

**Avista Corp.**

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December 11, 2014

**Via: Electronic Mail**

Public Utility Commission of Oregon  
3930 Fairview Industrial Dr SE  
Salem, OR 97302-1166

Attention: Filing Center

**Advice No. 14-11-G (Compressed Natural Gas Service)**

Pursuant to OAR 860-022-0025(1), enclosed for filing with the Commission is an electronic copy of Avista Corporation's ("Avista" or the "Company") revisions to the following tariff, P.U.C. OR. No. 5:

**Tenth Revision Sheet B Canceling Ninth Revision Sheet B  
Original Sheet 441**

The purpose of this filing is to establish an optional compressed natural gas service ("CNG Service" or "CNG") schedule. The proposed tariff would allow Avista to provide Company-owned and maintained compression and dispensing equipment on Customer-owned ("Customer" or "NGV Fleet Operator") property for the purpose of allowing those Customers to fuel their natural gas vehicle (NGV) fleet at specified pressures of up to 3600 pounds per square inch (psi). Customers under this optional, behind-the-meter service would continue to obtain natural gas service at approved tariffed rates.

The Company is pursuing the CNG Service schedule in response to inquiries from public and private fleet operators interested in capturing the economic and operating advantages of using natural gas for transportation. Additionally, Avista believes that the increased availability of CNG in Oregon responsibly supports the State's interest to improve air quality, lower greenhouse gas emissions and reduce its dependency on higher-cost, carbon-based fuels<sup>1</sup>. The

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<sup>1</sup> Avista's proposal to offer CNG Services to qualified NGV Fleet Operators advances Governor Kitzhaber's energy plan, and is consistent with Oregon State Senate Bill 844. In Governor Kitzhaber's 10-Year Energy Plan issued in December 2012, the Plan stated: "Oregonians consume some 1.5 billion gallons of gasoline to drive more than 33 billion miles every year. According to analysis done by the Oregon Department of Energy from U.S. Census Bureau data, fuel costs average Oregonians nearly seven percent of their disposable income, nearly double the cost ten years ago. Moreover, gasoline prices are projected to rise, so this trend is expected to continue unless the transportation system and habits are reformed. To reach Oregon's 2020 goals, the state will need an approximately 30 percent reduction from 2010 greenhouse gas levels, which roughly translates to a 30 percent reduction in fossil fuel use. Over the next ten years, the State will reduce dependence on fossil fuels by assisting in the conversion of

proposed CNG Service removes a potential barrier to CNG adoption for fleet operators by removing the significant up front capital investment that otherwise would be required of the Customer, and also assigns operating responsibility for the maintenance and repair of high pressure facilities to Avista.

The terms and conditions of the proposed CNG Service Schedule 441 provide qualifying Customers with a CNG fueling solution whereby the Company would install natural gas compression and fueling equipment on a Customer's premises for their CNG fleet. The Company proposes that all of the costs associated with this optional service be borne by those Customers taking service under the schedule, and to the extent any costs are unrecovered, Avista would not pass those costs to the general ratepayer population.

### **CNG Service Description**

Under the terms of the Company's proposed CNG Service, Avista would offer a turn-key refueling Facility ("Facility" or "CNG Facility"), located on qualified fleet operator's premises, along with the high pressure dispensing capability necessary to safely and efficiently fill NGVs. In addition to the Company owning the refueling equipment, Avista, or its contractor, would provide ongoing monitoring and scheduled maintenance. Scheduled and unscheduled maintenance would be provided, as required, at an incremental cost to the Customer.

NGV Fleet Operators interested in CNG Service will be required to enter into a Compressed Natural Gas Service Agreement ("CNG Service Agreement"), which has been included as Attachment A to this filing. This CNG Service Agreement is comprised of three sections (Articles 1, 2 and 3). The first section of the contract, Article 1, is the Feasibility Evaluation section. This section requires the Customer to operate in good faith when providing Avista information about the characteristics of its property and CNG consumption projections. Also provided for in this section of the CNG Service Agreement is the Company's preliminary estimate for CNG Service. If the Company determines that a CNG Facility could be sited on the Customer's premise, and the Customer approves of the preliminary cost estimate, the second section of the CNG Service Agreement (Article 2 - Site Design and Permit Evaluation) would become effective. This section provides the terms and conditions for permitting, site preparation, facility design and will refine the overall cost of providing the Facility. The third and final section of the CNG Service Agreement (Article 3 - Construction and CNG Services) sets forth all of the terms of service to be performed by the Customer and Avista for a ten-year contract period.

The standard components of the Facility provided under Avista's CNG Service will provide a high-efficiency compressor unit, a CNG storage vessel(s), and a fast-fill refueling dispenser. The Customer may elect to add compression capability, storage capacity, additional fast-fill dispensers or time-fill dispensers which are designed for overnight refueling. Regardless of the equipment configuration, the Customer will be solely responsible for all of the costs associated with the selected equipment. Customers may choose equipment that would provide CNG

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20 percent of large fleets to alternative fuel vehicles, including, but not limited to, electric, compressed natural gas ("CNG"), and liquefied natural gas ("LNG"). Converting 20 percent of large fleets over the next ten years will accelerate the market for newer, cleaner-burning vehicles that are less expensive to operate over the life of the vehicle, which will help the state and businesses save money on operations and fuel." (emphasis added)

Service not only to its fleet, but also make CNG available to other Customers.

### **CNG Service Pricing**

Customer's taking service under this optional program would continue to receive conventional natural gas service through Commission-approved tariffs. The CNG Facility pricing (i.e., behind the meter) for each qualifying Customer would vary based on the actual cost of each installation and would be indicated in the CNG Service Agreement executed prior to construction. Actual costs of each Facility include all equipment, permitting and siting expenses and will be borne by the Customer through a Monthly CNG Facility Charge ("CNG Facility Charge"). This charge is calculated by multiplying the actual project costs by an annual cost recovery factor, divided by 12. The cost recovery factor is levelized over the 10-year term of the CNG Services Agreement and effectively recovers the annual depreciation cost of the Facility, and the Company's financing costs, at its authorized return, for the investment made by Avista to provide service to the Customer.

In addition to the CNG Facility Charge, the Customer would be responsible for charges associated with the Facility's scheduled maintenance, base charges for administrative services, (which includes but is not limited to costs for managing the program, performing Customer credit evaluations, billing, warehousing and managing inventory of spare parts, monitoring, and dispatching) and any charges for other services such as unscheduled maintenance or back-up natural gas service (offered if the flow of natural gas to the Facility is disrupted) that may be provided by the Company. All charges for natural gas delivered to the metering point upstream of the Facility will be billed to the Customer in accordance with the applicable rate schedule under tariff.

As part of the CNG Service qualification process, the Customer will be required to meet credit standards and may be required to produce a secured debt instrument. In the event the Customer requests early termination prior to the completion of the ten-year term, they will be obligated to pay all monthly charges remaining on the CNG Facility Charge schedule plus any maintenance costs the Company may have incurred. The CNG Facility, in the event of early termination, would be removed from the Customer's property and redeployed to another Customer location to ensure its refueling infrastructure remains useful and in service. While the Company will only provide this service for qualified Customers, should any of the costs associated with this service be stranded, Avista would not assign any of the costs to the general ratepayer population.

### **Availability of CNG in Southern Oregon is Limited**

Currently, CNG is available to NGV operators at two locations in Avista's Southern Oregon Service territory. The Rogue Valley Transportation District ("RVTD") and Jackson County Motor Pool ("JCMP") allow public fueling access at their respective facilities located in Medford. Each of these facilities offers fast-fill capability to NGV Fleet Operators during their regular hours of operation, Monday through Friday. Management at both facilities has indicated that further availability of CNG would provide desirable relief to fueling demands the public places on their personnel and fueling infrastructure.

## Summary

Approval of this filing would allow the Company to make CNG Service available to an increasing number of prospective NGV Fleet Operators located in our Southern Oregon service territory. If approved, Schedule 441 would provide Customers with an option to use compressed natural gas for their fleet by using Avista-owned CNG facilities located on the Customer's premises. The costs associated with each CNG Facility would be borne by those Customers taking service under Schedule 441 and not assigned to the general rate payer population.

The Company requests that the Commission approve Schedule 441 with an effective date of February 1, 2015. If you have any questions regarding this matter, please contact me at 509-495-8620 or by email at [pat.ehrbar@avistacorp.com](mailto:pat.ehrbar@avistacorp.com).

Sincerely,

A handwritten signature in black ink that reads "Patrick Ehrbar". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Patrick Ehrbar  
Manager, Rates & Tariffs

AVISTA CORPORATION  
dba Avista Utilities

SCHEDULE 441  
COMPRESSED NATURAL GAS SERVICE

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**PURPOSE:**

To provide Company-owned and maintained Compressed Natural Gas (“CNG”) refueling infrastructure sited on a Customer’s Premise where the Company’s standard Distribution System operating pressures are sufficient to meet Customer’s requirements for fueling motor vehicles.

**SERVICE APPLICABILITY:**

Service under this Rate Schedule is available to a Customer who has entered into a Compressed Natural Gas Service Agreement (“CNG Service Agreement”) and has satisfied the prerequisites for service commencement set forth in the Customer’s CNG Service Agreement.

**SERVICES PROVIDED:**

Service under this Rate Schedule includes Compressed Natural Gas Service, Scheduled Maintenance, Unscheduled Maintenance, and Back-Up Service.

CNG Facilities - The Company, or its contractor, will design, plan, engineer, permit, construct, install, inspect, test, and maintain all Standard CNG Refueling Equipment installed in accordance with this Tariff. Avista reserves the right to designate the location of all gas distribution infrastructure and CNG Refueling Equipment required for such service.

Standard CNG Refueling Equipment – Standard CNG Refueling Equipment includes the following:

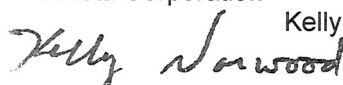
- Compression system, (includes remote monitoring equipment)
- Main distribution panel
- Remote feeder panel
- Transformer pad
- Compressor pad
- Remote Power Panel Pad
- Dispenser pad
- Transformer pad
- Trenches
- Compressor skid
- Dryers
- Regeneration pad
- Storage vessel(s)
- Priority panel
- Protective traffic bollards
- Fast fill meter/dispenser(s) (does not include hanging hardware)
- Approved Cascade Buffer
- Control System and remote power panel

Non-Standard CNG Refueling Equipment - Non-Standard Refueling Equipment includes any equipment related to CNG Service not identified above as Standard CNG Refueling Equipment. Examples of Non-Standard CNG Refueling Equipment include, but are not limited to, time-fill dispensers and hanging hardware. The Customer will own all Non-Standard CNG Refueling Equipment. Upon the Customer’s request, the Company may assist with the purchase, installation, and maintenance of Non-Standard Refueling Equipment. The installed cost for any Non-Standard CNG Refueling Equipment will be borne by the Customer and must be paid in full at the time the parties enter into the CNG Service Agreement. Avista is not liable for any damage to, or damage caused by, Non-Standard CNG Refueling Equipment.

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Scheduled Maintenance – Avista shall procure and furnish all materials, utilities, equipment, services, supplies, and labor necessary for the routine operation and maintenance of the CNG Facilities. Scheduled maintenance shall include, but shall not be limited to, periodic testing, adjustment, and calibration of the meter, external inspection of above-ground portions of the CNG Facilities, and the maintenance of all valves, piping, meter and instruments. Scheduled Maintenance does not include maintenance of non-standard customer-owned CNG Refueling Equipment.

Unscheduled Maintenance – Avista will furnish all materials, equipment, supplies, services, and labor necessary to perform non-routine maintenance on the CNG Facilities as needed to ensure efficient and continued operation. Such Unscheduled Maintenance shall include dispatching Company personnel, or designated contractors, to investigate any abnormality or emergency situation affecting the CNG Facilities, including the tripping of an alarm observed by the Company through its monitoring of CNG Facilities, and the repair or replacement of CNG Refueling Equipment or their components that result from normal wear or facility failure. Unscheduled Maintenance also includes equipment additions, upgrades, or replacements that the Company determines are required to comply with any changes in law, evolving industry and/or Avista engineering design, or field operational standards. Unscheduled Maintenance does not include maintenance of non-standard, Customer-owned CNG Refueling Equipment, or any other equipment that is not associated with or required for the operation the CNG Facilities.

Back-Up Service – Avista may provide CNG as a Back-Up Service when Scheduled Maintenance or Unscheduled Maintenance disrupts the flow of Natural Gas to the CNG Facilities for an extended period of time. The availability and duration of Back-Up Service is subject to Company discretion and availability. Back-Up Service may be provided via tube trailer deliveries of CNG to the Customer’s site at Avista’s discretion. The Company may limit the number of natural gas vehicles that may fuel at the CNG Facilities under this Back-Up Service provision. Back-Up Service is not available as a replacement supply source under Curtailment conditions or when Customer-owned gas supplies do not arrive at the Receipt Point. The Customer is not relieved of its obligation under this Tariff, including the Customer’s obligation to pay any charges set forth in this Tariff during the period of any service disruption resulting from Unscheduled Maintenance.

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**INSTALLATION COSTS:**

In the event new Distribution Facilities are required to provide service under this Rate Schedule, such facilities shall be installed in accordance with the Company's Rules as outlined in its approved Tariff. For the purposes of this Rate Schedule, the Company-owned facilities beyond the meter will not be considered Distribution Facilities as they are defined in Avista's General Rules and Regulations. Any costs for site preparation and Company-owned facilities installed beyond the meter will be included in the Monthly CNG Facilities Charge calculation.

**MONTHLY CHARGES:**

All costs and charges are specific to each CNG Facilities installation and shall be set forth in the CNG Service Agreement between Avista and the Customer. A description of each charge follows:

**Monthly Billing Rate**

Monthly CNG Facilities Charge is the amount a Customer will pay for the installation and use of the CNG Facilities, calculated as follows:

$$(\text{Actual Project Costs} * \text{Cost Recovery Factor}) / 12$$

**Actual Project Costs** equal the cost for all equipment associated with the provision of the CNG Facilities, and the costs to design, plan, engineer, permit, construct, install, inspect, and test the CNG Facilities, adjusted as needed for any subsequent capital additions or improvements that result from Unscheduled Maintenance. Any tax credits, refunds, grants, rebates or other monetary benefits received and recognized by the Company for accounting purposes as a result of the installation of a CNG Facilities at a Customer's Premise will be credited, net of any applicable taxes, to the Actual Project Costs at the time of recognition, and to the extent multiple customers take service under this schedule, any benefits would be shared on a proportionate basis.

**Cost Recovery Factor** equals the annual percentage rate necessary to recover the incremental capital-related costs of the CNG Facilities. Incremental capital-related costs include rate of return, depreciation, interest, property taxes, and any other costs customarily relating to a utility investment. The rate of return used in the Cost Recovery Factor shall be the most recent rate of return authorized by the Commission in the Company's general rate case. The current Cost Recovery Factor for each year of the ten year term of service is levelized at a rate of 16.5%.

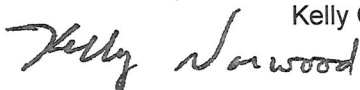
Scheduled Maintenance Charge includes the costs associated with providing Scheduled Maintenance on the CNG Facilities as well as a base annual charge of \$9,600 per Customer for administrative services, which includes but is not limited to costs for management, performing Customer credit evaluations, drafting the Customer agreements and site licenses, billing, warehousing and managing inventory of spare parts, monitoring, and dispatching. In addition, the Company will conduct maintenance at the customer's premises, and any costs associated with this maintenance will be billed on an actual time and materials basis, including overhead expenses. The rates for scheduled maintenance are provided for in the CNG Service Agreement.

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In addition to the Monthly CNG Facilities Charge and the Scheduled Maintenance Charge, the Company will bill, and the Customer will be responsible to pay, all actual costs associated with the Company's provision of Unscheduled Maintenance and Back-Up Services.

Unscheduled Maintenance will be billed as costs are incurred at actual costs for labor and materials plus overhead expenses.

Back-Up Services will be billed as costs are incurred. The charge will also include all mobilization costs, associated time and materials, and administrative and general overheads. Sales Service Customers will be billed according to the rate, and terms and conditions of the Rate Schedule on which the Customer receives gas service as part of its service under this Tariff. For Schedule 456 Transportation Customers, an additional amount will apply for each therm of back-up gas consumed, priced at the approved Commodity and Demand Weighted Average Cost of Gas in accordance with Rate Schedule 461.

**SPECIAL CONDITIONS:**

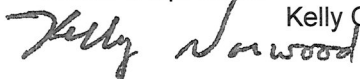
1. Service under this Schedule first requires a signed CNG Service Agreement under which Customer elects to take service under this Tariff for a primary term of ten years commencing on the first day of the first Billing Month following the date that the CNG Refueling Equipment is installed. At the end of the initial ten-year term of the CNG Service Agreement, the Company and Customer may choose to negotiate a new CNG Service Agreement if the Company is offering CNG Service at that time. If CNG Service is no longer available, or the Company is unable to continue the program during the term of the agreement due to Commission order, the Company will either remove the CNG Facilities or negotiate with the Customer the price and other terms and conditions to reassign ownership of the CNG Facilities.
2. The Company will not use rate-payer funded direct marketing channels to communicate the availability of CNG Service to Customers.
3. The Company or Customer may terminate service under this Rate Schedule Tariff for the reasons and in the manner set forth in the CNG Service Agreement. In the event of termination prior to the end of the ten-year initial term, Customer must pay any amounts due for the early termination of service to the Company in accordance with the terms and conditions of the CNG Service Agreement. Upon termination of service, Avista will safely cap utilities used at the CNG Facilities and remove the CNG Refueling Equipment, except for all cement concrete pads.
4. With the sole exception of the use of the fueling apparatus, the Customer may not access or modify, or allow another party to access or modify, the CNG Facilities without the express written permission of Avista.
5. The Customer shall operate the fueling apparatus in accordance with all applicable regulations and laws.

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- 6. The Customer shall maintain the minimum clearances around the CNG Facilities as directed by Avista.
- 7. The Customer shall not fuel any receptacle that is not fit and certified for transporting and, or containing compressed natural gas.
- 8. The Customer is solely responsible for compliance with laws related to the use of CNG in a natural gas vehicle and, if applicable, the operation as a retailer of CNG, including responsibility for payment of any state and federal highway or other taxes associated with or related to the sales and, or use of CNG under this Tariff.
- 9. All Applicants for CNG Service will be subject to a credit review, and if requested by Company, the Customer shall provide financial assurance in advance of construction by making a cash payment, or providing an irrevocable letter of credit or other guaranty of Customer obligation in a form acceptable to Avista for an amount equal to part or all of the costs in the CNG Service Agreement.
- 10. Customer shall notify Avista as soon as reasonably possible of any conditions that may affect operation of CNG Facilities, including, but not limited to, force majeure, fires, vandalism, accidents, planned construction, or power disruptions at Customer's premises and specifically on or near the Site.
- 11. Avista will attempt to conduct Scheduled Maintenance and Unscheduled Maintenance in a manner that minimizes disruption of the flow of Natural Gas through the CNG Facilities.
- 12. The Customer shall establish and maintain electricity and communication services necessary for the continual operation of the CNG Facilities. The Company may assist in the siting of the electric services on the Customer Premise.
- 13. The Customer shall own and maintain a lockable security fence around the site or around the CNG Facilities.
- 14. Unobstructed access to the Company's CNG Service Facilities, meters and other property of the Company located on the Customer's Premises must be given to the Company, its employees, its contractors, subcontractors, and agents, at all times for installation, inspection, adjustment, repair, maintenance, removal and other purposes. Failure to permit access is grounds for Disconnection of Service.
- 15. For the purposes of this Tariff, the Custody Transfer Point is the meter located at the point of interconnection between the Company's Distribution Facilities and the Company-owned service line to its CNG Facilities. All service under this Tariff occurs beyond the Custody Transfer Point.

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**GENERAL TERMS:**

Service under this tariff is governed by the terms and condition of the Service Agreement between Customer and Avista, by the terms of this Rate Schedule Tariff, by the terms of the Rate Schedule from which the Customer is receiving Natural Gas service, by any other Schedules that by their terms or by the terms of this Rate Schedule Tariff apply to Service under this Rate Schedule Tariff, by the General Rules contained in this Tariff, and by all rules and regulations prescribed by regulatory authorities as amended from time to time. In the event of inconsistent terms, the terms of this Rate Schedule Tariff and the Customer's CNG Service Agreement shall prevail. In the event of inconsistent terms, the terms in the Customer's CNG Service Agreement shall prevail over this Rate Schedule Tariff.

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By *Kelly Norwood*

Kelly O. Norwood, Vice-President, State and Federal Regulation

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Avista Utilities

Advice No. 14-11-G

Sample of Compressed Natural Gas Service Agreement

December 11, 2014

*SAMPLE OF DRAFT AGREEMENT*

**COMPRESSED NATURAL GAS SERVICE AGREEMENT**

This Compressed Natural Gas Service Agreement (“Agreement”), dated \_\_\_\_\_ (“Effective Date”) is entered into by Avista Corporation, a Washington corporation located at 1411 E. Mission Avenue, Spokane, Washington 99202 (“Avista”), and [INSERT CUSTOMER NAME], a(n) [State and business entity type] located at [INSERT CUSTOMER’S STREET ADDRESS] (“Customer”) (collectively, “the Parties”).

**RECITALS**

- A. Avista has the capability to provide Compressed Natural Gas ("CNG") service;
- B. Customer desires to contract with Avista for the feasibility evaluation, design, planning, engineering, installation of CNG facilities (“CNG Facilities”), permitting and provision of compressed natural gas service (“CNG Service”) to Customer at a designated location on Customer's business premises (“Site”); and
- C. Avista is willing to provide such CNG Service on the terms and conditions set forth in this Agreement.
- D. The Parties acknowledge that this Agreement may be subject to the approval of the Washington Utilities and Transportation Commission or the Public Utility Commission of Oregon.

NOW THEREFORE, Avista and Customer hereby agree as follows:

**ARTICLE 1.**

**FEASIBILITY EVALUATION – PHASE 1**

1.1 Description of Phase 1 Services.

(a) Avista will, at Avista's sole cost and expense, evaluate Customer’s site, fuel needs, facilities, and other factors relevant to Customer’s potential for receiving CNG Service and provide Customer with a report summarizing the facility requirements and estimated costs associated with Customer receiving CNG Service at the Site.

(b) Any analyses, reports, or other information provided by Avista to Customer under this Agreement are for the limited purpose of assisting Customer in Customer’s own evaluation of receiving CNG Service. Customer shall not use the analyses, reports, or other information provided by Avista for any other purpose. Avista makes no warranties or guarantees, express or implied, related to the suitability or costs of service for Customer or Customer’s needs. The provisions of this Section 1.1(b) survive termination or completion of this Agreement.

## *SAMPLE OF DRAFT AGREEMENT*

### 1.2 Customer Obligations and Representations.

(a) Customer will work with Avista to determine where Avista's high pressure natural gas facilities could be located and the date Avista may have access to the Site.

(b) Customer represents that it has the authority to grant such licenses, leases and easements on the property as may be necessary for Avista's work under this Agreement.

(c) Customer shall provide Avista all records, information, drawings, and assumptions necessary for Avista to complete its analysis, including but not limited to information about Customer's fueling needs (e.g., current fueling requirements, the amount of fuel needed in the future, and the expected timing of Customer's fueling requirements, etc.) and Customer's existing electric and natural gas facilities. Avista will provide Customer written notice of the information Customer must provide pursuant to this Section. Requested information will include, at a minimum, daily, weekly, and annual projections which include both fast fill or slow fill needs.

(d) Customer shall disclose to Avista all hazardous and potentially hazardous conditions, zoning requirements, and permit restrictions that may exist at the Site.

(e) Customer shall provide Avista access to the Site as necessary for Avista to complete its analysis.

(f) Customer shall provide any Adequate Assurance as required by Article 4.

1.3 Notice to Proceed. Upon Avista's completion of its obligation under Phase 1, if Customer wishes to proceed with Phase 2 of this Agreement, Customer shall give Avista written notice to proceed stating that Customer wishes to proceed with the Phase 2 Services ("Notice to Proceed"). Until it receives Notice to Proceed, Avista is under no obligation to provide further services under this Agreement. If Customer does not provide Avista with a Notice to Proceed within one (1) year of Avista's completion of the Phase 1 Services, then this Agreement shall terminate and, except as expressly provided to the contrary, neither party shall have any further obligation.

1.4 Termination. Upon Avista's completion of the Phase 1 Services, either Party may terminate this Agreement for any reason or no reason by giving written notice of termination to the other Party. Section 1.1(b), Article 8, and Article 12 of this Agreement will survive such termination.

1.5 Exclusivity. Customer shall not engage or contract with any party other than Avista for the provision of the Phase 2 or Phase 3 Services for a period of 180 days after the Effective Date.

## **ARTICLE 2.**

## **SITE DESIGN AND PERMIT EVALUATION – PHASE 2**

2.1 Description of Phase 2 Services. Avista, or its contractor, will design, plan, engineer, and confirm permitting requirements (“Phase 2 Services”) in preparation for Avista to permit, construct, install, inspect, test, and maintain CNG Facilities to provide CNG Service at the Site. Avista may provide Phase 2 Services through its agents.

2.2 CNG Facilities Design Volume and Pressure. The CNG Facilities will have a designed daily volume of \_\_\_\_ Dth/d and a peak hourly flow of \_\_\_\_ Dth/hr. The designed pressure of the CNG Facilities will be between \_\_\_\_ psig and \_\_\_\_ psig. Actual operating pressure, daily volume, and peak hourly flow during service may be outside this range.

### 2.3 Deliverables from Avista.

(a) Avista will develop the following as part of its Phase 2 Services:

- Initial Estimated Project Cost (the estimated cost to design, plan, engineer, permit, construct, install, inspect, and test the CNG Facilities);
- Permit-Ready Site Design;
- Permit-Ready Construction Drawings and Specifications;
- Completed Permit Application(s); and
- CNG Service Agreement (prepared for signature)

(b) All drawings, specifications, and other design materials developed and produced by Avista or its agents under this Agreement remain the property of Avista. Customer shall not reproduce such material without express written permission of Avista.

2.3.2 Services Provided in Accordance with Law and Standard Industry Practice. Avista will perform the Phase 2 Services in accordance with applicable state and federal specifications and standard natural gas industry practice.

2.4 Commencement of Phase 2 Services. Avista shall have no obligation to commence Phase 2 Services until Customer provides a notice to proceed which contains the following information:

- (a) Written confirmation of the Site and the date Avista may have access to the Site;
- (b) The Exhibits described in Section 2.6; and
- (c) Any financial assurance required by Article 4.

2.5 Termination. At any time after completion of the Phase 2 Services but prior to the Commencement of Service Date, Customer may terminate this Agreement by giving Avista written notice and paying any amounts required by Section 9.4. Avista shall have no further obligation to continue work on the CNG Facilities and shall incur no liability for

*SAMPLE OF DRAFT AGREEMENT*

discontinuing such work. Section 1.1(b), Article 8, and Article 12 of this Agreement will survive such termination.

2.6 Customer Obligations. Prior to Avista commencing the Phase 2 Services, Customer shall deliver the following Exhibits which provide the information necessary for Avista to proceed with such services. Customer shall update and supplement the information contained in the Exhibits as needed and provide any additional information requested by Avista.

- (a) Exhibit A: Site Description.
- (b) Exhibit B: Access Authorization and Restrictions.
- (c) Exhibit C: Site Information including any specifically requested materials, methods or procedures affecting design or construction.
- (d) Exhibit D: Service Information (Vehicles, consumption, etc.)
- (e) Exhibit E: Notice of Conditions

2.6.1 Notice of Conditions. Customer shall disclose to Avista all hazardous and potentially hazardous conditions, zoning requirements, permit restrictions, the presence of hazardous wastes, substances, or contaminants, as defined under state or federal law (“Hazardous Substances”), and any other conditions that exist at the Site which differ materially from those ordinarily encountered and generally recognized as inherent to the work provided under this Agreement.

- (a) This notice obligation continues for the term of this Agreement.
- (b) Avista may require Customer to remediate hazardous materials or conditions at the Site before Avista continues or begins work under this Agreement.

2.6.2 Compensation to Avista. Customer shall pay to Avista the Site Design Costs to cover all costs, fees, and expenses associated with the designing, planning, engineering and confirming permit requirements. Customer shall pay such amount as follows:

- (a) If Customer proceeds with Phase 3 of this Agreement for construction of CNG facilities and service within sixty (60) days of Avista providing Customer notice that it has completed the Phase 2 Services, Avista shall include the Site Design Costs in the Monthly Facility Charges pursuant to Sections 3.5 and 3.6.
- (b) If Customer does not proceed with Phase 3 for construction of CNG Facilities and service within sixty (60) days of Avista completing the Phase 2 Services, Avista shall invoice Customer for the Site Design Costs. Customer shall pay the full amount of such invoice within thirty (30) days of the date of the invoice. If Customer fails to pay such invoice within said thirty (30) day period, interest of 1% per month will accrue on the unpaid portion of the invoice. Further, Customer shall reimburse Avista for any reasonable attorneys' fees incurred in connection with any activities related to collection of payments due. If Customer

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has provided Financial Assurance as set forth in Section 4, Avista may recover the full amount of the Site Design Costs plus interest and attorneys' fees from the Financial Assurance.

**ARTICLE 3.**

**CONSTRUCTION AND CNG SERVICES**

3.1 Description of Compressed Natural Gas Services. Avista shall permit, construct, install, inspect, test, and maintain CNG Facilities as necessary to allow Customer to receive CNG Service at the Site and in accordance with applicable state and federal specifications and standard natural gas industry practice. Avista may provide these services through its agents.

3.2 Permitting, Constructing, Installing, and Testing.

(a) Avista shall permit, construct, install, and test the CNG Facilities at the Site in accordance with drawings and specifications contained in Exhibit F.

(i) CNG Facilities include only those facilities installed beyond the Customer's retail service meter. The CNG Facilities are described in Exhibit G.

(ii) The CNG Facilities do not include the optional, non-standard equipment described in Exhibit H ("Optional Equipment"). However, upon request from the Customer, Avista may supply, install, and maintain the Optional Equipment described in and under the terms described in Exhibit H. Avista is not liable for damage to or damage caused by non-standard equipment.

(b) During construction of the CNG Facilities, Avista shall use its best efforts to limit disruptions to Customer's operations during normal business hours.

(c) Avista shall provide Customer the training described in Section 3.7.1 (e).

3.3 Maintaining the CNG Facilities.

(a) Avista shall provide Scheduled Maintenance, Unscheduled Maintenance, Back-Up Services, and Removal of CNG Facilities in accordance with:

(i) All rules and regulations prescribed by regulatory authorities;

(ii) This Agreement and any amendment thereto; and

(iii) Prudent natural gas industry practices.

(b) Scheduled Maintenance. Avista shall procure and furnish all materials, utilities, equipment, services, supplies, and labor necessary for the



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routine operation and maintenance of the CNG Facilities ("Scheduled Maintenance"). Scheduled Maintenance includes, but is not limited to, providing periodic testing, adjustment, and calibration of the meter, external inspection of above-ground portions of the CNG Facilities, and maintenance of all valves, piping, meter and instruments. Scheduled Maintenance does not include maintenance of Optional Equipment.

(c) Unscheduled Maintenance. Avista shall procure and furnish all materials, equipment, supplies, services, and labor necessary for performing non-routine maintenance to the CNG Facilities ("Unscheduled Maintenance"). Such Unscheduled Maintenance shall include the repair and replacement of CNG Facilities or their components as the result of normal wear or facility failure associated with the CNG Facilities or any part thereof required to keep the CNG Facilities operating efficiently at the design pressures and in accordance with general industry practices and standards. Unscheduled Maintenance includes equipment additions, upgrades, or replacements that are required as the result of changes in law, evolving industry and/or Avista engineering design, or field operational standards. Unscheduled Maintenance includes dispatching Avista personnel, or its contractor, to investigate any abnormality or emergency situation affecting the CNG Facilities, including the tripping of an alarm observed by Avista through its monitoring of CNG Facilities. Unscheduled Maintenance does not include maintenance of Optional Equipment.

(d) Back-Up Service. If Unscheduled Maintenance disrupts the flow of natural gas through the CNG Facilities for an extended period of time, Avista will make Back-Up Service available to Customer, subject to availability ("Back-Up Service").

(i) Avista may provide Back-Up Service at designated Avista fueling stations or via deliveries of CNG to the Site at Avista's discretion. If Back-Up Service is unavailable, Customer is not relieved of its obligations under this Agreement, including Customer's obligation to pay any charges set forth in this Agreement.

(ii) If Customer receives Back-Up Service under this Agreement, Customer shall pay for the natural gas commodity at the rate set forth in the Rate Schedule under which Customer takes commodity service, and charged for time and materials at the applicable labor rate.

(e) Removal of CNG Facilities. Upon termination of this Agreement, Avista will safely cap utilities used at the CNG Facilities and remove the CNG Facilities, except for all cement concrete pads, underground conduits, trenches, bollards, underground piping, underground electrical feeds, and signal cables.

(f) Attempts to Minimize Disruption to Customer. Avista will attempt to conduct Scheduled Maintenance and Unscheduled Maintenance that is not due to an emergency condition in a manner that minimizes disruption of the flow of natural gas through the CNG Facilities.

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(g) Notice of Disruption of Flow of Natural Gas through CNG Facilities. When Avista determines that any necessary Scheduled Maintenance or Unscheduled Maintenance will prevent the flow of natural gas through the CNG Facilities, Avista will, as circumstances permit, give reasonable notice to Customer prior to making such maintenance, repair, or replacement.

### 3.4 Customer Obligations.

3.4.1 Update Notice of Conditions. Pursuant to Article 2, Customer provided Avista notice of all hazardous and potentially hazardous conditions, zoning requirements, permit restrictions, the presence of hazardous wastes, substances, or contaminants, as defined under state or federal law (“Hazardous Substances”), and any other conditions differing materially from those ordinarily encountered and generally recognized as inherent to the work provided under this Agreement that may exist at the Site. Customer shall update such notice as necessary. This notice obligation continues for the term of this Agreement.

3.4.2 Site Access to Avista. Customer shall provide Avista access to the Site as described in Section 3.8.

#### 3.4.3 Site Security.

(a) Customer shall own and maintain a lockable security fence around the Site or the CNG Facilities and a secure staging facility for use during construction and while providing services under this Agreement.

(b) Customer shall provide Avista with a Site security plan.

(c) With the sole exception of the use of the fueling apparatus, Customer may not access or modify, or allow another party to access or modify, the CNG Facilities without the express written permission of Avista.

(d) Notwithstanding the requirement to secure the CNG Facilities, Customer shall provide reasonable access at all times to Avista personnel, or its agents performing their duties.

#### 3.4.4 Operation of Fueling Apparatus and Conducting Activities Near CNG Facilities.

(a) Customer shall ensure that the fueling apparatus is operated and activities near the CNG Facilities are conducted in a safe manner and in compliance with applicable laws.

(b) Customer shall maintain the minimum clearances around the CNG Facilities as directed by Avista or any authority having jurisdiction over the CNG Facilities.

(c) Customer shall not fuel any receptacle that is not fit and certified for transporting and/or containing CNG.

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(d) Customer shall notify Avista as soon as reasonably possible of any conditions that may affect operation of CNG Facilities, including, but not limited to, fires, vandalism, accidents, planned construction, or power disruptions at Customer's premises and specifically on or near the Site.

3.4.5 Emergency Shut-Off. Customer shall comply with Avista's emergency shut-off procedures.

3.4.6 Electric Service. Customer shall maintain electric service to the CNG Facilities through the term of this Agreement.

3.4.7 Financial Assurance. Customer shall provide the Financial Assurance required by Article 4.

3.4.8 Payment for Services. Customer shall make all payments required under this Agreement in a timely manner.

3.4.9 Payment of State and Federal Highway or Other Taxes. Customer is solely responsible for payment of any state and federal highway or other taxes associated with or related to the use or sale of CNG.

3.5 Project Costs.

3.5.1 Estimated Project Costs. Estimated Project Costs are shown in Exhibit I. Estimated Project Costs reflect (1) the Site Design Costs set forth in Section 2.6.2; and (2) the Initial Estimated Project Costs provided to Customer pursuant to Article 2, which includes a contingency amount equal to 10 percent of the Initial Estimated Project Costs. The Estimated Project Costs, amended as set forth below, will be used to calculate the Monthly Facility Charge described in Section 3.6.

3.5.2 Updates to Project Costs.

(a) Prior to the Commencement of Service Date defined in Section 3.7, Avista shall update the Estimated Project Costs and amend Exhibit I to reflect:

(i) The difference between the actual cost to Avista to purchase the CNG Facilities and to design, plan, engineer, permit, construct, install, inspect, and test the CNG Facilities ("Actual Project Costs") and the Estimated Project Costs, if the Actual Project Costs are different than the Estimated Project Costs;

(ii) Customer-initiated Change Orders for any reason; and

(iii) Avista-initiated Change Orders for Material Events. Avista shall initiate a Change Order upon the occurrence of a Material Event (as defined in section 3.5.3) which is not attributable to the negligence of Avista or its agents or Avista's breach of this Agreement, and provided that Avista has taken all reasonable action to minimize the impact of such Material Event.

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(b) Prior to the Commencement of Service Date, Avista shall provide Customer with an updated Exhibit I reflecting the Estimated Project Costs and all amendments to that date, which will be the “Final Project Costs.”

(c) After the Commencement of Service Date, Avista shall amend Exhibit I to reflect changes to the Final Project Costs for:

(i) Capital Additions and Improvements. The cost of capital additions or improvements to the CNG Facilities that result from Unscheduled Maintenance (“Capital Additions and Improvements”) will be added to the Final Project Costs and amortized over the remaining term of this Agreement.

(ii) Other Funding Sources. If tax credits, refunds, grants, rebates, or other monetary benefits are recognized for accounting purposes as a result of the installation of a CNG Facility at a Customer’s premises, Avista will credit such amount, net of any applicable taxes, to the Final Project Costs at the time of recognition (“Other Funding Sources”).

### 3.5.3 Material Events.

(a) For purposes of this Agreement, “Material Event” means:

(i) Delays or interference affecting Avista’s services resulting from the acts or omissions of Customer or its agents;

(ii) The occurrence of a Force Majeure event;

(iii) The discovery of Hazardous Substances not brought on the Site by Avista or its agents;

(iv) The occurrence of a material change in any laws, statutes, acts, ordinances, regulations, codes, rules, orders, decrees, permits or rulings after the Effective Date of this Agreement that directly affects the services to be performed under this Agreement; and

(v) The discovery of unforeseen site conditions, including but not limited to geotechnical conditions that affect structural support for CNG Facilities and the presence of archeological resources.

(b) Avista will notify Customer in writing of any change orders and will include the particulars of the Material Event, the Material Event’s expected duration, and the change in Project Costs resulting from the Material Event.

(c) The occurrence of a Material Event does not excuse any obligation or liability of Customer which arose before the occurrence of the Material Event.

### 3.6 Price and Payment Terms.

3.6.1 Monthly Charges. Customer shall pay the following four separate monthly charges for services provided under this Agreement, calculated as provided in this

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Section: (1) Facility Charge; (2) Scheduled Maintenance Charge; (3) Unscheduled Maintenance Charge; and (4) Backup Service Charge.

(a) Monthly Facility Charge. The Monthly Facility Charge is calculated by multiplying the Final Project Costs contained in Exhibit I, as amended in accordance with Section 3.5.2, by a Capital Recovery Factor of 16.5% and dividing by 12. The Estimated Facility Charge (based on the Estimated Project Costs) is \$ \_\_\_\_\_ per month. The Estimated Facility Charge will be adjusted to reflect any changes to Estimated and Final Project Costs resulting from the events described in Section 3.5.2(c).

(b) Avista will provide Customer with a Final Monthly Facility Charge upon commencement of service, and a revised Monthly Facility Charge calculation whenever the Monthly Facility Charge changes.

(c) Scheduled Maintenance Charge. Customer shall pay a monthly charge for the costs associated with Avista providing Scheduled Maintenance and administrative services. The Monthly Scheduled Maintenance Charge will be calculated as set forth in Exhibit J.

(d) Unscheduled Maintenance. Customer will be billed as costs are incurred at actual costs for labor and materials plus overhead expenses. However, as explained in Section 3.5.2(c), Capital Additions or Improvements which result from Unscheduled Maintenance will be added to the Project Costs and amortized over the remaining term of this Agreement.

(e) Back-Up Service Charges. Customer shall pay the costs associated with providing Back-Up Service. The Back-Up Service Charge will be calculated as set forth in Exhibit K.

3.6.2 Payment. By the \_\_\_\_\_ of each month, Avista shall provide to Customer an invoice reflecting the Monthly Facility Charge, the Monthly Scheduled Maintenance Charge, and, if applicable, Unscheduled Maintenance costs and the Back-Up Service Charge. Customer shall pay or cause to be paid the full amount of such invoice within thirty (30) days of the date of the invoice. If Customer fails to make payment of such invoice within said thirty (30) day period, interest shall accrue on the unpaid portion at the rate of 1% per month. Further, Customer shall reimburse Avista for reasonable attorney's fees Avista incurs in connection with any activities related to collection of payments due.

3.6.3 Compensation for Optional Equipment. Customer shall pay the actual cost of Optional Equipment as set forth in Exhibit H upon execution of this Agreement.

3.6.4 Taxes and Fees. Customer shall pay all business or occupation taxes, license, franchise or operating permit fees, or similar exactions imposed upon Avista by any city or county for engaging in business therein or for use and occupancy of streets and public ways.

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3.6.5 Compensation During Service Outages Required. Customer shall pay the Monthly Facility Charge and the Monthly Maintenance Charge for any period during which Customer does not receive service due to a service outage. If Customer receives Back-Up Service, Customer shall pay the Back-Up Service Charge calculated as set forth in Exhibit K.

3.6.6 Discontinuance of Service. If Customer fails to pay any amount required under this Agreement, Avista may discontinue all services under this Agreement.

### 3.7 Commencement of Service.

3.7.1 Service Commencement. Operation of the CNG Facilities shall commence on or after the date on which:

(a) Avista provides Customer with written notice that the CNG Facilities have been installed, tested, and placed in-service;

(b) Avista provides Customer with the amounts of the Monthly Facility Charge and the Monthly Maintenance Charge;

(c) Customer has paid in full the actual cost of Optional Equipment upon execution of this Agreement;

(d) Customer has provided any Financial Assurance required by Article 4; and

(e) Avista provides Customer with training on the CNG Facilities, including safety requirements, emergency shut-off procedures, and how to dispense from the CNG facilities.

3.7.2 Notice of Service Commencement Date. Avista will notify Customer of the date upon which these conditions have been satisfied. This date will be the "Service Commencement Date."

### 3.8 Easement, Access and Ownership.

3.8.1 Lease. Customer shall lease to Avista the Site consisting of approximately \_\_\_\_ square feet on the Customer's property for Avista to provide the CNG (the "Lease"). The Site is more specifically described in Exhibit A. The Lease shall additionally include a reasonable right of ingress and egress to and across Customer's property to allow Avista to access the Site and a utility easement sufficient to allow Avista's access to the CNG Facilities on the Site, which easement will be recorded in the records of the County in which the Site is located. The Lease shall commence on the Effective Date and shall terminate 60 days after the date this Agreement is terminated. No rental shall be payable by Avista to Customer for such lease and Customer acknowledges that the consideration for such lease is the Customer's and Avista's rights and obligations under this Agreement. Customer shall at its sole cost pay all real property taxes and assessments levied against the Site.

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3.8.2 Avista Site Access. Customer shall provide reasonable access to the Site at all times to Avista personnel and Avista's agents performing their duties. Customer shall provide Site Authorization as described in Exhibit B and the Lease.

3.8.3 Ownership of CNG Facilities. Avista retains ownership of the CNG Facilities at all times, both during the term of this Agreement and after termination of this Agreement.

3.8.4 Encumbrances.

(a) Prior to the Service Commencement Date, for each party (an "Encumbering Party") with a trust deed, lien, or other encumbrance (an "Encumbrance") on the Site, Customer will obtain the Encumbering Party's written agreement confirming the following: (1) Avista owns the CNG Facilities; (2) the Encumbering Party has no interest in the CNG Facilities; (3) the CNG Facilities are not subject to any Encumbrance in which the Encumbering Party has an interest; and (4) Avista has the right, at any time, to remove the CNG Facilities from the Customer's Site.

(b) Avista may, at its discretion, record a Uniform Commercial Code ("UCC") Financing Statement as a fixture filing in the real property records of County in which the Site is located, identifying Avista as the owner of the CNG Facilities. Customer will fully cooperate with the fixture filing if requested by Avista.

3.9 Hazardous Substances.

3.9.1 Notice of Remediation of Hazardous Substances or Conditions. Avista may require Customer to remediate Hazardous Substances or conditions at the Site before Avista continues or begins work under this Article 3 or Avista may terminate this Agreement pursuant to Section 9.3 (b) if the condition or restriction materially affects Avista's ability to safely provide CNG.

3.9.2 Hazardous Substances. Customer shall bear all costs and expenses and shall be solely liable for any response, removal, investigation, cleanup, or other remedial action required by applicable environmental laws related to any Hazardous Substance that is not brought on the Site by Avista or its agents. Avista shall not be responsible for any costs or expenses related to the introduction of Hazardous Substance to the Site by any party other than Avista or its agents

## **ARTICLE 4. FINANCIAL ASSURANCE**

4.1 Customer shall comply with Avista's general rules and regulations relating to credit and collection policies including, at Avista's sole discretion, the requirement for Customer to provide either a payment to Avista, a bond, or a letter of credit, in advance of construction, in an amount equal to part or all of the Estimated Project Costs ("Adequate Assurance"). The Adequate Assurance, in the form determined by Avista to be appropriate, is intended to cover Avista's costs in the event that the CNG Facilities are constructed and Customer fails to make payments under this Agreement. If Avista deems an Adequate Assurance to be necessary, then the parties will negotiate the terms of an

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Adequate Assurance Agreement the conditions under which the Adequate Assurance amount will be paid to Avista or refunded to Customer.

### **ARTICLE 5. INSURANCE**

5.1 Avista shall carry and maintain insurance of the type and in the amounts sufficient in its sole opinion to cover its services under this Agreement and any exposure in providing services under this Agreement.

5.2 Customer shall carry and maintain Commercial General Liability Insurance in the amount of \$1 million per occurrence and \$2 million in the aggregate. Avista shall be named as an additional insured on Customer's Commercial General Liability Insurance and the policy shall contain a cross liability endorsement and contractual liability coverage for obligations assumed by Customer under the indemnity provisions of this Agreement.

### **ARTICLE 6. FORCE MAJEURE**

6.1 Avista shall not be liable to Customer for the failure to perform any of its obligations under this Agreement to the extent such failure is a result of Force Majeure. The term "Force Majeure" as employed herein means any cause, event, act or omission whether of the kind enumerated herein or otherwise that is not reasonably within its control.

6.2 Force Majeure includes, but is not limited to, the following: (i) physical events such as acts of God, landslides, earthquakes, fires, other natural catastrophes, epidemics, explosions, and breakage or accident or necessity of repairs to machinery, equipment, lines of pipe or any component part of the CNG Facilities; (ii) weather-related events, such as low temperatures which cause freezing or failure of the CNG Facilities or lines of pipe, storms, floods, and lightning; (iii) acts of others such as the need to obtain third party easements and/or rights-of-way, strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars; and (iv) governmental actions or litigation, such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction, including the need to obtain pipe line construction or other permits. Nothing contained herein shall be construed to require the settlement of a strike or labor dispute.

6.3 Avista will provide to Customer notice of Force Majeure impacting the CNG Facilities or Avista's services under this Agreement as soon as reasonably practical after the occurrence of the Force Majeure or upon receipt of knowledge thereof. Initial notice may be given orally; however, written notice with reasonably complete particulars of the event or occurrence is required as soon as reasonably practical. Failure to give notice is not a waiver of such Force Majeure. Avista shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to the extent possible, will work to resolve the Force Majeure in order to resume performance under the Agreement.

### **ARTICLE 7. CUSTOMER SALES OF CNG AND ACKNOWLEDGMENTS**

7.1 Sales of CNG. Customer may make sales of CNG to third parties to the extent such sales are consistent with this Agreement and any laws in the applicable state.



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(a) Customer shall be fully responsible and liable to such third parties and shall hold Avista harmless as to any third party claims for damages or lost profits associated with any sales of CNG to third parties as a result of any service interruptions at the CNG Facilities.

(b) Customer is solely responsible for compliance with laws related to operation as a retailer of CNG, including responsibility for payment of any state and federal highway or other taxes associated with or related to the sales of CNG. Avista transfers custody of the natural gas that will ultimately be converted to CNG at the Customer's natural gas service meter. Avista is not responsible for vehicle fueling.

(c) Customer Use of CNG. Customer is solely responsible for compliance with laws related to the use of and operation of a fueling station.

### **ARTICLE 8. LIABILITY AND INDEMNIFICATION**

8.1 Customer shall protect, defend, indemnify and hold Avista, its directors, officers, employees, attorneys-in-fact, agents and affiliated companies, free and harmless from and against any and all losses, claims, liens, demands, and causes of action of every kind and character, arising out of, in connection with, or incident to this Agreement or any activities contemplated hereunder, including, but not limited to, the amounts of judgments, penalties, interest, court costs, investigation expenses and costs and legal fees (whether incurred at trial, on appeal, in bankruptcy or otherwise), for claims, liens, debts, personal injuries, death or damages to property, and all other claims or demands of every character occurring or incident to, in connection with or arising out of Customer's or its contractors' or subcontractors' performance of Customer's obligations under this Agreement. This indemnity provision may be limited as necessary by applicable law.

8.2 IN NO EVENT WILL EITHER PARTY NOR ITS SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS BE LIABLE FOR ANY PUNITIVE, SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL, CONSEQUENTIAL, LOST PROFITS, OR OTHER SIMILAR DAMAGES TO PERSONS OR PROPERTY, WHETHER SUCH DAMAGES ARE CLAIMED UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING, BUT NOT LIMITED TO, LOSS, DAMAGE, OR EXPENSE TO PERSONS OR PROPERTY, DIRECTLY OR INDIRECTLY, ARISING OUT OF ITS ACTIONS THAT ARE IN ACCORDANCE WITH THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT, UNLESS SUCH DAMAGES ARE THE RESULT OF A PARTY'S WILLFUL MISCONDUCT.

### **ARTICLE 9. EFFECTIVE DATE/TERM/TERMINATION**

9.1 Term. This Agreement commences on the Effective Date. Following Avista's completion of its Phase 1 Services, this Agreement may be terminated by either party in accordance with Section 1.4. If this Agreement is not so terminated, then following the completion of the Phase 2 Services, this Agreement may be terminated as set forth in Section 2.5. If this Agreement is not terminated following the completion of the Phase 2 Services, then this Agreement will continue for a period of ten (10) years beginning on the Service Commencement Date, during which time Avista will provide the Construction and CNG Services set forth in Article 3. Such ten (10) year period is referred

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to in this Agreement as the CNG Service Term. Avista and Customer may agree to extend the CNG Service Term. If the CNG Service Term is extended, Avista and Customer will revise the Monthly Facility Charge and the Scheduled Maintenance Charge.

### 9.2 Termination by Customer.

(a) At any time after completion of the Phase 2 Services but prior to the Commencement of Service Date, Customer may terminate this Agreement by giving Avista written notice and paying any amounts required by Section 9.4. Avista shall have no further obligation to continue work on the CNG Facilities and shall incur no liability for discontinuing such work.

(b) At any time after the Commencement of Service pursuant to Article 3, Customer may terminate this Agreement by giving Avista thirty (30) days' written notice and paying any amounts required by Section 9.4.

### 9.3 Termination by Avista.

(a) At any time during the term of this Agreement, in the event that Customer: (i) makes an assignment or any general arrangement for the benefit of creditors; (ii) files a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iii) otherwise becomes bankrupt or insolvent (however evidenced); (iv) is unable to pay its debts as they fall due; or (v) has a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all of its assets; Avista may, at its sole election, immediately withhold or suspend performance, terminate this Agreement, and/or request additional financial assurance, in addition to any and all other remedies available to it. Avista shall provide written notice to Customer of its intent to withhold services, suspend performance, or terminate this Agreement as soon as is reasonably practical after Avista makes such decision. Without action or election by Avista, upon the occurrence of any of the events specified in this Section 9.3(a), the entire amount due and owing over the term of this Agreement is immediately due and payable in full, including those amounts set forth in Section 9.4.

(b) At any time during the term of this Agreement, in the event Avista determines that (i) Customer has failed to comply with any material term of this Agreement, including but not limited to making payments to Avista as required by this Agreement; (ii) Customer has tampered with or otherwise affected the operation of the CNG Facilities; (iii) a condition at the Site poses a risk to health or safety that Customer has not mitigated within a reasonable period of time; or (iv) Avista must discontinue its work due to a Force Majeure event, Avista shall have the right, at its sole election, to immediately withhold and/or suspend performance and/or to terminate this Agreement, in addition to any and all other remedies available to it. Avista shall provide written notice to Customer of its intent to withhold services, suspend performance, or terminate this Agreement as soon as is reasonably practical after Avista makes such decision.

### 9.4 Effect of Termination.

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(a) Upon termination of this Agreement for any reason by either Party, Customer is required to pay Avista as follows:

(i) If termination occurs prior to the Commencement of Service Date, Avista shall submit to Customer a reasonably detailed listing of the actual costs, including any applicable contract cancellation fees, incurred by Avista. Cancellation fees include, but are not limited to, the Production Unit Cancellation fees set forth in Exhibit I.

(ii) If termination occurs after the Commencement of Service Date, Customer shall pay (1) the total amount of Monthly Facility Charges which would otherwise be due over the CNG Service Term, and (2) and the remaining Monthly Scheduled Maintenance Charges which Avista has already incurred, or is contractually obligated to incur.

(b) In the event of termination, Avista shall render to Customer an invoice reflecting the total amount of such charges. Customer shall pay the full amount of such invoice within thirty (30) days of the date of the invoice. If Customer fails to make payment of such invoice within said thirty (30) day period, interest of 1% per month will accrue on the unpaid portion of the invoice. Further, Customer shall reimburse Avista for any reasonable attorney's fees that may be incurred in connection with any activities concerning collection of any payments due.

(c) Upon termination of this Agreement, Customer shall continue to provide access to the Site as set forth in Section 3.8 to allow for removal of the CNG Facilities.

**ARTICLE 10. DISPUTE RESOLUTION**

10.1 Binding Arbitration. The Parties shall submit all claims, disputes and other matters in question arising out of, or relating to this Agreement, the breach of this Agreement or the relationship of the Parties to binding arbitration. The arbitration will be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). The arbitration will be held in Multnomah County, Oregon, OR Spokane County, Washington unless the Parties agree otherwise. A Party may not demand arbitration after the date when institution of legal or equitable proceedings based on such claim, dispute or other matters in question would be barred by the applicable statute of limitations. The award rendered by the arbitrator(s) will be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

10.2 Selection of Arbitrators. If the Parties mutually agree on the selection of a single arbitrator, then the arbitration shall be heard by that one arbitrator. If the Parties cannot agree on a single arbitrator, then each Party shall select one arbitrator within ten (10) days of a demand for arbitration is made. Within ten (10) days after selection of the two (2) arbitrators, those arbitrators must jointly select a third arbitrator. If either Party fails to select an arbitrator within the ten (10) day period, or if the two (2) selected arbitrators fail to agree on a third arbitrator, a Party may make immediate application to a Court in and for the State of Oregon located in Multnomah County OR the State of

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Washington located in Spokane County for appointment of a second or third arbitrator, as the case may be. Arbitrators need not be members of AAA.

10.3 Litigation for Limited Purposes. Nothing in this Agreement prohibits or limits a Party's right to initiate litigation to enforce the arbitration award, to obtain injunctive or equitable relief permitted by the terms of this Agreement, or to preserve a superior position with respect to other creditors.

**ARTICLE 11. MODIFICATION AND ASSIGNMENT**

11.1 This Agreement may not be modified or amended in any respect except by a written instrument executed by the Parties. No waiver or modification of any provision of this Agreement shall occur as a result of any course of performance or course of dealing between Avista and Customer, or from any usage of trade. No Party may assign this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, Avista may assign this Agreement to any affiliate without prior consent from Customer. Any attempted assignment made without such prior written consent is void and of no legal effect. This Agreement is binding upon and inures to the benefit of any valid successors or assigns to the original Parties to this Agreement, but any assignment of this Agreement shall not relieve either Party of any obligations to the other Party incurred prior to such assignment.

**ARTICLE 12. CONFIDENTIALITY AGREEMENT**

12.1 The term "Confidential Information" means any information that a Party has designated in writing as proprietary or confidential, by writing "CONFIDENTIAL" prominently on the material.

12.2 The Parties acknowledge that as part of performing under this Agreement, the Parties will exchange Confidential Information regarding their facilities and other forms of proprietary information deemed to be confidential. The Parties agree not to disclose Confidential Information during or after the term of this Agreement except to the extent necessary to perform their obligations under this Agreement during the term hereof. Neither Party shall use or duplicate any such information for any other purpose other than for use under this Agreement. Each Party's standard of care under this Article shall be satisfied if it treats the other Party's Confidential Information as it treats its own information that it does not wish to be publically disclosed, published, or otherwise disseminated.

12.3 Each Party's Confidential Information shall be made available to the other Party's employees, subcontractors or agents only on a "need to know" basis.

12.4 The confidentiality obligations imposed in this Section do not apply to: (1) information that now or hereafter becomes part of the public domain through lawful means; (2) information already known to or developed by the receiving party as demonstrated by written materials that predate the disclosure; (3) information subsequently and rightfully received from third parties without any obligation of confidentiality; and (4) information required to be produced by a lawful government, regulatory, or court order, provided that Customer will provide Avista with prompt written notice sufficient to allow Avista to seek a protective order or other appropriate remedy.

## *SAMPLE OF DRAFT AGREEMENT*

12.5 Upon termination of this Agreement, each Party shall immediately cease to use any of the Confidential Information disclosed to it pursuant to this Agreement. Upon such termination or expiration, neither Party may retain any Confidential Information of the other Party and shall immediately return to the other Party all written Confidential Information that has been provided to it as well as any copies of Confidential Information.

12.6 Customer agrees that in the event of a breach or threatened breach of this Section, the remedy at law is inadequate and Avista may obtain equitable relief prohibiting the breach, in addition to any other appropriate legal or equitable relief.

### **ARTICLE 13. SURVIVING TERMS**

13.1 The following provisions of this Agreement will survive termination as specified in such Section or Article, as follows: Section 1.1(b), Article 8, and Article 12.

### **ARTICLE 14. OTHER GENERAL PROVISIONS**

14.1 Recitals. The Recitals are by this reference specifically incorporated herein.

14.2 Complete Agreement. This Agreement, and all documents and regulatory filings referenced in this Agreement, sets forth the entire integrated agreement of the Parties with respect to the subject matter herein.

14.3 Supersedes Other Agreements. This Agreement supersedes all other agreements relating to the subject matter herein which the Parties may have previously entered.

14.4 Not Construed Against Either Party. This Agreement has been drafted with the joint participation of each Party, and shall be construed to be neither against nor in favor of any Party, rather this Agreement shall be construed in accordance with the fair meaning of its stated terms.

14.5 Headings. The headings set forth in this Agreement shall not affect the interpretation of this Agreement.

14.6 Severability. Any provision of this Agreement held to be unenforceable in any jurisdiction shall be, as to that jurisdiction only, ineffective only to the extent of such unenforceability, without affecting any other provision of this Agreement.

14.7 Signatures May Be in Counterparts; Facsimile or E-Mail Signature Has Legal Effect. This Agreement may be signed in counterparts. A facsimile version or an e-mailed pdf of the signature page shall have the same legal effect as an original.

14.8 Waiver. No waiver by a Party of any provision of this Agreement shall be deemed to be a waiver of any preceding, concurrent, or succeeding breach of the same or any other provision.

*SAMPLE OF DRAFT AGREEMENT*

14.9 Rights and Remedies Cumulative. Subject to the terms herein, all rights and remedies granted or referred to in this Agreement are cumulative and resort to one shall not preclude resort to any other available right or remedy.

14.10 Signatories Have Authority. The signatories to this Agreement certify that they have the authority to bind the Party they represent.

**ARTICLE 15. NOTICES AND COMMUNICATIONS**

15.1 Any notice or communication permitted or required by this Agreement shall be made in writing; and will be considered duly delivered if personally delivered to the other Party or upon mailing if sent to the other Party by U.S. Mail, certified, at the appropriate address set forth below:

To: Avista Corporation  
Attn: Director, Customer Solutions  
1411 E. Mission Avenue  
Spokane, WA 99202

To Customer:

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

15.2 Either Party may change its address for receipt of notices and communications under this Agreement by providing written notice to the other Party in accordance with this Section 15.

Dated as of the Effective Date.

AVISTA CORPORATION

[CUSTOMER]

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

*SAMPLE OF DRAFT AGREEMENT*

EXHIBIT A  
SITE DESCRIPTION

*SAMPLE OF DRAFT AGREEMENT*

EXHIBIT B

ACCESS AUTHORIZATION & RESTRICTIONS

Customer shall provide reasonable access at all times to Avista personnel or its agent to perform their duties. Please list any restrictions to such access below including physical restrictions and day of week or time of day restrictions.



*SAMPLE OF DRAFT AGREEMENT*

EXHIBIT C  
SITE INFORMATION

(Include any specifically requested materials, methods or procedures affecting design or construction)

*SAMPLE OF DRAFT AGREEMENT*

EXHIBIT D  
SERVICE INFORMATION

*SAMPLE OF DRAFT AGREEMENT*

EXHIBIT E  
NOTICE OF CONDITIONS

*SAMPLE OF DRAFT AGREEMENT*

EXHIBIT F  
DRAWINGS & SPECIFICATIONS FOR CNG FACILITIES

*SAMPLE OF DRAFT AGREEMENT*

EXHIBIT G  
CNG FACILITIES

The Compressed Natural Gas Facilities will be located at Customer premises at \_\_\_\_\_, Oregon OR Washington.

The CNG Facilities will have a designed daily volume of \_\_\_\_ Dth/d and a peak hourly flow of \_\_\_\_ Dth/hr at a design pressure of not less than \_\_\_\_ psig nor greater than \_\_\_\_ psig.<sup>1</sup> CNG Facilities are installed beyond the Customer's retail service meter.

The major items comprising the CNG Facilities are:

Compression system, which includes remote monitoring equipment  
Main distribution panel  
Remote feeder panel  
Transformer pad  
Compressor pad  
Remote Power Panel Pad  
Dispenser pad  
Transformer pad  
Trenches  
Compressor skid  
Dryers  
Regeneration pad  
Storage vessel(s)  
Priority panel  
One fast fill meter/dispenser(s) (does not include hanging hardware)  
Protective traffic bollards  
ASME Cascade Buffer – one three pack installed on the roof  
Control System and remote power panel  
Any modifications or additions to the above major components

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<sup>1</sup> Pressure design assumptions set forth in this Agreement are not to be construed as implying a guaranty of any particular level of pressure during service.

*SAMPLE OF DRAFT AGREEMENT*

EXHIBIT H

OPTIONAL EQUIPMENT ORDER

Customer has elected for Avista to install the following Optional Equipment:

[Optional Equipment]

As set forth in the Agreement, payment for Optional Equipment is due upon execution of this Agreement.

**AVISTA CORPORATION**

**[CUSTOMER]**

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

*SAMPLE OF DRAFT AGREEMENT*

EXHIBIT H

ESTIMATED PROJECT COSTS

[Specifically identify in a Box costs to which Production Unit Cancellation Fee will be applied.]

*SAMPLE OF DRAFT AGREEMENT*

EXHIBIT J

MONTHLY SCHEDULED MAINTENANCE CHARGE



*SAMPLE OF DRAFT AGREEMENT*

EXHIBIT K

BACK-UP SERVICE CHARGE CALCULATION