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

4. TERM OF AGREEMENT AND COMMERCIAL OPERATION DATE

4.1 This Agreement shall be effective on the date last signed below or such other date set by Commission order (the "Effective Date") and shall continue until September 30, 2019 (the "Term"), unless otherwise terminated as provided herein.

4.2 The Commercial Operation Date may occur only upon or after:

(a) all of the requirements in Section 3 of this Agreement are satisfied;

(b) Commission approval of this Agreement in a form acceptable to Avista has been received;

(c) Seller has demonstrated to Avista's satisfaction that the first of the two generators of the Facility is complete and able to provide energy in a consistent, reliable, and safe manner;

(d) Seller has requested in writing a Commercial Operation Date from Avista; and

(e) Seller has received written confirmation from Avista of the Commercial Operation Date, which confirmation will not be unreasonably withheld by Avista.

4.3 Seller shall cause the first of the two generators of the Facility to achieve Commercial Operation on or before the Scheduled Operation Date. If the Commercial Operation Date occurs after the Scheduled Operation Date, Seller shall pay Avista Delay Liquidated Damages. Delay Liquidated Damages will be calculated monthly as follows:

Delay Liquidated Damages are equal to the applicable Initial Year Monthly Output Estimates as provided pursuant to Section 5.1 multiplied by the Delay Period for the month multiplied by the calendar month's Delay Price. Accordingly, Delay Liquidated Damages shall be calculated using the following formula:

Delay Liquidated Damages = Initial Year Monthly Output Estimates * Delay Period * Delay Price

4.4 Delay Liquidated Damages will be calculated pursuant to Section 4.3 for a maximum of 120 days past the Scheduled Operation Date. If the first of the two generators of the Facility fails to achieve Commercial Operation within 120 days of the Scheduled Operation Date, Seller shall pay Avista, in addition to the Delay Liquidated Damages calculated under Section 4.3, Delay Liquidated Damages calculated as follows:

\$45 multiplied by the Initial Capacity Determination with the Initial Capacity Determination Amount being measured in kilowatts.

Within 30 days of the date of a Commission order specified in Section 4.8 approving this Agreement, Seller shall post liquid security ("Delay Security") in the form of cash, letter of credit from a Qualified Institution, or other form acceptable to Avista equal to or exceeding \$45 multiplied by the Expected Capacity with the Expected Capacity being measured in kilowatts. Upon the occurrence of a Letter of Credit Default, Seller agrees to deliver a substitute letter of credit or other Delay Security (in a form acceptable to Avista) to Avista in an amount at least equal to that of the letter of credit to be replaced on or before the tenth Business Day after written demand by Avista. If Seller posts Delay Security in the form of cash, Seller grants to Avista a present and continuing, first priority security interest in and to, and a general first lien on any Cash that is posted to Avista as Delay Security. Seller agrees to take such action as Avista reasonably requests in order to perfect Avista's present and continuing, first priority security interest in and lien on such Cash and grants authority to Avista to file financing

statements or take such other actions necessary to perfect the foregoing interests. In all cases, the costs and expenses (including, but not limited to the reasonable costs, expenses, and attorney's fees of Avista) of establishing, renewing, substituting, canceling, increasing and reducing the amount of the Delay Security shall be borne by the Seller.

Failure of at least one of the two generators of the Facility to achieve Commercial Operation within 120 days of the Scheduled Operation Date shall constitute a material breach of this Agreement and, therefore, Avista may, at its sole option, terminate this Agreement.

4.5 Seller shall pay Avista any Delay Liquidated Damages within five business days of when Avista presents any Delay Liquidated Damages billings to Seller or the 15th of the month, whichever is later. Seller's failure to pay Delay Liquidated Damages within the specified time will be a material breach of this Agreement.

4.6 Avista shall release the balance of the Delay Security, if any, within 90 days after the Commercial Operation Date.

4.7 The Parties agree that Avista will incur substantial damages if at least one of the two generators of the Facility fails to achieve Commercial Operation by the Scheduled Operation Date and that the damages Avista would incur due to such delay would be difficult or impossible to predict or calculate with certainty, and that the Delay Liquidated Damages are an appropriate approximation of such damages and are not a penalty.

4.8 The Parties agree that this Agreement is a special contract and, as such, the rates, terms and conditions contained in this Agreement will be construed in accordance with Section 210 of PURPA and other applicable laws and regulations. This Agreement shall become finally effective upon the Commission's approval of all terms and provisions herein without change or condition and declaration that all payments to be made to Seller hereunder shall be allowed as prudently incurred expenses for ratemaking purposes.

5. NET OUTPUT AMOUNTS

5.1 Initial Monthly Net Output Estimates. Seller shall provide to Avista Net Output estimates for each of the twelve consecutive months that begin with the month containing the Commercial Operation Date, counting the month during which the Commercial Operation Date occurs as month one ("Initial Year Monthly Net Output Estimates"). Seller shall provide to Avista such Initial Year Monthly Net Output Estimates by written notice in accordance with Section 29 no later than five calendar days prior to the Commercial Operation Date.

5.2 Subsequent Monthly Net Output Estimates. At the end of month nine following the Commercial Operation Date, and at the end of every third month thereafter, Seller shall provide to Avista Net Output estimates pertaining to each of the additional consecutive three months for which Seller has not yet delivered to Avista Net Output estimates ("Monthly Net Output Estimates"), so that Seller shall have provided in advance on a rolling basis to Avista six months of Net Output estimates. Seller shall provide such Monthly Net Output Estimates to

Avista by written notice in accordance with Section 29, no later than 5:00 p.m. of the last Business Day of the month during which they are required to be provided.

5.3 Content of Net Output Estimates. All Net Output estimates (including the Initial Year Monthly Net Output Estimates and Monthly Net Output Estimates) shall be expressed in kilowatt-hours by month.

5.4 Failure to Provide Net Output Estimates. If Seller fails to provide Monthly Net Output Estimates within the time required in Section 5.2, the Monthly Net Output Estimates for the omitted period shall equal the amounts scheduled by Seller for the same three-month period during the previous year, and such Monthly Net Output Estimates shall be binding for purposes of the Agreement as though they were prepared by Seller and provided to Avista as required by the Agreement.

5.5 Seller's Revisions of Monthly Net Output Estimates. At the end of month three following the Commercial Operation Date, and at the end of every third month thereafter, counting the month during which the Commercial Operation Date occurs as month one, Seller may provide Avista with revisions to Monthly Net Output Estimates previously provided to Avista, except Seller may not revise Monthly Net Output Estimates that pertain to the three consecutive months that immediately follow the month during which Seller provides Avista notice of the revisions. If Seller elects to revise Monthly Net Output Estimates previously provided to Avista, then Seller must provide to Avista the revised Monthly Net Output estimates by written notice in accordance with Section 29, no later than 5:00 p.m. of the last Business Day of the month during which they are required to be provided.

5.6 Avista Adjustment of Monthly Net Output Estimate. If, pursuant to Sections 10.2 or 12, Avista is excused from accepting the Seller's Net Output or if the Seller declares a suspension of Net Output or an event of Force Majeure as specified in Sections 10.3 or 12 and the Seller's Declared Suspension of Net Output or event of Force Majeure is accepted by Avista, the Monthly Net Output Estimate for the specific month in which the reduction or suspension occurs will be reduced in accordance with the following:

Where:

- NO = Current Month's Net Output estimate
- SGU = (a) If Avista is excused from accepting the Seller's Net Output as specified in Section 10.2 or Section 12, this value will be equal to the percentage of curtailment as specified by Avista multiplied by the TGU as defined below.
- (b) If the Seller declares a suspension of Net Output as specified in Section 10.3 or Section 12, this value will be the sum of the individual generation units size ratings as specified in Exhibit C that are impacted by the circumstances causing the suspension of net output or the Force Majeure event.

- TGU = The Nameplate Capacity Rating of the Facility,
- RSH = Actual hours the Facility's Net Output was either reduced or suspended under Sections 10.2, 10.3, or 12.
- TH = Actual total hours in the current month

Resulting formula being:

$$\begin{array}{l} \text{Adjusted} \\ \text{Net} \\ \text{Output} \end{array} = \text{NO} - \left(\left(\frac{\text{SGU}}{\text{TGU}} \times \text{NO} \right) \times \left(\frac{\text{RSH}}{\text{TH}} \right) \right)$$

This Adjusted Monthly Net Output Estimate will be used in applicable Shortfall Energy and Surplus Energy calculations for only the specific month in which Avista or Seller was excused from accepting or delivering Net Output.

5.7 Unless excused by an event of Force Majeure, Seller's failure to deliver Net Output in any Operating Year in an amount equal to the Initial Capacity Determination multiplied by 8760 multiplied by 0.09 shall constitute a material breach of this Agreement. However, such minimum for the first Operating Year will be reduced pro rata to reflect the Commercial Operation Date, and will be reduced for the last Operating Year pro rata to reflect the end of contract Term.

6. SCHEDULING

6.1 Seller will make reasonable effort to contact Avista Real-Time Scheduler when the Facility experiences an outage that is not a Declared Suspension under Section 10.3. Information regarding the outage start, expected duration and return to service timing should be communicated to the Avista Real-Time Scheduler.

6.2 Seller will make reasonable efforts to contact Avista Real-Time Scheduler to update Avista Real-Time Scheduler regarding any changes to duration of the outage and/or changes in expected return to service timing.

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

7. PURCHASE PRICES AND PAYMENT

7.1 Except when either Party's performance is excused as provided herein, for the Term of this Agreement, Seller shall deliver all Net Output from the Facility to Avista at the Point of Delivery, or at the Alternate Point of Delivery if applicable under Section 11.3. For all Net Output delivered to Avista at the Point of Delivery, or at the Alternate Point of Delivery if

applicable under Section 11.3, Avista shall pay the applicable rate specified in Sections 7.3, 7.4, 7.5, 7.6, and 7.7 of this Agreement.

7.2 Net Output. Net Output shall be determined by measuring the Facility Output and reducing that amount by Facility Service Power and the Meter Location Adjustment Factor (“MLAF”) which is the product of all applicable loss factors for the distribution system, transformation and transmission system between the metering point and the Point of Delivery. Net Output shall be calculated in accordance with the following formula:

$$\begin{aligned} \text{Net Output} &= (\text{Facility Output}) - (\text{Facility Service Power}) \times \text{MLAF} \\ \text{MLAF} &= 1 - [(\text{Distribution Line Loss Factor of } 0.0203) \\ &\quad + (\text{Dower Transformer No Load Loss of } 0.0030) \\ &\quad + (\text{Dower Transformer Load Loss of } 0.0010) \\ &\quad + (\text{Transmission Line Loss of } 0.0005)] \\ \text{MLAF} &= 1 - 0.0248 \\ \text{MLAF} &= 0.9752 \end{aligned}$$

7.3 Base Energy. For all Base Energy delivered to Avista at the Point of Delivery, or at the Alternate Point of Delivery if applicable under Section 11.3, Avista shall pay Seller the applicable rate based upon the On-Peak or Off-Peak Avoided Cost Rates For Non-Fueled Projects Smaller Than Ten Average Megawatts - Non-Levelized in effect on the Effective Date (“Avoided Cost Rates”) as specified in Exhibit D.

7.4 Surplus Energy. For all Surplus Energy delivered to Avista at the Point of Delivery or at the Alternate Point of Delivery if applicable under Section 11.3, Avista shall pay Seller the Avoided Cost Rate specified in Exhibit D or 85 percent of the current month’s Market Energy Price, whichever is lower (“Surplus Energy Price”).

7.5 Shortfall Energy. If the month’s Net Output is less than 90 percent of the Monthly Net Output Estimate for the corresponding month, all energy delivered for that month shall be Shortfall Energy. For all Shortfall Energy delivered to Avista at the Point of Delivery, or at the Alternate Point of Delivery if applicable under Section 11.3, Avista shall pay Seller the Avoided Cost Rate specified in Exhibit D or 85% of the current month’s Market Energy Price, whichever is lower (“Shortfall Energy Price”).

7.6 Excess Energy. Excess Energy is Net Output, expressed in MWh, which Seller delivers to Avista at the Point of Delivery and/or at the Alternate Point of Delivery if applicable under Section 11.3 that exceeds 10 aMW in a calendar Month. Avista, at its sole discretion, may accept Excess Energy, but Avista will not pay for any Excess Energy. Where Avista does not elect to accept Excess Energy, and Seller delivers such energy after notification by Avista in accordance with Exhibit A, Seller shall pay Avista liquidated damages equal to \$100 per MWh of Excess Energy delivered to Avista. The Parties agree that the damages that Avista would incur due to Seller’s delivery of Excess Energy when Avista does not elect to accept Excess Energy would be difficult or impossible to predict with certainty and the liquidated damages contemplated by this provision are a fair and reasonable calculation of such damages and are not a penalty.

7.7 Test Energy. Seller shall sell and deliver all Test Energy produced by the Facility to Avista and Avista shall purchase all such Test Energy at the lesser of (i) the price in Section 7.3 or (ii) 50 percent of the Market Energy Price; *provided, however,* that, notwithstanding the foregoing, if (1) the Facility operates at or above a 75 percent capacity factor over a 30 consecutive day period and (2) Seller certifies that the Facility is capable of sustained operation at or above a monthly 75 percent capacity factor, upon satisfaction of (1) and (2) above, Avista shall thereafter purchase Test Energy at the lesser of (i) the price in Section 7.3 or (ii) 85% of the Market Energy Price.

7.8 Environmental Attributes. Ownership of Environmental Attributes generated by or associated with the Project shall be governed by any and all applicable federal or state laws and /or any regulatory body or agency with competent jurisdiction.

7.9 Payments to Seller. Avista shall prepare and submit to Seller monthly statements during the Term of the Agreement based upon Net Output delivered to Avista during the previous month. Payments owed by Avista shall be paid no later than the 15th day of the month following the end of the monthly billing period or five days after the receipt of a monthly statement, whichever is later. If the due date falls on a non-Business Day, then the payment shall be due on the next Business Day.

7.10 Payments to Avista and Right of Set Off. If Seller is obligated to make any payment or refund to Avista, Seller agrees that Avista may set off such payment or refund amount against any current or future payments due Seller under this Agreement. If Avista does not elect to set off, or if no current or future payment is owed by Avista, Avista shall submit an invoice to Seller for such payments. Seller shall pay Avista no later than the 15th day of the month following the end of the monthly billing period or five days after the receipt of a monthly statement, whichever is later. If the due date falls on a non-Business Day, then the payment shall be due on the next Business Day.

7.11 Interest. In addition to the remedies set forth in Section 16 of this Agreement, any amounts owing after the due date specified in Sections 7.9 and 7.10 will be subject to interest in the amount of one and one half percent (1.5%) per month, not to exceed the maximum rate allowed by the law, multiplied by the unpaid balance.

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

8. SECURITY

8.1 Insurance. Prior to operating the Facility, Seller, at its own cost, shall obtain and maintain the following insurance in force over the term of this Agreement and shall provide certificates of all insurance policies. All insurance policies required to fulfill the requirements of this Section 8 shall include language requiring that any notice of cancellation or notice of change in policy terms be sent to Avista by the insurance carrier(s) at least sixty days prior to any change or termination of the policies.

8.1.1 General Liability. Seller shall carry commercial general liability insurance for bodily injury and property damage with a minimum limit equal to \$2,000,000 for each occurrence. The deductible shall not exceed the Seller's financial ability to cover claims and shall not be greater than prevailing practices for similar operations in the State of Idaho.

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

8.1.3 Qualifying Insurance. The insurance coverage required by this Section 8 shall be obtained from an insurance company reasonably acceptable to Avista and shall include an endorsement naming Avista as an additional insured and loss payee as applicable.

8.1.4 Notice of Loss or Lapse of Insurance by Seller. If the insurance coverage required by this Section 8 is lost or lapses for any reason, Seller will immediately notify Avista in writing of such loss or lapse. Such notice shall advise Avista of (i) the reason for such loss or lapse and (ii) the steps Seller is taking to replace or reinstate coverage. Notice provided by the insurer required by Section 8.1 shall not satisfy the notice requirement of this Section and Seller's failure to provide the notice required by this Section and/or to promptly replace or reinstate coverage will constitute a material breach of this Agreement.

8.2 Ongoing Security for Performance. For the Term of this Agreement, Seller will provide Avista with the following:

8.2.1 Insurance. Upon Avista's request, Seller shall provide Avista evidence of compliance with the provisions of Section 8.1. If Seller fails to comply, such failure will be a material breach and may only be cured by Seller promptly supplying evidence that the required insurance coverage has been replaced or reinstated.

8.2.2 Engineer's Certification. Every three years after the Commercial Operation Date, Seller will supply Avista with a Certification of Ongoing Operations and Maintenance from a Registered Professional Engineer licensed in the State of Idaho, which certification shall be in the form specified in Exhibit B. Seller's failure to supply the certificate required by this Section 8.2.2 will be a material breach that may only be cured by Seller promptly providing the required certificate.

8.3 Licenses and Permits. During the Term of this Agreement, Seller shall maintain compliance with all permits and licenses described in Section 3.2 of this Agreement. In addition, Seller will obtain, and supply Avista with copies of, any new or additional permits or licenses

that may be required for Seller's operations. At least every fifth year after the Commercial Operation Date, Seller will update the documentation described in Section 3.2. If at any time Seller fails to maintain compliance with the permits and licenses described in Section 3.2 or this Section, or to provide documentation required by this Section, such failure will be a material breach of this Agreement that may only be cured by Seller submitting to Avista evidence of compliance.

9. CURTAILMENT, INTERRUPTION OR REDUCTION OF DELIVERY

Avista may require Seller to curtail, interrupt or reduce delivery of Net Output if, in accordance with Section 10.2, Avista determines that curtailment, interruption or reduction is necessary because of a Force Majeure event or to protect persons or property from injury or damage, or because of emergencies, necessary system maintenance, system modification or special operating circumstances. Avista shall use commercially reasonable efforts to keep any period of curtailment, interruption, or reduction to a minimum. In order not to interfere unreasonably with Seller operations, Avista shall, to the extent practical, give Seller reasonable prior notice of any curtailment, interruption, or reduction, the reason for its occurrence and its probable duration. Seller understands and agrees that Avista may not be able to provide notice to Seller prior to interruption, curtailment, or reduction of electrical energy deliveries to Avista in emergency circumstances, real-time operations of the electric system, and/or unplanned events.

10. OPERATION

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

10.2 Excuse From Acceptance of Delivery of Energy.

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

(a) endanger any person or property, or Avista's electric system, or any electric system with which Avista's system is interconnected;

(b) cause, or contribute to, an imminent significant disruption of electric service to Avista's or another utility's customers;

(c) interfere with any construction, installation, inspection, testing, repair, replacement, improvement, alteration, modification, operation, use or maintenance of, or addition to, Avista's electric system or other property of Avista; or

(d) cause, contribute to, or necessitate operation of any of Avista's hydro electric projects in violation of any license or other regulatory requirements.

10.2.2 Avista shall promptly notify Seller of the reasons for any such curtailment, interruption, reduction or suspension provided for in Section 10.2. Avista shall use reasonable efforts to limit the duration of any such curtailment, interruption, reduction or suspension.

10.3 Seller Declared Suspension of Net Output.

10.3.1 If the Facility experiences a forced outage due to equipment failure which is not caused by a Force Majeure event, Seller may, after giving notice as provided in Section 10.3.2 below, temporarily suspend deliveries of Net Output to Avista from the Facility or from individual generation unit(s) within the Facility impacted by the forced outage for a period of not less than 48 hours to correct the forced outage condition ("Declared Suspension of Net Output").

10.3.2 If Seller desires to initiate a Declared Suspension of Net Output as provided in Section 10.3.1, Seller shall notify the Avista by telephone in accordance with the guidance specified in Exhibit A. The beginning hour of the Declared Suspension of Net Output Deliveries will be at the earliest the next full hour after making telephone contact with Avista. Seller shall, within one Business Day after the telephone contact, provide Avista a written notice in accordance with Section 29 that will contain the beginning hour and duration of the Declared Suspension of Net Output Deliveries and a description of the conditions that caused Seller to initiate a Declared Suspension of Net Output Deliveries. Avista shall review the documentation provided by Seller to determine Avista's acceptance of the described forced outage as qualifying for a Declared Suspension of Net Output Deliveries as specified in Section 10.3.1. Avista's acceptance of Seller's Declared Suspension of Net Output will be based upon the documentation provided by Seller that the forced outage is not due to a Force Majeure event or by neglect, disrepair or lack of adequate preventative maintenance of Seller's Facility.

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

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

10.6 Avista's Right to Inspect. Seller shall permit Avista to inspect and audit the Facility, any related production, delivery and scheduling documentation or the operation, use or maintenance of the Facility at any reasonable time and upon reasonable notice. Seller shall provide Avista reasonable advance notice of any Start-Up Testing.

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

11.0 INTERCONNECTION AND TRANSMISSION

11.1 Seller shall make all necessary arrangements and pay all costs to interconnect its Facility with the electrical system of the Transmitting Entity. The Parties shall, prior to Commercial Operation, execute an amendment to the Interconnection and Operating Agreement which incorporates all necessary provisions for the interconnection and operation of the Facility within Avista's Balancing Authority Area. At such time, the Parties will update Exhibit F by attaching the amended Interconnection and Operating Agreement.

11.2 Seller, as the Transmitting Entity, shall provide sufficient capacity on its distribution and transmission systems between the point of interconnection on Seller's system and the Point of Delivery to ensure deliveries of Net Output to the Point of Delivery on a firm basis for the Term of this Agreement.

11.3 In the event that Seller or Avista is required to curtail, interrupt or reduce delivery of Net Output to the Point of Delivery, Seller may use reasonable commercial efforts to arrange, at Seller's sole expense, for delivery of Net Output at a secondary point of delivery ("Alternate Point of Delivery"). Avista will use reasonable commercial efforts to accept Net Output at such Alternate Point of Delivery; *provided, however*, that the Parties have enabled and established the use of such Alternate Point of Delivery pursuant to Section 11.5.

11.4 The termination, cancellation or reduction of any capacity on Seller's distribution or transmission systems that restricts the delivery of Net Output to Avista on a firm basis for a period that exceeds 180 days, except in the case of a Force Majeure event, shall constitute a material breach of this Agreement, and Avista may terminate the Agreement by giving Seller written notice of such termination which shall be effective upon the termination, cancellation or reduction in such capacity.

11.5 Seller shall be responsible for any and all costs and expenses related to the transmission of Net Output to the Point of Delivery or any Alternate Point of Delivery under this Agreement, including but not limited to Ancillary Services and any costs or expenses incurred by

Avista resulting from enabling and establishing Avista's ability to accept Net Output at the Point of Delivery and any Alternate Point of Delivery. Such costs and expenses shall include those for metering and other parallel operation facilities specified in Exhibit G.

12. FORCE MAJEURE

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

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

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

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

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

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

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

13. INDEMNITY

13.1 Each Party shall defend, indemnify and hold harmless, the other Party, its directors, officers, employees, and agents (as the "Indemnitee") from and against all claims, demands, causes of action, judgments, liabilities and associated costs and expenses (including reasonable attorney's fees) to the extent arising from or attributable to the performance or non-

performance of that Party's (as the "Indemnitor") obligations under this Agreement, including but not limited to, damage to tangible property and bodily injury or death suffered by any person (including employees of Seller or Avista or the public), provided that:

(a) No Indemnitee shall be indemnified for any loss, liability, injury, or damage resulting from its sole negligence, gross negligence, fraud or willful misconduct; and

(b) The Indemnitor shall be entitled, at its option, to assume and control the defense and any settlement of such suit.

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

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

13.3 EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE UNDER ANY PROVISION OF THIS AGREEMENT FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT, SAVINGS OR REVENUE, LOSS OF THE USE OF EQUIPMENT, COST OF CAPITAL, OR COST OF TEMPORARY EQUIPMENT OR SERVICES, WHETHER BASED IN WHOLE OR IN PART IN CONTRACT, IN TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY.

14. ASSIGNMENT

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

14.2 Seller shall have the right, subject to the obligation to provide security specified in Section 8, without Avista's consent, but with a thirty days prior written notice to Avista, to make collateral assignments of its rights under this Agreement to satisfy the requirements of any development, construction, or other reasonable long term financing. A collateral assignment shall not constitute a delegation of Seller's obligations under this Agreement, and this Agreement shall not bind the collateral assignee. Any collateral assignee succeeding to any portion of the ownership interest of Seller shall be considered Seller's successor in interest and shall thereafter be bound by this Agreement.

15. NO UNSPECIFIED THIRD PARTY BENEFICIARIES

There are no third party beneficiaries of this Agreement. Nothing contained in this Agreement is intended to confer any right or interest on anyone other than the Parties, and their respective successors, heirs and assigns permitted under Section 14.

16. DEFAULT AND TERMINATION

16.1 In addition to any other breach or failure to perform under this Agreement, including without limitation failure to deliver Net Output in the amounts required by this Agreement that is not otherwise excused under this Agreement, each of the following events shall constitute a Default:

- (a) Seller abandons the Facility;
- (b) The Facility ceases to be a Qualifying Facility;
- (c) A Party becomes insolvent (e.g., is unable to meet its obligations as they become due or its liabilities exceed its assets);
- (d) Seller makes a general assignment of substantially all of its assets for the benefit of its creditors, files a petition for bankruptcy or reorganization or seeks other relief under any applicable insolvency laws;
- (e) Seller has filed against it a petition for bankruptcy, reorganization or other relief under any applicable insolvency laws and such petition is not dismissed or stayed within sixty days after it is filed;
- (f) Seller is in default under any Agreement related to this Agreement;
- (g) Termination, cancellation or expiration of any agreement required for Seller to deliver electric energy to Avista under this Agreement, including but not limited to the Interconnection and Operating Agreement;
- (h) Seller fails to comply with any of the requirements in Section 4.4, including the failure to deliver, maintain, or timely cure infirmities with, any Delay Security as provided in Section 4.4; or
- (i) Seller fails to deliver Net Output in any Operating Year in an amount equal to the Initial Capacity Determination multiplied by 8760 multiplied by 0.09 as specified in Section 5.7.

16.2 Notice and Opportunity to Cure. In the event of a Default, the non-Defaulting Party shall give written notice to the Defaulting Party of a Default in accordance with Section 29. Except where the applicable section provides a cure period for the applicable default, if the Defaulting Party has not cured the breach within thirty days after receipt of such written notice,

the non-Defaulting Party may, at its option, terminate this Agreement and/or pursue any remedy available to it in law or equity; *provided that*, if a Default occurs under Sections 4.4, 4.5, 5.7, 16.1(a), 16.1(d) and/or 16.1(e), Avista may immediately terminate this Agreement without opportunity to cure, and such termination shall become effective upon written notice of Default.

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

16.4 Damages. If this Agreement is terminated as a result of Seller's Default after the Commercial Operation Date, Seller shall pay Avista, in addition to other damages, the positive difference, if any, between the purchase price specified in Section 7.3 and the cost to replace the Net Output for twelve months beginning on the date of the original Default, plus all associated transmission costs to Avista to acquire such replacement Net Output.

17. DISPUTE RESOLUTION

Each Party shall strive to resolve any and all differences during the term of the Agreement through meetings and discussions. If a dispute cannot be resolved within a reasonable time, not to exceed thirty days, each Party shall escalate the unresolved dispute to a senior officer designated by each Party. If the senior officers are not able to resolve the dispute within ten Business Days of escalation then either Party may either agree to mediate or arbitrate the dispute or request a hearing before the Commission.

18. RELEASE BY SELLER

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

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

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

18.3 Disconnection, interruption, suspension or curtailment by Avista pursuant to terms of this Agreement or the Interconnection and Operating Agreement.

19. GOVERNMENTAL AUTHORITY

This Agreement is subject to the rules, regulations, orders and other requirements, of all governmental authorities having jurisdiction over the Facility, this Agreement, the Parties or either of them, including Section 210 of PURPA. All laws, ordinances, rules, regulations, orders

and other requirements of governmental authorities that are required to be incorporated in agreements of this character are by this reference incorporated in this Agreement.

20. SEVERAL OBLIGATIONS

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

21. IMPLEMENTATION

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

22. NON-WAIVER

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

23. AMENDMENT

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

24. CHOICE OF LAWS AND VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the State of Idaho without reference to its choice of law provisions. Venue for any litigation arising out of or related to this Agreement shall lie in the District Court of the Fourth Judicial District of Idaho in and for the County of Ada.

25. HEADINGS

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

31. ENTIRE AGREEMENT

This Agreement, including the following exhibits which are attached and incorporated by reference herein, constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous oral or written agreements between the Parties with respect to the subject matter hereof.

- Exhibit A Communications and Reporting
- Exhibit B Independent Engineering Certifications for Construction Adequacy for a
Qualifying Facility and Operations and Maintenance Policy
- Exhibit C Project Description and Point of Delivery
- Exhibit D Avoided Cost Rates
- Exhibit E Initial Capacity Determination Documentation
- Exhibit F Interconnection and Operating Agreement
- Exhibit G Metering and Parallel Operation Facilities

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

**KOOTENAI ELECTRIC
COOPERATIVE, INC**

AVISTA CORPORATION

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A
Communication and Reporting

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

Avista: kim.mattern@avistacorp.com; or
dale.hubbard@avistacorp.com

Seller: delliot@kec.com
Alternate: sdolan@kec.com

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

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

Avista Pre-Scheduler: (509) 495-4911
Alternate Phone: (509) 495-4073

Seller: (208) 292-3276 (Shawn Dolan)
Alternate Phone: (208) 292-3227 (Doug Elliott)

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

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

Seller: (208) 292-3276 (Shawn Dolan)
Alternate Phone: (208) 292-3227 (Doug Elliott)

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

Exhibit B

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

1. I, _____ am a licensed professional engineer registered to practice and in good standing in the State of _____. I have substantial experience in the design, construction and operation of electric power plants of the same type as Fighting Creek Landfill Gas to Energy Facility sited at the Kootenai County Solid Waste Facility, near Bellgrove, Idaho (the "Facility").

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

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

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

Signed and Sealed

DATE: _____

SIGNATURE: _____

PRINTED NAME: _____

**Independent Engineering Certification for
Operations and Maintenance Policy for a Qualifying Facility**

1. I, _____ am a licensed professional engineer registered to practice and in good standing in the State of _____. I have substantial experience in the design, construction and operation of electric power plants of the same type as Fighting Creek Landfill Gas to Energy Facility sited at the Kootenai County Solid Waste Facility, near Bellgrove, Idaho (the "Facility").

2. I have reviewed and/or supervised the review of the Policy for Operation and Maintenance ("O&M Policy") for the Facility and it is my professional opinion that, provided said Facility has been designed and built to appropriate standards, adherence to said O&M Policy will result in the Facility's producing at or near the design electrical output, efficiency, and capacity factor for twenty years, barring unforeseeable Force Majeure.

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

4. I have supplied the owner of the Plant with at least one copy of said O&M Policy bearing my Stamp and the words "CERTIFIED FOR IDAHO P.U.C. SECURITY ACCEPTANCE" on each sheet thereof.

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

Signed and Sealed

DATE: _____

SIGNATURE: _____

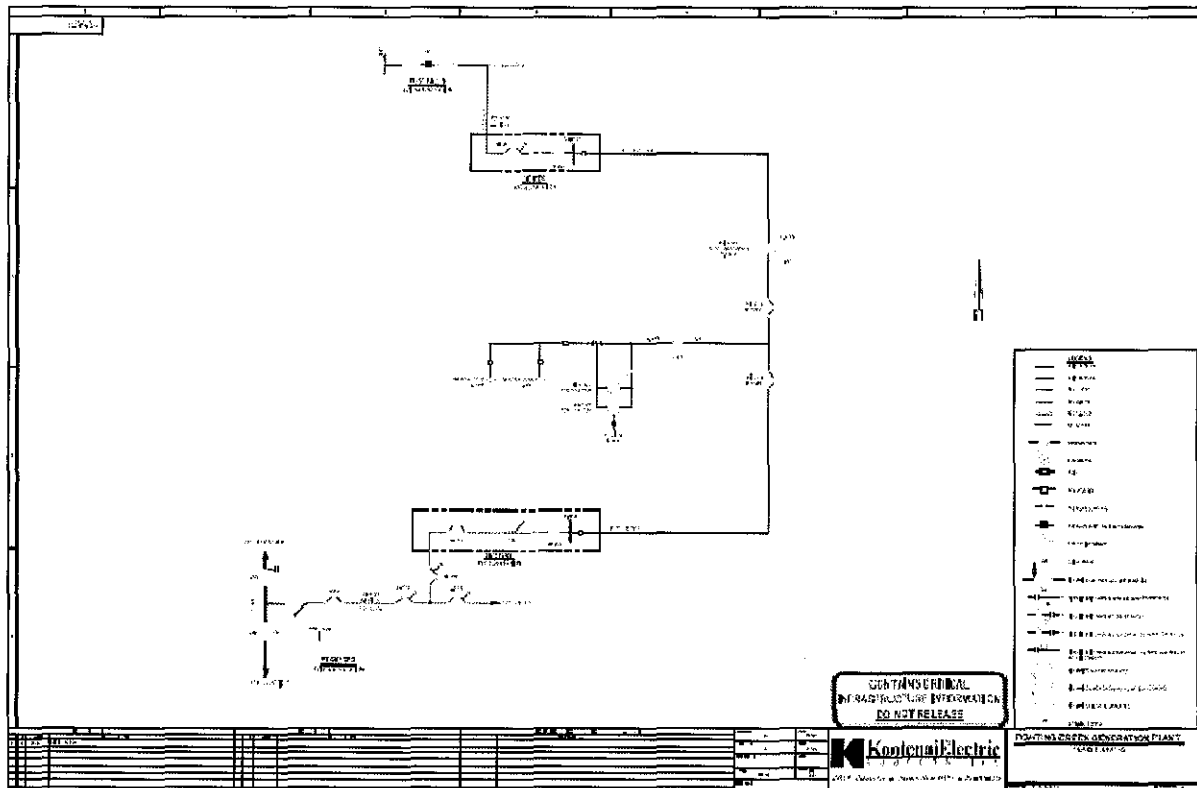
PRINTED NAME: _____

Exhibit C

Project Description and Point of Delivery

Description of the Facility:

Seller's Facility is described as the Fighting Creek Landfill Gas to Energy Facility and consists of: Two 1.6 MW generators each powered by a Caterpillar Model 3520, spark ignited, reciprocating internal combustion engines electrically interconnected to Seller's 24.9 kV distribution facilities terminated on the project busbar. The Project will use methane gas produced by decomposition of waste interned within landfill. The Project is located at Kootenai County Solid Waste Facility (W116.93 , N47.532), near Bellgrove, Idaho.



Location:

Seller's Facility is located at: Kootenai County Solid Waste Facility (W116.93 , N47.532), near Bellgrove, Idaho.

Point of Delivery:

Point of Delivery Location: The point where Avista's Dower – Post Falls 115kV Tap Transmission Line and KEC's Dower – Post Falls 115kV Tap Transmission Line are connected.

Alternate Point of Delivery:

Alternate Point of Delivery Location: The point where Avista's Dower – Post Falls 115kV Tap Transmission Line served via Avista's Post Falls – Ramsey 115kV Transmission Line and KEC's Dower – Post Falls 115kV Tap Transmission Line are connected.

or

Alternate Point of Delivery Location: The point where Avista's Rockford Tap 115 kV Transmission Line is connected to KEC's Setters Substation 115 kV Tap.

Point of Metering:

Metering Location: In Seller's Facility, on the 24.9 kV side of the generator step-up transformer over which electric power and energy flows.

Exhibit D

Avoided Cost Rates

Period	Heavy Load Hours \$/MWh	Light Load Hours \$/MWh
Oct 2011 - Dec 2011	\$57.52	\$52.12
Jan 2012 - Feb 2012	\$59.55	\$54.15
Mar 2012 - Jun 2012	\$46.32	\$42.12
Jul 2012 - Dec 2012	\$59.55	\$54.15
Jan 2013 - Feb 2013	\$61.40	\$56.00
Mar 2013 - Jun 2013	\$47.76	\$43.56
Jul 2013 - Dec 2013	\$61.40	\$56.00
Jan 2014 - Feb 2014	\$63.22	\$57.82
Mar 2014 - Jun 2014	\$49.17	\$44.97
Jul 2014 - Dec 2014	\$63.22	\$57.82
Jan 2015 - Feb 2015	\$65.17	\$59.77
Mar 2015 - Jun 2015	\$50.69	\$46.49
Jul 2015 - Dec 2015	\$65.17	\$59.77
Jan 2016 - Feb 2016	\$67.26	\$61.86
Mar 2016 - Jun 2016	\$52.31	\$48.11
Jul 2016 - Dec 2016	\$67.26	\$61.86
Jan 2017 - Feb 2017	\$69.50	\$64.10
Mar 2017 - Jun 2017	\$54.05	\$49.85
Jul 2017 - Dec 2017	\$69.50	\$64.10
Jan 2018 - Feb 2018	\$71.98	\$66.58
Mar 2018 - Jun 2018	\$55.98	\$51.78
Jul 2018 - Dec 2018	\$71.98	\$66.58
Jan 2019 - Feb 2019	\$74.44	\$69.04
Mar 2019 - Jun 2019	\$57.90	\$53.70
Jul 2019 - Sep 2019	\$74.44	\$69.04

Exhibit E

Initial Capacity Determination Documentation

Within fifteen (15) days after a Commission order specified in Section 4.8 approving this Agreement, the Seller shall provide to Avista;

1. the manufacturer's serial number and specifications for each engine - generator installed at the Facility.
2. the Initial Capacity Determination of the Facility, expressed in kilowatts at the Point of Delivery, which is equal to the sum of the Facility's gross output values identified and provided in Exhibit C, less Facility Service Power and Losses.

- B. Alternate Point of Delivery – Protection Upgrades at Avista’s Post Falls 115 kV Switching Station on the Ramsey 115 kV line position: Avista shall provide, at Seller’s expense, labor to provide parallel operation of the Facility with Avista’s system on the Post Falls – Ramsey 115kV Transmission Line. Accordingly, Avista shall revise, at Seller’s expense, the relay settings on the existing synch check relay on Avista’s Post Falls A-211 circuit breaker.
- C. Alternate Point of Delivery – Protection Upgrades at Avista’s Third & Hatch and Ninth & Central 115 kV Switching Stations for delivery via the Rockford 115 kV Tap: Avista shall provide, at Seller’s expense, material and labor to provide parallel operation of the Facility with Avista’s system on the three terminal Latah – Third & Hatch – Ninth & Central 115kV line. Accordingly, Avista shall replace, at Seller’s expense, a relay and add a line PT to provide synch check functionality on Avista’s Third & Hatch A-532 circuit breaker and revise the relay settings on the existing synch check relay on Avista’s Ninth & Central A-686 circuit breaker.

IV. FINANCIAL TERMS AND CONDITIONS

The estimated cost of the work to be performed by Avista at Seller’s expense, as identified in Section III, is \$110,000 including applicable overheads and taxes. Upon completion of all work under Section III A performed by Avista, Avista shall invoice Seller for the actual costs Avista incurred to complete such work, including applicable overheads and taxes. Upon completion (date yet to be determined) of all work under Section III B and C (Alternate Point of Delivery) performed by Avista, Avista shall invoice Seller for the actual costs Avista incurred to complete such work, including applicable overheads and taxes.

Remittances from Seller shall be within the timeframe specified in the invoice and shall be sent to the address named in the invoice.